House of Commons

Business, Innovation and Skills Committee

Pub Companies

Tenth Report of Session 2010–12

Volume II

Additional written evidence

Ordered by the House of Commons
to be published 6 September 2011

Published on 6 October 2011
by authority of the House of Commons
London: The Stationery Office Limited

Business, Innovation and Skills Committee

The Business, Innovation and Skills Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Business, Innovation and Skills.

Current membership

Mr Adrian Bailey MP *(Labour, West Bromwich West)* (Chair)
Mr Brian Binley MP (*Conservative, Northampton South*)
Paul Blomfield MP (*Labour, Sheffield Central*)
Katy Clark MP (*Labour, North Ayrshire and Arran)*
Rebecca Harris MP (*Conservative, Castle Point*)
Margot James MP (*Conservative, Stourbridge*)
Dan Jarvis MP *(Barnsley Central)*
Simon Kirby MP (*Conservative, Brighton Kemptown*)
Ian Murray MP (*Labour, Edinburgh South*)
Mr David Ward MP (*Liberal Democrat, Bradford East*)
Nadhim Zahawi MP (*Conservative, Stratford-upon-Avon*)

The following members were also members of the Committee during the parliament.
Luciana Berger MP (*Labour, Liverpool, Wavertree*)
Jack Dromey MP (*Labour, Birmingham, Erdington*)
Gregg McClymont MP (*Labour, Cumbernauld, Kilsyth and Kirkintilloch East*)
Nicky Morgan MP (*Conservative, Loughborough*)
Chi Onwurah MP (*Labour, Newcastle upon Tyne Central*)
Rachel Reeves MP (*Labour, Leeds West*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/parliament.uk/bis. A list of Reports of the Committee in the present Parliament is at the back of this volume.

The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are James Davies (Clerk), Charlotte Pochin (Second Clerk), Louise Whitley (Inquiry Manager), Neil Caulfield (Inquiry Manager), Ian Hook (Senior Committee Assistant), Jennifer Kelly (Committee Assistant).

Contacts

All correspondence should be addressed to the Clerk of the Business, Innovation and Skills Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 5777; the Committee's email address is biscom@parliament.uk

List of additional written evidence

Written evidence

Written evidence submitted by Admiral Taverns

1. Admiral Taverns ("Admiral") was formed in December 2003 and operates 1,350 pubs across England and Wales. Admiral welcomes the opportunity to inform the Committee on the progress made since the "Pub Companies: follow up" report of March 2010. Admiral accepts that the March 2010 report made some valid and timely criticisms of the leased and tenanted pub sector. By taking these recommendations to heart, and surpassing them in places, we are strengthening our business and those of our licensees. We have therefore addressed the recommendations in the Admiral Taverns Code of Practice which is now central to the improvement of our operational processes.

Admiral's Ethos

2. Admiral has a distinctive strengthening ethos which enables us to derive a competitive advantage in attracting and retaining good licensees. Our ethos is founded on three principles:

(a) *Simplicity of Agreement and Operational Practices*

3. We recognise that licensees are busy people. We therefore keep our processes and agreements simple and transparent for our licensees.

(b) *Flexibility of Approach*

4. Our business thrives by ensuring we have the right licensee in the right pub on the right deal, ie licensees are motivated to work with us to succeed. We are therefore comfortable with customising any form of letting agreement, whether tied, part tied or free-of-tie, which is fair to both Admiral and the Licensee.

(c) *Delegation of Authority*

5. We devolve an unusual degree of authority to our Business Development Managers ("BDM's") who work directly with licensees and who are empowered to manage almost all aspects of the company's relationship with a licensee. This enables Admiral's licensees to get issues addressed quickly and decisively in almost all situations. We therefore employ some of the very best and most experienced BDM's in the industry who provide commercial and personal support to licensees. Over 50% of our BDM's have experience of being a licensee and we support the BII's plan to provide ongoing development for BDM's.

BBPA Framework Code of Practice

6. Admiral is a member of the BBPA and received accreditation from the British Institute of Innkeeping Benchmarking and Accreditation Service ("BIIBAS") for its Code in November 2010. We recognise that the BBPA Framework Code of Practice is the minimum standard expected and therefore our Code incorporates all aspects of the BBPA Framework Code, and also provides additional detail and information, particularly around the pre-let process and the respective obligations of the agreements.

7. Our Code is intrinsic to our relationship with licensees, and our employees are aware of the importance of the Code's contents and spirit. A copy of our Code has been issued to every Admiral licensee holding a substantive agreement, whether the agreement was signed after the Code's accreditation or not. Following advice from the BII, we have only asked licensees to confirm receipt of the Code.

Lease Assignments

8. Our Code requires assignees to provide information to incoming licensees (similar to the information provided by Admiral to licensees entering a new agreement). However, as the assignor has not been required to sign up to the Code's obligations, this cannot be enforced by Admiral. To address this issue, assignments are managed by an Operations Director who ensures that incoming licensees have received adequate information before taking an assignment.

Training and Professional Advice

9. Admiral is determined that licensees only enter a substantive agreement once they understand the commitments they are entering: over 90% of our new licensees take a 6 month agreement before signing a substantive agreement. This "try before you buy" agreement enables the licensee to assess the business and to develop a trading relationship with Admiral before making a significant commitment. The only time a 6 month agreement is not used is where the incoming licensee is familiar with running the business (eg is the manager for the prior licensee) or has extensive experience of running leased and tenanted pubs.

10. Admiral endorses the BII's Pre-Entry Awareness Training ("PEAT") which provides a good general understanding for inexperienced licensees. Licensees entering a substantive agreement must provide a copy of their PEAT certificate unless they have taken independent legal advice or have at least three years' successful

experience of running a leased and tenanted business. The senior manager in charge of recruitment is the only Admiral employee able to sanction an exemption from PEAT.

11. All licensees are encouraged to take independent legal advice before signing any agreement. This is specified within our Code and in all relevant communications prior to signing. If the licensee states that they do not wish to take independent advice, they are required to confirm that this decision has been taken despite our advice.

12. These policies are having a positive impact on licensee success. Although the first 12 months of any new business is when the likelihood of failure is highest, Admiral has seen only eight early departures from 108 substantive agreements signed over the last year.

Upward-only rent review clauses

13. Admiral has removed any upward only rent review clauses from new agreements, but there are some old agreements which have an upward-only clause. Our Code confirms that we will remove this clause through a deed of variation when asked although we may ask for a contribution from the licensee for this variation (no such charge has yet been levied).

Amusement ("AWP") Machines

14. Admiral has removed AWP income from the divisible balance used in rent calculations where AWP income is tied. However, we include machine income in the divisible balance where the licensee is free-of-tie for machines.

15. Admiral is flexible about machine tie arrangements. Our Code states that we will release the tie on machines, but this will require a rent discussion: we have added wording about this free-of-tie option in pre-let correspondence to ensure that licensees understand its implications before deciding which type of agreement to take.

16. This flexibility can be seen from the differing share terms agreed with licensees. In over 200 sites the licensee takes all net (after supplier costs) income from AWP machines, with other licensees taking 90%, 85%, 75%, 65%, 60% or 50% of net income. Most licensees enjoy the entire net income from juke boxes and pool tables.

17. Admiral also offers a share arrangement with machine suppliers which increases licensee income from lower machine income sites. This share arrangement is popular and we now have around 450 machines on this arrangement.

18. Pub companies historically received royalties from machines suppliers and our Code states that we may take a royalty. However, we have started to remove royalties from our AWP equipment and to-date we have removed royalties from over 1/3 of tied AWP machines. By completion, circa £500,000 of annual income will have been transferred to licensees.

Flow monitoring equipment

19. Admiral employs flow monitoring equipment and makes its information available to licensees free-of-charge. Admiral does not solely rely on this equipment to determine tie breaches, but employs Cellar Inspectors to confirm physical evidence of buying out.

20. The previous Committee identified that some pub companies charged breach fines by direct debit without licensee authority: Admiral has never taken direct debits for fines without agreement from the licensee.

Policing the Codes

21. Admiral welcomes the BII's role in enforcing company Codes and considers the BII to be impartial in any review of complaints. We recognise the importance of the BII accreditation of our Code and believe that its removal would adversely impact our recruitment of licensees. We consider the BII to be an effective body to ensure compliance with individual Codes.

22. The BII has received three calls to its Legal Helpline regarding Admiral. None of these calls related to compliance with our Code and all enquiries were resolved to the satisfaction of both the licensee and BII.

Pub Rent Evaluations

RICS Guidance

23. Admiral welcomes RICS' 2010 guidance on pub rental valuations and has confirmed within its Code that any changes made by RICS to it guidelines will be adopted by Admiral for rent reviews.

Benchmarking

24. Admiral incorporates the ALMR's cost benchmarking information in its Profit and Loss assessments, making it available on the supporting sheets to supplement the actual costs used in the rental assessment which we try to establish with the licensee. This enables anyone reviewing a Profit and Loss assessment to compare its outputs with the ALMR benchmarks.

Rent assessments

25. Admiral intends to set sustainable rents for each site, whether for lettings, rent reviews, renewals or rent concessions. This has resulted in Admiral keeping rents well below pub company averages—our current average annual rent is £14,000. Rent reviews during 2010 reduced rents by an average 2.8%: 68% of reviews either reduced rents or kept them unchanged. This, along with other movements, resulted in headline rents reducing within the like-for-like estate by 4.5% during 2009 and 6.4% in 2010 or by 15% in 2009/10 once the effect of inflation is included. These headline reductions, in addition to further non-contractual support provided to licensees, amounted to more than £4 million.

Pubs independent rent review scheme (PIRRS)

26. Admiral supported the introduction of PIRRS as an independent low cost solution to rent disagreements. Our Code confirms that, irrespective of the letting agreement's wording, the licensee can choose an independent expert rather than appoint an arbitrator, or can use PIRRS. However, given our sustainable rent ethos, no review or renewal since Admiral's formation has resulted in a rent being settled by an external body.

Flexibility in Beer Tie and Pricing

27. One of Admiral's key attributes is the flexibility afforded to BDM's in agreeing terms with a licensee. This flexibility covers all aspects of the relationship with the licensee including tie arrangements.

28. Our standard tie includes beer, cider and flavoured alcoholic beverages ("FABS"), but excludes wines, spirits and minerals. However, a BDM can agree any tie variant with a licensee. Consequently, over 140 sites are free-of-tie for bottled product, over 130 are free-of-tie for cider, over 600 are free-of-tie for FABS and over 100 licensees have operated under entirely free-of-tie arrangements during the last year.

29. We have over 50 sites which have guest beer rights, enabling the licensee to buy cask and bottle conditioned beers outside the tie. Admiral is happy to agree guest beer arrangements with licensees when requested. However, licensee demand for guest beer rights is limited as we offer access to the Society of Independent Brewers' Direct Delivery Scheme which provides an extensive range of local beers.

Pricing

30. Admiral does not adopt a single pricing model, but allows BDM's to offer pricing that meets a licensee's specific needs. Discounts provided to licensees range from £25 to £130 per barrel: few licensees do not receive a discount.

31. Admiral provides 25% of its pubs with additional non-contractual discount and we have not passed on in full suppliers' wholesale price increases in recent years. The cost to Admiral of this additional discount was over £1,400,000 in the last year.

32. Consequently, the average net tied price to licensees has increased by only 1.3% compound over the last 2 years if the impact of duty is removed. This percentage lags significantly both the rate of inflation and supplier increases to Admiral.

Conclusion

33. Admiral's distinctive ethos enables us to develop strong, sustainable relationships with licensees, and our flexibility regarding ties, pricing and machines allows letting agreements to be structured to suit licensees' requirements. We are however far from complacent and continue to make improvements beyond the previous Committee's requirements by introducing more forms of licensee support, strengthening the calibre of our employees and enhancing our operating practices to ensure that Admiral is regarded by licensees as a constructive business partner.

34. We at Admiral take our Code seriously and have invested over £200,000 in its implementation. We believe that our Code, and the further enhancements we have made, have already had a positive effect on licensee relationships and have reduced the already small number of disputes we have historically experienced. We were therefore pleased with the results of the independent survey of licensees recently conducted by CGA which revealed a good and strengthening relationship between licensees and pub owners.

17 June 2011

Written evidence submitted by the All-Party Parliamentary Save the Pub Group

BACKGROUND

The All-Party Parliamentary Save the Pub group was established in February 2009 with the aim of bringing together MPs and peers to help protect pubs. Since its formation it has held a number of successful meetings in Parliament discussing all the issues affecting the pub trade and engaged in constructive dialogue with ministers. The group's membership includes 118 MPs and peers from all parties. The group made submissions to previous committee inquires, in March 2009 and February 2010.

1.1 *The BBPA and IPC—are they in dialogue and, if so, how is this progressing*

The group is not convinced that the BBPA has made a significant attempt to engage in sustained and effective dialogue with the IPC, based on the evidence available. Since reports in the trade press of an initial meeting in May last year, little has been heard of dialogue between the two groups. The only evidence recently of the groups working together was the publication of a survey, conducted by research group CGA, on tenants' and lessees' attitudes towards the pubcos and new codes of practices.

Despite the survey being jointly commissioned by the BBPA and IPC, members of the IPC subsequently expressed frustration that the survey did not address the group's key concerns, such as tenant profitability.

1.2 *Whether the Pub Companies' individual codes of practice are robust enough and whether the major pub companies have built upon the de-minimus requirements of the BBPA's Framework Code*

The group is concerned about the robustness and effectiveness of the codes of practice and has no evidence they have gone beyond the minimum requirement. Speaking at a meeting of the Save the Pub group this month (June 2011), Nigel Williams, president of the only licensee group to sign up to the Framework Code of Practice, the Federation of Licensed Victuallers Associations (FLVA), said:

"The framework code is a start—but we do not see anywhere that the codes have gone further than they need to go. They have gone at best, just about far enough. They haven't addressed overall tenant profitability."

The key point of course is that the BBPA's Framework Code, upon which all other codes are based, does not in itself go as far as the Committee expected. On a guest beer right for example, the Framework Code simply states that individual companies must stipulate whether or not they are offered—and does not require this option to be offered. Despite this weak requirement, both Marston's and Scottish & Newcastle's codes make no mention of any guest beer options offered to licensees.

1.3 *Are the Codes of Practice being complied with?*

In March 2011 it was reported by the trade press that 21 serious complaints had been received by BIIBAS from licensees over operation of the codes. A report from BIIBAS stated:

"BIIBAS has seen an increase in the number of enquiries from licensees who feel that they are not receiving the level of service expected by the codes.

"Complaints received are often complex and involve several areas of business. BIIBAS has received a number of complaints from licensees whose experiences fall outside of the remit of the current codes of practice."

BII chief executive Neil Robertson reported to the Save the Pub Group at the June 2011 meeting that 25 serious complaints had now been received and five breaches of the code had been found.

1.4 *How the BII is policing the codes and whether this is effective*

We acknowledge that the BII has invested significant time and effort in establishing a system to police the codes through the BIIBAS scheme. However, the group is concerned about the impartiality of the BII in this matter, bearing in mind the funding it receives from its corporate members—including the major pub companies. Although BIIBAS reported five breaches of the code, only one of these was since the codes have been updated. This seems a very small number and raises questions over how well the codes are being policed and whether BIIBAS has the teeth to effectively police the codes.

Neil Robertson, the BII's Chief Executive also admitted to the Save the Pub group at the June 2011 meeting that new tenants' understanding of the business model is still poor, despite the codes. He said:

"I am despondent in that…I suspect we are now back at four or five (out of 10) not fully understanding the business model…but that is the complication of the industry and we will work hard to improve that further."

1.5 *The enforceability of the codes*

Again, with the industry effectively self-policing itself there is no deterrent for a code breach. The group therefore believes that a statutory code is the only effective and reliable way to police the industry. The BBPA's Brigid Simmonds told the group at the June 2011 meeting:

"There are areas around the tie that could not be in the framework code because of the competition issues that offers up—all we can do as an association is to encourage our members to do more and to offer more to their tenants—and we set the framework up to do just that."

The Save the Pub Group does not accept this assertion and believes that any Code must cover the substantive issues (a genuine free of tie option and guest beer right) for it to be effective. Should the BBPA's claims be proved, this further demonstrates the need for a statutory code.

1.6 *If AWP machines are now being treated more fairly and tenants are being given a genuinely free of tie option*

The Committee's previous report branded the practice by pubcos of taking 50% of the machine income and then 50% of the remaining profit as part of the divisible balance for rent as "totally unacceptable".

However despite this strong view, we remain concerned that pubcos are taking into account licensees' AWP income as part of rental negotiations. BII chief executive Neil Robertson was reported on *The Publican's Morning Advertiser* website on June 2, 2011, as saying:

"All landlords have completely removed shared machine income from their rental calculation. However, some may still take into consideration the tenant's share of machine income when making their rental bid."

"We advise you to ensure you understand how the landlord has arrived at their rental bid and whether it has been materially influenced by the tenant's share of income."

Many pubcos are only offering a free of tie option on AWP machines in exchange for a penalty fee (described by Marstons, Admiral and Enterprise as a "charge"/"increased rent"/"annual release fee" respectively). Scottish & Newcastle does not offer free of tie AWP option at all. The CGA survey found that 44% of existing businesses and 42% of new entrants are still tied for AWPs.

1.7 *The treatment of flow monitoring equipment*

The group still has concerns about the accuracy of Brulines equipment, as noted in previous committee reports. The group notes that the National Measurement Office (NMO) refused to substantiate claims by Brulines that its equipment was "fit for purpose", after tests by the NMO. Paul Dixon of the NMO told *The Publican* magazine:

"We've given no approval of the systems tested, or commented on its suitability for the purpose for which it is intended."

"We haven't given any opinion on whether the technology is good, bad or indifferent."

"We have just performed a range of tests and reported our findings. Because this technology is not prescribed under legislation there are no error limits."

1.8 *The effectiveness of the new RICS guidance on pub rental valuations and whether it provides clarity on the principle that a tied tenant should be no worse off than a free of tie tenant by defining what constitutes a countervailing benefit*

The group has seen no evidence that the RICS guidance is effective in offering clarity on the principle that a tied tenant should be no worse off than a free-of-tie tenant. Indeed, the group notes that the long-delayed 20-page guidance published by RICS in December 2010 contained no direct reference to this principle. RICS also stressed at the time of publication that the paper was "guidance" and not "legally binding". RICS also said its members "are not required to follow the advice and recommendations contained in the paper" (thepublican.com, December 22, 2010).

2.1 *The availability and effectiveness of complaints procedures and an independent disputes mechanism*

The group acknowledges the work of the Pubs Independent Rent Review Scheme (PIRRS) to settle disputes. However, the CGA survey suggests a major lack of awareness among licensees of the scheme. Well over half (56%) of existing and new licensees said they unaware of PIRRS.

The first PIRRS annual report found that only five dispute cases had been resolved by the scheme. The report notes that concerns had been raised as to the "accuracy of the information that is supplied by the independent experts" based on the independent experts' "listed conflicts of interest on the website".

2.2 *The availability of genuine free of tie options ie an open market rent review under RICS new guidelines, ability to buy beer from any source*

At the June 2011 meeting, the group was given clear and unequivocal evidence from Enterprise Inns and Punch Taverns that neither offered complete free-of-tie options with an open market rent review. This is a cause of serious concern for the Save the Pub group.

Simon Townsend, Enterprise's chief operating officer, told the group:

"I will go straight to the nub of the issue. We have not included the availability of a completely free-of-tie option within our code of practice"

Roger Whiteside, Punch's leased division managing director, said:

"We have stopped short in one respect…if we were to offer them (licensees) a completely free-of-tie option then we would be giving up the additional benefit we gain through our scale and not available to them as independent licensees. If we had to give that up, then that would jeopardise the business model."

There is also evidence of a glaring lack of willingness by the pubcos to actually offer a free-of-tie option. The CGA survey revealed that only 16% of new licensees had been offered a free-of-tie agreement by their landlord. In addition only 9% of current licensees have been offered changes to their agreement, the survey showed.

It is clear that the pub companies have not done what they have clearly been asked by the select committee (and Government) to do and it is clear that all the different leases on offer still involve the pub company dictating the rent and what this means is that the pubco would still be taking more from pub turnover than is fair, reasonable or sustainable. If the "tie" is as attractive as pubcos suggest it is, then should have the courage to offer a genuine free-of-tie option alongside it (in this model the pubco gets the rent only at a fair independent level—paying more for product should then lead to *lower*) rent, which is not what is being offered).

The Group is deeply concerned that some companies are using the term "free of tie pricing" for leases that are patently not free of tie and simply involve a different set of tied prices and believe this is deliberately misleading and they should be asked to cease doing so.

2.3 *The guidance from BII on the type of pub leases available and what the options mean in reality to prospective lessees. This includes free of tie, tied pricing and discounts as well as the business support countervailing benefits available*

The group is aware of the Pre-entry Awareness training course that the BII operates. However the group notes that more than a fifth (22%) of new licensees were not required by their pubco to take the course in order to take on a pub.

Conclusion

The group is concerned that despite successive Parliamentary investigations over the course of seven years issues still remain and around 25 pubs a week continue to close, meaning vital community assets are lost. An average pub employs around 10 staff, which reveals the human cost of a pub closure as well as adding to the difficult overall economic situation.

On a specific point, the Save the Pub Group wishes to point out that oft quoted statistics that free of tie pubs close in greater numbers than tied pubs is both misleading and also seriously dubious. Apart from the fact that these statistics are collected by the BBPA and paid for by the pub companies (and cannot therefore be regarded as impartial) they are misleading as they do not include temporary closure and the rate of business failure for tied pubs is many many more times that what it is for free houses; dubious because of the deliberate practice of selling tied pubs to developers who only close the pub after the sale, once the pub can be declared as a "free of tie" pub even though it has only traded as such for a short time (with the closure already planned). There is considerable evidence of this. Sometimes the pub may not even open again but is offered on a free of tie basis, which means that again, when it is closed permanently (not the same thing as the doors closing) it is *reported as being free of tie even though it never traded as such!* This is a scandal and needs to be exposed and the CGA figures rejected accordingly,

One of the key aims of the Save the Pub group when it was established was reform of the beer tie model. The group believed then, and still does, that the model makes it impossible for some licensees to make a living and leads to pub closures. This is due to the lack of a genuine free-of-tie option along with an open market rent review.

The group believes the pub companies have failed to meet the full recommendations from previous committees and therefore a statutory code of practice is required for the industry together with an independent ombudsman, funded by the pubcos.

The group therefore believes it's now time for the government to legislate to force companies to offer a free-of-tie option with an open market rent review and a guest beer option.

June 2011

Further written evidence submitted by Greg Mulholland MP on behalf of the All Party Parliamentary Save the Pub Group

I am writing to you on behalf of the All-Party Parliamentary Save the Pub Group following the successful BIS Select Committee this week to inform you of contradictions in statements made by Ted Tuppen regarding his compliance with RICS guidelines.

David Rusholme, Director of Valuation at the Royal Institution of Chartered Surveyors, confirmed at the first Select Committee last week that RICS guidelines mandated "the tied tenant should be no worse off than the free of tie tenant."

Guidance 7.18 reads *"The tenant may compare its own property with the circumstances of being free of a supply tie and consider the profit achievable under those circumstances."*

7.19 states, "*The REO may have regard to the fact that free houses are available in the market. Therefore, it could expect to make an increased profit as a result of being able to buy products in the open market and not at the prices charged by the supply tying landlord or its nominated supplier."*

And Guidance 7.21 confirms, "*Comparability between public houses held on different lease terms and with different supply terms is problematic, particularly between the tied and non-tied sectors. There is nothing within this guidance that should result in rents in one sector being set at any advantage or disadvantage to another."*

At the second hearing this week, Ted Tuppen stated that he agreed with the way rents were assessed by RICS and that all Enterprise Inns rent assessments were in accordance with RICS guidance. However, Mr Tuppen also disagreed with the principle that the tied tenant should not be worse off than the free of tie tenant.

It must follow then that Mr Tuppen does not, in fact, agree with the way rents are set by RICS, and that Enterprise Inns rent assessments do not conform to these standards.

The statements made by Mr Tuppen and other pubcos heads, illustrate a sad reality that these companies either can't or won't implement the Select Committee's directives to avoid government intervention. Enterprise Inns has had over a year to act in accordance with new RICS guidance, and they have failed to do so. Now is the time for a statutory code to correct this market abuse.

8 July 2011

Further supplementary written evidence submitted by Greg Mulholland MP on behalf of the All Party Parliamentary Save the Pub Group

Over the last year the Parliamentary Save the Pub Group has received 30 serious and detailed complaints from individual tied pub lessees. These have been received just since June 2010, in which time the new Codes of Practice should have been in place. This is a further demonstration that the new Codes of Practice have not improved the situation for licensees. Given that the Group has not sought individual complaints this is likely to represent only a tip of the iceberg of ongoing malpractice in the tied pub sector made possible by a gross imbalance of power.

A summary of the 30 complaints are attached. These are submitted in an anonymous format as we have not had time to seek permission to forward the full details supplied by individual lessees. Given that several of the complaints relate to intimidation, bullying and abusive behaviour it is likely many lessees would be reluctant to make their complaints public.

In oral evidence to the Select Committee by Neil Robertson of the BII, he stated that the BII had received only 28 serious complaints which he regarded as a "remarkably small number". It is not apparent that any of the 30 serious complaints received by the Save the Pub Group were also submitted to the BII.

The Save the Pub Group has forwarded individual complaints to the complainant's local MP to take up on their behalf as well as suggesting they contact the Fair Pint Campaign for assistance. The Group has not advised complainants to contact the BII as it is unclear what actual assistance they can provide. Additionally, a number of lessees have expressed a lack of confidence in the BII to handle complaints fairly as they are financially dependent on the pub companies and have no history of representing or providing advocacy for lessees.

I hope the attached summary of correspondence helps dispel the possible impression given by Neil Robertson that there are few serious complaints from tied pub lessees.

Greg Mulholland MP
Chair, All Party Parliamentary Save the Pub Group

22nd August 2011

Complaints received by the All Party Parliamentary Save the Pub Group—June 2010—July 2011

Summary of Complaints Received	
Pub Company	*Number of Complaints*
Admiral	1
Brakspear	1
Enterprise	17
Marston's	4
Punch	4
Scottish and Newcastle	3
Total	30

Our Ref	*County*	*Correspondence Received*	*Description of Complaints*
1AA	West Yorkshire	2010 June	The pubco withdrew discounts on beer from the tenant, so they were forced to buy beer at higher prices. The tenant subsequently got behind with the rent and cannot afford to pay these higher prices. The pubco will not work with the tenant to resolve the issue, because of a dispute between Brulines and the tenant.
1AB	Oxfordshire	2010 June	The tenant had to pay for their own repairs, staff, equipment and decoration, and was faced with rising prices set by the pubco. The tenant feels they had no support from the pubco and was simply told to "call it a day" when their money ran out.
1AC	Suffolk	2010 July	The tenants invested £50,000 into the pub but have made losses due to the high rent and beer costs. The tenants were told to sign for a new rent level without negotiation or discussion because "it was the only deal they were going to get." The tenants state that the rent is unsustainable and unrealistic.
1AD	Bristol	2010 July	The tenant has improved the sales and reputation of the pub and has steady sales. However, the rent and prices charged by the pubco has meant that the tenant hasn't drawn a wage for two years. The tenants were not informed that paying rent weekly rather than monthly would mean they were charged £3,000 extra a year.
1AE	Merseyside	2010 July	The tenant is earning minimum wage and only just surviving. They have had no help from the pub company in the prior two years, and more recently no help with regards to a sale. The tenant attempted to organise an off-site beer festival to promote the pub. Breweries felt they were not able to deliver to the tenant because of the tie (even though the festival was off-site) and they feared being struck off the SIBA list.
1AF	London	2010 July	The tenants estimate that if they could purchase beer on the open market, they could pay three times their current rent and make more profit. The pubco have refused to negotiate a fairer deal
1AG	Yorkshire	2010 July	The tenant states that the better the pub does, the more they are penalised
1AH	Yorkshire	2010 September	The pubco have taken 50% of turnover which has left the tenant unable to pay the bills, unless they personally work for nothing. The tenants are almost unable to continue but still have 15 years remaining on their lease and if they leave the pub, they will be liable for 15 years rent.
1AI	Middlesex	2010 September	The tenants experienced unannounced inspections by the pubco and Brulines, who went behind the bar and intimidated staff, questioning them without permission. The pubco has imposed a significant rent increase, and the tenants were also informed (with no previous knowledge) that, after five years of their lease; they would now be fully tied on wines, spirits and minerals.

Our Ref	*County*	*Correspondence Received*	*Description of Complaints*
1AJ	Chesterfield	2010 September	The tenants personally invested £70,000 to redevelop and bring the pub up to legal standards, but are making no money for themselves because of the high rates charges by the pubco. The tenants state that they are forced to stock inferior products, but pay premium prices. Also, because of the tie, they cannot compete with other pubs.
1AK	North West	2010 October	The tenants are suffering heavily following a steep rent increase combined with a full tie, and the business viability is in question. The tenants also own the freehold to three other pubs which not experiencing these problems.
1AL	Derbyshire	2011 January	After increasing trade, winning numerous awards and accolades and raising £10,000 for charity, the rising cost of rent and wet stock (the pubco take over 70% of takings) has resulted in the pub becoming unviable. The tenant's debt to the pubco increased to £6,000, and a missed direct debit caused the pubco not to release an order, giving the tenant no way to make the money. The tenant recently walked out of the pub with no money.
1AM	Northamptonshire	2011 May	The pubco sent two bailiffs, unannounced, to the tenant's pub to demand thousands of pounds of rent. The tenant states that they were undergoing rent review and that rent had been paid according to income.
1AN	Staffordshire	2011 June	Following the recession and subsequent fall in turnover and increase in costs and VAT, the tenants have struggled with rent. The pubco mentioned a free of tie option, but the suggested rent increase was too high for consideration, and would have necessitated outperforming the rest of the market by 10%. The tenant requested information about a free of tie option alongside an open market rent review but was told the figures for this were unavailable.
1AO	Unknown	2010 October	The tenant states that the pubco is "pulling the wool over people's eyes" with regards to the free of tie pricing options currently available. All apart from one ale and one cider are still tied; products are subject to a tie release penalty fee and the pubco estimate their resultant loss of earnings and adds this to the rent.
1AP	Surrey	2010 July	The pub is subject to significant disrepair including broken steps and unpainted walls/window frames which has not been dealt with adequately by the pubco. The pubco has refused to engage with the tenant in a reasonable and mature manner.
1AQ	Derbyshire	2010 November	The tenant reports that the pubco "mis-sold a tenancy lease," fabricated information, offered little support and will not respond since the tenants handed in their notice.
1AR	Sussex	2011 January	The pubco offered to complete much-needed repair works if the tenants agreed to a further tie. The tenants agreed but the pubco then refused to carry out the repairs. The tenants had to close the pub and were left in debt.
1AS	Yorkshire	2011 January	The pubco forced the rent up by 54% over a 20 year period, and the tenant has been subject to attempts to more than double rent at rent reviews. This sharp increase in rent meant the tenant was forced to sell his house to cover his debts.
1AT	London	2011 July	The tenant reports that, due to the beer tie, they are under legal obligation to buy from the pubco which is costing 100%—200% more than readily available from wholesalers. The pubco has consistently failed to deal with the tenant's complaints and concerns.

Our Ref	*County*	*Correspondence Received*	*Description of Complaints*
1AU	Unknown	2010 December	The tenant had a good business and busy pub but was defeated by high rents and beer prices imposed by the pubco. The sale of the pub "fell-through," and the tenant has now been forced to sell his house to cover £40,000 of debt.
1AW	Northumberland	2011 February	The tenants are consistently losing money. The BDM has informed them that there is no chance of being offered a free of tie option, and that the pubco will not reduce the rent or increase the discount.
1AX	Unknown	2011 June	The tenants have had numerous different area managers. The tenants invested in a pub after they had been relocated, only to find that the current regional manager had intervened to prevent progress six months previously; in effect the tenants had been subsidising the building with their savings and acting as unpaid caretakers and restricted from full trading opportunities.
1AY	Derbyshire	2011 June	When renewing the lease, the pubco sought to impose an annual rent that was higher than the pub's overall profits.
1AZ	Pembrokeshire	2011 June	The tenant has been forced to relinquish his lease after being priced out of the market. Free of tie pricing options were only offered to him in conjunction with an unsustainable rent.
2AA	West Midlands	2011 July	The tenants report that they were charged a £75 penalty for a late order, because the pubco didn't ring to receive the order. Due to these "bully boy tactics", the licensee intends to leave the pub as soon as his lease expires.
2AB	Sussex	2011 July	The pubco stopped the tenant trading for being one week behind on the rent (the first late payment in seven years). The pubco then charged the lessee a significant penalty for loss of trade. The tenant was also never provided with a contract despite multiple requests.
2AC	Gloucestershire	2011 June	The tenant requested to go free of tie with an open market rent review, but was informed that any free of tie rent proposal would be accompanied by a new 20 year lease, and would fall outside the scope of the pubco's Code of Practice. Any increased profit for the licensee would be recovered by the pubco through a tie release fee.
2AD	Scotland	2011 June	The tenant reports that the behaviour and actions of the pubco has cost them at least £300,000.
2AE	Northumberland	2011 March	The tenant reports a large loss despite a huge effort, because the pubco makes a fortune taking so much money
2AF	Unknown	2011 March	The tenant reports he is paying extortionate rent and doesn't receive appropriate discounts. For example, buying Strongbow at even the highest discount from punch is £110 plus VAT, while the open market price is just £64 plus VAT.

Written evidence submitted by the Association of Licensed Multiple Retailers (ALMR)

As the only national trade body dedicated to representing pub and bar operators—and the only one to have given written and oral evidence to each of the Committee's previous inquiries—the Association of Licensed Multiple Retailers welcomes the opportunity to contribute to the current inquiry.

By way of background, the *ALMR* was formed in 1992 specifically to represent the interests of those companies which operate multiple estates. Uniquely amongst industry trade bodies, the Association has no remit to represent landlord or brewing interests; our views and comments are therefore drawn solely from the perspective of licensees.

Between them our 91 member companies operate just over 6,000 pubs, bars and casual dining outlets—equivalent to two thirds of the managed estate in England and Wales. These pubs are valuable social and economic assets—community centres, social spaces, tourist attractions and significant revenue generators—as well as providing a well regulated and controlled environment for people to enjoy alcohol responsibly and socially.

Two-thirds of *ALMR* members are small independent companies operating 50 outlets or fewer under their own branding, predominantly suburban community outlets. Just under three-quarters of our members' sites are operated under lease from and of these just under half will have an industry landlord, the majority being long leases issued by one of the major pub companies. It is the views of these members we have captured in the attached submission to the Committee. These pubs may be assets but they are under-valued, under threat and under ever increasing pressures—regulatory, fiscal or competitive.

The 2004 Trade & Industry and 2008 Business Enterprise and Skills Select Committee inquiries were comprehensive and exhaustive. Both found that there was an "unhealthy and imbalanced relationship" between landlord and lessee arising from a lack of transparency and openness about the nature of the commercial relationship. It allowed the pub companies to "exploit their position of economic strength", to the detriment of lessee profitability and the health of the sector as a whole. Both set out a series of recommendations to address them.

In March 2010, the pub companies were given a final ultimatum by Ministers to reform or face statutory intervention. The challenge to them was very clear—they needed to put in place a comprehensive Code of Practice and effective self-regulatory structure; and, the major national pub companies needed to offer a free of tie and guest beer option. Failure to do so or if the arrangements put in place were not working effectively, the Government pledged to consult on putting the Code on a statutory footing with independent enforcement.

Notwithstanding the significant efforts made by many in the industry to address the Committee's concerns, insufficient effort has been directed at eliminating the root cause of disputes between landlord and lessee—namely the fair sharing of the economic benefits arising from the business. The Framework Code of Practice is silent on these substantive commercial matters. They also fall outside the remit of the dispute resolution mechanisms established in the wake of the Committee's inquiries.

There are inherent tensions in any commercial relationship of this nature, but these are exacerbated in times of financial and economic stress. The pub company model of long fully repairing and insuring leases was predicated and established in an expanding market at a time of economic prosperity. In a weakening market, characterised by rising costs and declining consumer sales, it proved to be unduly rigid and unable to react sufficiently well to market and retail pressures. In the current market, with high beer prices due to duty increases and soaring costs, the only point of flexibility is lessee's profit margin. As a result, over recent years there has been a very real disparity in the share of profits each side earns. From an *ALMR* perspective this is the crux of the matter and the experience of our members suggests that this remains untouched.

We therefore recommend that the existing regulatory regime be strengthened and expanded in line with Ministerial recommendations in order both to cement progress to date and to encourage further action—from the largest companies in particular—on the issues which remain extant from previous inquiries. Mandatory application of a comprehensive Code covering all aspects of the commercial relationship, rigorously policed and enforced with access to independent redress remains the only long-term solution.

Introduction

1. The Association of Licensed Multiple Retailers (*ALMR*) welcomes the opportunity to submit written evidence as part of the above inquiry. As the only national trade body dedicated solely to representing the needs and concerns of licensed retailers, and a contributor to all three of the previous inquiries in this area we are well placed to review the conclusions reached then and to assess whether activity to date by both the pub companies and the trade and professional bodies has been sufficient to address the significant and substantive concerns raised by previous committees and Ministerial expectations.

2. The *ALMR* is a member of the Independent Pub Confederation and supports and endorses the collective submission. We have therefore confined our comments to those recommendations which are of particular relevance to the Association or where we have a specific insight derived from the experiences of multiple operators.

Codes of Practice—Compliance

3. The IPC has provided detailed and comprehensive information on the Codes of Practice—in particular whether the specific commitments given to the Committee in December 2009 were met and whether the Codes are being complied with in practice. The evidence from a survey carried out by CGA on behalf of BBPA, IPC, BII and FLVA suggests that limited progress is being made but that compliance is still not comprehensive. We support and endorse these representations.

4. The most effective self-regulatory mechanism in the world is meaningless unless customers are made aware of it, understand its obligations and know what to do when things go wrong.

5. The *ALMR* has also undertaken a short survey of members to ask a small number of questions about the Code of multiple lessees—these companies were not included in the CGA survey.[1] The survey results cover 178 outlets and all five of the national pubco and super regional landlords. The key findings are set out below:

(1) Over three quarters of existing leased premises had not received a copy of the company's Code of Practice. In some cases only one per company had been received, despite the fact that the Framework Code makes clear that the company code is read alongside the individual lease.

(2) 84% of all leased outlets were subject to a wet tie. This rose to 100% for Punch, Enterprise, SNPE, Greene King and Marston lessees. The only free of tie outlets were operated by smaller pub companies such as Wellington and GRS Inns.

(3) 61% of existing leased outlets are subject to a machine tie—all Punch, Greene King and Marston lessees surveyed were tied for machines.

(4) A fifth of companies had seen the machine income removed from the divisible balance for tied outlets as required under the Framework Code and in line with the commitments given to the Committee by the BBPA in December 2009.[2] Half stated that this was only in respect of new leases. Half stated that it had been technically removed at rent review but in most cases had still been rentalised separately.

(5) None of the companies had been offered a free of tie pricing or free of tie option in respect of existing outlets. These offers are only made available for new agreements, not as a variation to an existing lease.

(6) A fifth of companies responding said that they had had discussions with Enterprise Inns about their tie release fee scheme which sees companies paying a substantial annual fee of, on average £30,000, to be released from the tie—effectively an additional rent. One company had also been offered a short term free of tie pricing agreement by Marstons.

(7) 43% of outlets had received a reduction in rent or an increase in beer discounts since their last rent review.

Code of Practice Effectiveness

6. From an *ALMR* perspective the acid test of the Framework and Company Codes' effectiveness is whether they result in a rebalancing of the relationship between landlord and lessee and reduce the disparity in the share of the profits each side earns from the tied outlet; this more than anything is the root cause of dispute between landlord and lessee. The evidence from our members suggests that, for existing lessees, the new Codes of Practice have had little material impact on their day-to-day operations.

7. The Framework Code of Practice is silent on substantive commercial matters—the price at which beer is bought, the way in which machine income is rentalised and whether and how RICS guidelines will be followed. At best the Framework Code requires pub companies to make clear their policy in these areas; the obligation is for transparency not necessarily fairness.

8. The wording of the Framework Code has provided sufficient leeway for pub companies to disregard or mis-interpret industry guidance and commitments given at the last Committee sessions without being in technical breach of their obligations. The BIIBAS enforcement regime has proved powerless to act as a check on this type of behaviour as it falls outside their remit. This is a major weakness of the self-regulatory system and one which must be addressed as a matter of urgency.

Rent Setting—RICS Guidance & Benchmarking

9. During the course of 2009–10, the Royal Institution of Chartered Surveyors reviewed and revised its valuation guidance on the setting and review of rents. For the first time, lessee representatives were involved in this process, including *ALMR* Council member, Garry Mallen. The end result is immeasurably better and the RICS has confirmed that a correct interpretation and application of the guidance should result in a tied tenant being no worse off than a free of tie tenant. The RICS is to be commended for its robust and rigorous reassessment of both its role and the guidance itself.

10. Both at Mediation and in giving evidence to the BIS Committee in 2009, the BBPA and landlords undertook to abide by the revised RICS guidance once published. Despite this, the Framework Code only obliges companies to follow RICS guidance in respect of the disregarding of goodwill. Other elements—such as the establishment of FMT and the use of benchmarked operating costs are not included.

11. A snapshot survey of our members who had recently undergone a rent review, found that no BDM was aware of the RICS Guidance or was familiar with its provisions and they were routinely disregarded. Our survey found evidence of routine inflated FMT volumes far in excess of average barrelage. It is now widely accepted that beer volumes have declined across the market as a whole over the past 5 years ie. since the last rent review agreement, yet no rent review carried out amongst our membership since the Code of Practice took

[1] A copy of the questionnaire is attached at Appendix I

[2] The BBPA said in oral evidence that this would mean "the income is shared only once" ie not rentalised and that lessees would be £1,250 better off on average.

effect reflects this. In fact, in 29% of cases, the initial rental bid was based on a barrelage in excess not only of the previous rental agreement but in excess of actual trade in the intervening period.

12. For example, in one rent review case drawn to our attention by members, the FMT set in 2005 was 325 barrels. The site has never achieved this and despite annual volume decreases of more than 4% over the past review period, the initial FMT proposed by the pub company at rent review was 387 barrels. In another case, the incoming tenant took on a site based on an FMT of 200 barrels in 2005, despite the fact that, for the five years previously, it had traded below this. The pub company has proposed an FMT of 320 barrels at rent review. These are by no means isolated examples.

13. The *ALMR* Benchmarking Report was established in 2007 to establish common KPIs for the sector.[3] For the past two survey rounds, changes have been made to allow an analysis of the different cost and profit structures of the leased and freehold estate and the tied and untied estate, allowing the benefit and impact of the tie to be assessed. The key findings are set out below:

(1) The average controllable costs are higher in the freehold sector than they are in the leasehold sector but this gap has halved over the past year.

(2) Freehold properties outperform leasehold sites on a range of indices—leasehold sites attracted half the capex investment of freehold sites over the past year and their gross margins were, on average, 3% lower.

(3) The differential between tied and untied rent has been significantly eroded -The gap between tied and untied rents was 21% in 2009–10 and in 2010–11 it has fallen to just 6%.

(4) At the same time, gross margins remain substantially higher in free of tie leased estates, particularly in respect of wet sales. Again, the differential between the two has narrowed over the past year from 19% to 11%.

14. Whilst reference is made in the RICS Guidance to the use of industry benchmarks for assumptions on costs in the presentation of rental bids, our survey reveals no rent review was prepared by reference to them and when the lessee referred to the *ALMR* Report it was not accepted.

15. Just 13% of rent reviews were prepared using a realistic assessment of operating costs ie 39% of turnover. In almost three quarters of cases, the allowances for costs in the rental bid were between 33–35% of turnover. The depression of operating costs, particularly when coupled with inaccurate assumptions on FMT results in a distortion of the valuation model and an over-inflated dry rent.

16. BIIBAS is unable to provide a check in these instances because the Framework Code and company codes simply reference the RICS Guidance in limited circumstances and to industry benchmarks. As there is no absolute obligation to follow guidance in all cases, nor a requirement to explain or justify why it has been deviated from, no breach of the Code is incurred.

17. Attempts have been made to engage with BBPA to develop the Benchmarking Survey into a genuine industry database along the lines recommended by the Committee. These have been fruitless. As a result, misunderstandings on the methodology and results persist. In contrast, positive discussions have been held with RICS and BII on ways to encourage participation and disseminate the results. There is, therefore, growing awareness of the survey amongst lessees but this is not matched by an awareness and acceptance of its findings by landlords.

18. A meeting was held with Enterprise Inns in May 2010 to discuss the results and to compare them with an internal benchmark of costs and operating parameters prepared by a firm of accountants, Milestone, on behalf of over 700 Enterprise lessees. Despite the public dismissal of the *ALMR* Report as inaccurate and over-inflated, a comparison of the headlines from Milestone's figures and the 2010 report show a marked similarity. Indeed, Enterprise's own figures show a higher average operating cost than the *ALMR* in some instances and one which is far higher than that regularly used in rental bids[4].

Enforcement & Policing

19. *ALMR* is a Board member of PIRRS and this body may well provide an alternative route to resolve these type of disputes. It is, arguably, the single biggest step to address concerns in the industry which has been taken as a result of the 2008–9 inquiries. Cases like this may well end up at PIRRS but, as they must first exhaust all internal procedures for resolving disputes on rent, this will take time.

20. It is extremely disappointing, however, that awareness of PIRRS is not more widespread—the IPC/BBPA survey found 56% of existing lessees were unaware of PIRRs and awareness amongst new entrants was only marginally better. It suggests that whilst effort is being directed at making lessees aware of their obligations and responsibilities, less effort it being directed at communicating the potential benefits of new mechanisms. The relatively low level of cases heard by PIRRS over the past year should not be taken as evidence of the

[3] The *ALMR's* **Annual Benchmarking Report** is the most authoritative survey of its kind and tracks a wide range of indicators, including costs, turnover mix and profitability, as well as market trends. A full copy of the 2011 Report is attached at Appendix 1

[4] An extract from Milestone data provided to *ALMR* by Enterprise is attached at Appendix IV

fact that rent reviews are now handled more fairly. The PIRRS Board is only now taking steps to publicise the scheme—18 months after it started operating.

21. The fact that the *ALMR* has received five times the call volume on rent and lease related matters compared to last year is testament to the inadequacies of the self-regulatory regime. Similarly the fact that the new BII mediation service has had to deal with four major cases in its first four months suggests that not enough is being done to change the day-to-day commercial experience of our members.

Conclusion

22. All parties to the Framework Code acknowledged in 2009 that, in and of itself, a new Code could not be a full and final solution to all the issues raised by the TISC, BESC and BISC inquiries. The existence and accreditation of the codes of practice represents a modest step towards reform of the commercial relationship, but one which has yet to deliver in practice for the majority of existing lessees.

23. The most intractable elements of the commercial relationship—the assumptions on which rent is based, dilapidations, contractual relationships and pricing—remain outside the remit of the Codes and hence the self-regulatory regime to effectively address them.

24. For this reason, we continue to believe that a stronger, more effective Code of Practice is required as recommended by both the Committee and Ministers in May 2010. The Framework Code must be expanded to include more specific commitments on RICS guidance and AWP income as well as an obligation for major pub companies above a certain market threshold to make available a free of tie and guest beer option to all existing lessees as part of the rent review process. The lack of effective sanctions and the lack of a comprehensive dispute resolution mechanism leads us to conclude that the Code should be given statutory backing and include an independent redress mechanism.

20 June 2011

Supplementary written evidence submitted by the Association of Licensed Multiple Retailers (ALMR)

Following the oral evidence session held on 7 July as part of the above inquiry, the *ALMR* has been asked to provide further information on the content, coverage and dissemination of its Benchmarking Survey results. We are pleased to do so and should be happy to meet to discuss the findings in more detail as required.

The *ALMR's* Benchmarking Survey is now in its fifth year and provides an annual assessment of common operating costs incurred at a site level, as well as valuable information on business performance and the composition of the market. Information is collected from individual and multiple lessees but is always presented at individual outlet, not company level.

The survey was initially designed to assist operators in the management of their own business—how well were they performing in comparison to the rest of the market, how good are they at controlling their costs. It was also designed to assist them in making commercial decisions about their style of operation—if they wanted to provide more food, what impact would this have on their investment and cost levels. In designing the survey we were also keen to use it as a vehicle to collect data needed to inform the *ALMR's* campaigning activities and information which is of value to government and other external stakeholders. The Benchmarking Survey results are used in submissions on live music regulation, gaming machine taxation and National Minimum Wage.

The data is therefore collected for a variety of purposes and has many uses over and above its role in rental calculation and valuation purposes. The data therefore not only has a cost to the *ALMR,* it has a value to the organisation.

Cost of Production

The Committee asked for information on how much it cost to produce the Survey on an annual basis. The 2011 survey cost us £5,000 to run and publish. The average production cost over the five year history of the survey has been £6,100. These costs may rise if companies and other parties wish to see the information presented differently or to accommodate suggestions of banding according to turnover.

At the present point in time, the Association does not have sufficient resources to fund this and make the full results freely available. For this reason, we make a nominal charge to cover costs for a copy of the full report. This was precisely why we made the offer to the predecessor Committee in December 2009 to gift the survey. This would have seen all parties funding the collection, collation and interpretation of data and enabled wider dissemination. Unfortunately, preliminary discussions with RICS and others, as well as an initial approach to BBPA suggested that this would not be feasible. If the *ALMR* had not continued to underwrite and bear the costs, the survey would not have been maintained going forward.

Dissemination of Results

We understand that there has been some discussion about how the results of the *ALMR* Benchmarking Survey are made available to individual lessees and how this could be improved.

A full copy of the survey is made available free of charge to all lessees who participate in the exercise. This is used to encourage and reward participation and is common practice with other industry surveys. A copy of the headline results and the key charts is also made freely available through the *ALMR* website. The information which is freely available has been enhanced as part of this survey round and we believe provides a sufficient level of detail for a benchmark comparison to be made. We make available free of charge the information we believe of benefit to the majority of individual lessees and will continue to look at ways in which this can be improved. I have attached a copy of the information which is freely available through our website.[5]

We have offered to have discussions with BII and BBPA as to how this information can be disseminated through their publications and members, but this has been inconclusive.

To date, the *ALMR* has restricted publication of the full results to those paying for them. This is in part to recoup some of the costs of publication but also because few individual lessees will want to receive the detailed breakdown of information the full report provides. The detailed charts and tables are invaluable for those making a rental valuation and the professionals who would be advising the lessee in rent review negotiations. In our experience, access to the detailed information by BDMs trade valuers and professional advisers is far more important than access for individual lessees. It is this which remains a key point of concern.

In view of the fact that the information has a value to the Association as well as a production cost, we charge a nominal amount to non-participants—currently £20 for individual lessees and *ALMR* members and £50 for non-member operators—and £100 for landlords, industry analysts, commentators and other organisations such as law firms, banks. This cost only applies to those who want and can make use of a copy of the full 60 page report and detailed tables. We repeat that we believe that the information currently made freely available is sufficient for everyday comparison and benchmarking use by individual lessees.

This is a small cost and one which we are committed to reducing where possible. It should be viewed in context of the level of information which is freely and readily available and the use to which an individual lessee, as opposed to their professional adviser, may put it.

Future Developments

Our intention is to continue to improve the collection and dissemination of information in this area. We are currently in discussion with a number of commercial parties to explore how we could work with them to underwrite the costs.

In addition, we have recently had a meeting with Punch Taverns to discuss the survey and how best to work with them to disseminate the results amongst their BDMs and lessees. They have expressed strong support for an independent or lessee produced database on operating costs and we are actively exploring ways in which they could provide a degree of funding to assist in dissemination. For example, they could pay a one off fee on behalf of all their lessees.

We are hoping to have similar discussions with other pub companies and centrally with BBPA and will keep the Committee updated on any material developments.

We should be happy to provide any additional information on any aspect of the survey and our work.

Kate Nicholls
Strategic Affairs Director

31 July 2011

Written evidence submitted by Mark Beckett

I am writing in a personal capacity to express my dismay at the way that the Pub Co's, and particularly Enterprise Inns, are being portrayed during the current select committee investigation.

I should state my interest in this issue at the outset. I joined Enterprise Inns at its formation in September 1991 as Financial Controller, a role I held until 2006 when I took up a new role as Project Accountant.

The picture being painted of Enterprise Inns bears no resemblance to the organisation that I have had the pleasure to work for for almost 20 years. The organisation is, and always has been, professional, honest and well managed and I am immensely proud to have played a very small part in the development and success of the Company.

We are very lucky to have incredibly talented and committed publicans running most of our pubs, in the majority of cases we are able to work closely with these publicans to deliver mutual success. Our business needs our publicans to be successful.

[5] http://www.almr.org.uk/hotpdfs/143.pdf

Any small business failure is a tragedy for the individuals involved, however setting up and operating a small business is risky in any sector and unfortunately there will be failures. This does not mean that Enterprise or indeed any other Pub Co is responsible for these failures.

Small businesses are under immense pressure at the moment, the pub sector having been damaged by the credit crunch, recession, smoking ban, excessive duty increases and to cap it all the VAT increase to 20%.

Enterprise has taken unprecedented steps to support publicans during this difficult time. Our support is targeted at publicans who run their businesses well and who have appropriate controls in place.

We have provided increased discounts and rent concessions, this support is completely discretionary. There is no contractual obligation on Enterprise to take this action. We do this to support publicans who are struggling despite their very best efforts in the knowledge that as their business recovers both parties will reap the benefit.

I do not believe that Enterprise has ever claimed to be perfect, the Company is made up of around 500 people, individuals just like our publicans who come to work every day trying to do their best. Individuals make mistakes and I am sure that our employees make mistakes. Where we do make mistakes we are committed to fixing them quickly.

At your recent "evidence" session our detractors claimed that no progress has been made, this is clearly nonsense.

Since the last enquiry we have implemented fully our updated Code of Practice. I know this because the majority of my time over the last 18 months has been spend managing the project to implement new systems and controls that enable us to ensure that all our commitments are honoured.

The Code has been in place for almost a year now and as reported by the BII only a small number of very minor breaches have been recorded, despite the fact that hundreds of new agreements have been signed under the new Code.

I cannot think of any other business that puts as many hurdles in front of new customers to make sure that they fully understand the deal that is being offering before they sign up. At every opportunity we recommend applicants take appropriate advice, we require applicants to meet our training requirements and produce a full business plan approved by a suitable qualified trade accountant. We provide disclosure about the property condition as well as trading and investment history. Our view of the business in the form of a detailed profit & loss account is provided before negotiations commence.

The process is completely transparent. No one is forced to sign an agreement with Enterprise. As a public limited company Enterprise is under constant scrutiny by shareholders, auditors and analysts, unfortunately our detractors are not scrutinised in the same way. It appears to me that your committee finds it difficult to accept evidence provided by the trade, but you accept opinion and misstatement from our detractors without any serious form of challenge.

I urge you to bring some form of balance to the debate, accept that great progress has been made by the industry, and at the very least treat the evidence of our detractors with the same level of cynicism that you seem apply to evidence from the Pub Co's.

26 July 2011

Written evidence submitted by Michael Bell

WHY PUBS ARE CLOSING—AN OVERVIEW

Thousands of column inches have been devoted to the way that pub companies have literally run the British Public House into the ground. This paper is more of a cry for help for the thousands of otherwise well-run tied pubs in this country.

Since my original submission in 2004, I have been involved as a founder member of Fair Pint and have recently suffered a blatantly biased rent review at the hands of Enterprise Inns. There is no code of conduct that could ever have saved us, even if it had been as watertight as possible.

Without dwelling at length, the case revolved around the fact that my wife and I took out a large mortgage to pay for the creation of a hotel upstairs above our (Enterprise) Pub. The lease clearly states that the effect of our works should be disregarded. In other words the income from the hotel should be deducted from the turnover before assessing the rent. This is as opposed to just disregarding the cost of the works—a figure £50,000—£60,000 less a year

At the time Rob May was both the head of the RICS arbitration panel AND head of rentals at Enterprise Inns (A title euphemistically known as "Rent Boy"!) Mr May held both these posts, right throughout the length of our arbitration and right up until a week before the 2008 Select Committee enquiry at which point he was forced to stand down in his (unpaid) RICS role. Not to do so, would have been seen as a serious conflict of interest. Also the whole choosing of the arbitrator was flawed from the start and we simply didn't stand a

chance, so "buttoned-up" was the case. The result being an over rental by as much as £25,000 a year—the difference between success and failure. Mr May's "fingerprints" were all over the case.

This massive over-renting coupled with the extra rent levied by the tie, means that, despite the fact that we have been pioneers throughout the last quarter century, our income continues to fall annually. Because of this heavy penalty we are unable to keep the pub in the standard that Notting Hill demands and so we lose out to better-funded freehouses who can borrow (even in this day and age) to fund their improvements.

The tie has long ceased to be the valid tool that it once was and simply must go. UK products WILL stand up to overseas competition, the general public can see through all the smoke and mirrors of "reassuringly expensive" and other such epithets. The British Public is going more and more for "local". Which means value for money—no transport costs and above all NO PUBCO COSTS.

We simply do NOT need a middleman between the brewer and the licensee. British pubs need massive investment if they are to survive. This can never, ever be achieved under the pubco model. Greedy brewers, large and small, saw this as an opportunity and hived off their pubs into property arms. Now all they are doing is feeding their massive debt caused by their overspending.

Pubs MUST be offered first to the individuals that are running them. Pubs MUST be owner-run. If brewers are not happy, then they shouldn't have sold off the pubs in the first place. The problem is that the sort of "free spirit" that makes the British pub a success, does not want to have someone who has failed miserably at running the pub themselves, telling them what to do and overcharging them in the process..

There can never be fairness, no matter how thought through the "codes of conduct". Dissolution of ALL pub companies is the only solution and the best way to achieve this is to simply limit the tie to brewers and then only to those products that they actually brew themselves. Just as it always was. This would leave us with managed (tied) pubs and freehouses—nothing else.

Pubcos continue to divert criticism towards the Government but it is they that are taking most money out of every pint. All the Government does is limply try and defend its position when what they should be doing is getting to the root of the problem. This problem will NEVER go away until the pub company model is put to rest.

Previous Select Committees have given these parasites enough rope to hang us all.

We need action NOW and "freedom" for pubs is the only solution.

WHY PUBS ARE CLOSING 2 (FOOD FOR THOUGHT)—OVERVIEW 2

The parallel between the care home scandal and pubcos is uncanny. I read a newspaper article and substituted the word pub for care home and it clicked. Greed, securitisation, no direct interest in the inmates etc and, if I ever hear the words "duty to the shareholders" again . . . . . .! A pub shouldn't have shareholders except for those that are prepared to get behind the bar and give their investment oxygen or spend heavily as customers. Hospitality is a VERY personal; thing. It is impossible to be mine host at arms length.

Financially the **Government cannot afford** to have

(1) Mass unemployment from closed pubs. Remember its about 1000 employees of Punch and Enterprise VS about 100,000 in their 13000 pubs.

(2) Communities falling apart.

(3) Large amounts of funds leaving the UK economy (to overseas bondholders).

(4) Also taxes from individual operating freehouses are bound to be greater than those paid by the two vultures and their struggling pubs (with their lack of customers due to over-pricing).

Pubcos make absolutely NO contribution to society—(Unlike banks—and its not often we can say that!). It has now got to the point where they have sucked everyone—breweries, licensees and the public—dry.

(Tied) pubs are too expensive and people are simply drinking at home. *Due to an antiquated lease, I sell twice as much untied beer as tied and its all down to pricing. £1 a pint less—at the same gross profit % incidentally—is VERY compelling. It helps get people out of the house—even in Notting Hill.*

We need a two-pronged attack

Supermarket beer is too cheap, (tied and some greedy freehouses') pub beer is too expensive and only the Government can narrow this inequality. Even the APPBG's Humphries thought that some sort of VAT mechanism should be levied on supermarkets. Brian Jacobs even had the perfect VAT solution (in-store purchase vs home delivery), but no one listened. I know it wasn't mentioned at the meeting with Angela Eagle. It's a complicated subject, and someone needs to join up the dots for Government.

Apart from the odd benign freeholder—we have now got to the point where there is no room for even the leased or tenanted models and certainly not if tied as well. This is the point where pubs MUST be owner run if they are to survive. No intermediary landlord can afford to pour money into upgrading pubs. It is now, more than ever, a lifestyle thing—7/52, that's the lifestyle! Freehouses work—think Wetherspoons. Leased

pubs don't. See recent reports on Punch in the City Press. Only their Spirit (managed house) sector is doing anything. We keep reading "tenanted and leased pubs are in the doldrums"—and it cannot get any better with a desperately overstretched middleman (never a woman) in the loop. This has become a property issue. Where property prices are declining, so are pubs and even London and the Home Counties are only *just* about holding up. Which ever way we look at it, the UK is in for years and years of minimal growth and stagnant property prices. The ability to be able to work from home is the one hope we all hanker after. If that home is a pub, it WILL survive—especially if it fairly priced and if it is the only ray of sunshine in an otherwise stagnant community.

(1) If pubs are to survive they have to diversify—especially into Micro Brewing.

(2) To diversify, they need funds.

(3) To get funds they must own the freeholds.

(4) So all pubs should be sold to OWNER/OPERATORS. ie Individually or to managed house groups/brewers.

(5) To enable this, pubcos MUST be removed from the mix (before they drag us all down with them).

Jon Moulton said it, Guy Hands said it. "The pubco model is long dead"—so why keep it alive?

I simply do NOT subscribe to the notion put about by some (that should know better) that if the tie goes completely, then the foreign brewers will come flooding in. There are some VERY good small UK lager brewers and they sell very well. This is what competition is all about. Beer should be a local thing anyway—a bit like vegetables, Transport costs will soon level the playing field.

Just think. When pubcos have gone, we will look back in absolute amazement at our complacency and to why we allowed it to go on for so long. All we do is pussyfoot around ridiculous "codes of practice". **We are dealing with desperate people here and frankly, their gloves have long since been lost. Their only hope is that they lead us round in circles until the property market improves—dramatically—by which time thousands more pubs will have gone.**

Being in the Portobello Road, I meet a lot of tourists. The British pub is what they come here for—even if the Government doesn't appreciate it. A Britain without its pubs would be as about attractive as a Europe without its café culture or the Caribbean without its beaches.

This has been going on since 2004 and it's the slowest AVOIDABLE train wreck in our history.

FFPA sees a world of owner/publicans who will be able to borrow: to improve their pubs, to close the price gap between pubs and supermarkets and to diversify into other areas such as micro brewery, store, cinema and post office, but we cannot do it without your help.

GOVERNMENT MUST ACT ONE WAY OR ANOTHER—procrastination is not an option.

Written evidence submitted by the Brighton & Hove Licensees Association (B&HLA)

1. B&HLA

1.1 Brighton & Hove Licensees Association is an Association (B&HLA) of responsible publicans all of whom operate in the City of Brighton & Hove. We represent over 150 venues, many of which are tied houses with a turnover in excess of £60 million and employing over 1,200 people within the city.

1.2 This report has been circulated to the membership of B&HLA and has their unanimous support.

1.3 The concerns we raise with regard to the model operated by Pubcos is not an exhaustive one. We have, however, attempted to highlight what we consider to be our main concerns and have chosen to offer some solutions where we feel it is most appropriate.

1.4 The report is based upon the position as we find if as of the time of writing, May 2011, all Pubco conduct referred to will be based upon evidence after the previous report of the select committee into Pubcos.

2. Pricing & the Tie

2.1 As an association we remain concerned that the wholesale price upon which most tied lessees prices are based remains an arbitrary figure paid for only by tied leaseholders. The tied tenant has no input into the wholesale price and has no opportunity to negotiate it or to avoid it by purchasing from an alternative source.

2.2 The tied tenant relies upon the wholesale price being negotiated on their behalf by their landlord the Pubco. The Pubco is disadvantaged by negotiating the wholesale price downwards, indeed by ensuring an inflated wholesale price the Pubco will improve their own margin when compared to the price they pay a brewer, a price that will be negotiated.

2.3 In February 2011 both the two major pubcos have raised their prices to their tenants. Enterprise Inns by an average of 3.8% and Punch Taverns by an Average of 3.3%. Simon Townsend of Enterprise Inns noted "As in previous years, we have sought to keep the number and variety of percentage increases as low as possible"

however this would appear to be at odds with the price rises of some brewers announced at the same time, one example being Coors who raised their prices by 2.3%.[6] If the Pubco price rises were as low as possible why are they increasing their prices by more than that raised by the brewer themselves?

2.4 Where discounts are available to Pubco tenants these are often not subject to rises in line with that of the wholesale price. Many tenants complain that the discount level is frozen and so becomes increasingly less valuable over a period of time Indeed even where discounts are given the value of these when increased by a similar margin as that applied to the cost price still become increasingly less valuable over time because of the nature of the increased discount producing lower margins over time as the difference between cost price and discount increasingly widens.

3. Machine Income

3.1 Whilst the BBPA code of practice, the benchmark for all BiiBAS approved codes has stated that where there is a machine tie income from machines will show below the line and not form part of the divisible balance there is clear evidence some Pubcos are circumventing this in a variety of ways to ensure they maintain the revenue of the machine that they previously enjoyed.

3.2 Enterprise Inns have simply changed the percentage of the divisible balance that they would previously have taken to compensate for their loss by showing the tenants machine income below the line. We have site of one regional manager's email on the subject where they state "the divisible balance and machine income are considered together for the purposes of the rent review as machine performance is part of the pubs income and logically must have some bearing on rental bids. Machine performance is displayed below the line as according to the BBPA's code of practice." In essence where a rental bid of 50% would have been made of the divisible balance a rental bid is now made of 50% of the divisible balance plus the machine income to the tenant, or in other words a higher percentage of the divisible balance is taken by the Pubco to compensate them for their loss. Moving it below the line is therefore purely a cosmetic exercise and makes no difference to the income of the tenant. It is our opinion that this is how any Code of Practice accredited by BiiBAS expected a Pubco to deal with machine Income and is at best an example of sharp practice and creative accounting.

4. Rents & RPI

4.1 Whilst it is to be applauded that upward only rent reviews are now considered a thing of the past for the majority of tied tenants we would have liked this confirmed by a deed of variation to the tenants contracts rather than through side letters and commitments in codes of practice. It is our opinion that only then can the tenant be convinced that upward only rent reviews could not be enforced at some future date. We fail to see why this has not been done to date. If the pubco is genuine in their commitment to end upward only rent reviews for the tied tenant than there should be nothing stopping them from issuing a deed of variation to the lease confirming this. Why has this not happened? What is the motivation of the Pubco for not ensuring tenants have peace of mind on this issue?

4.2 It has come to our attention that many pubcos are circumventing the end of upward only rent reviews by producing new leases with only a five year term and subject to an annual increase by RPI and no rent review. Having no rent review removes the ability of the tenant to have a revised rent downwards.

4.3 We reject the pubco claims that RPI increases are a fair measure of annually adjusting rent. It is our opinion that this measure amounts to an annual upward rent review to the disadvantage of the tenant. The tenants position made all the more acute in a market place of declining beer sales year on year. In essence the tenants rent rises whilst income goes down.

4.4 AS a society we are dismayed that Pubco's continue to fabricate proposed profit and loss accounts to arrive at a divisible balance in total ignorance, possibly deliberately, of the world within which we trade. There is continued over expression of sales and under estimation of costs, all designed to create a larger divisible balance leading to a higher rent bid. Examples include venues where sites have increased barrelages attached to them at a second rent review where no major improvements to a venue have been made and where the local trade has seen a double digit drop in beer sales. Other examples include failure to account for benchmarking of costs and a refusal to take account of the ALMR benchmarking survey, currently the only one available leading to a serious under estimation of costs, one example seen by the association shows staff costs at over 5% below that benchmarked for a venue of it's style. No evidence is provided by the pubco to support their costs.

5. SCORFA

5.1 We remain unconvinced by the value of SCORFA (Special Commercial or Financial Advantage) countervailing benefits. For any tenant to understand the value of their lease and to know whether they are paying an appropriate rent we feel a Pubco should list and place a value on the SCORFA benefits they are providing. Failure to do so leaves a tenant unable to negotiate their rents.

[6] Source Morning Advertiser—http://www.morningadvertiser.co.uk/news.ma/ViewArticle?R=89742

5.2 The RICS guidelines also note that they need to take into consideration the countervailing benefits of SCORFA of any particular lease. We would envisage this benefit needing to have a value and envisage this value being made available to the tenant to ensure they do not enter into any arbitration process unarmed wit the full facts. Currently no such information is available.

5.3 We are unconvinced by some of the claims of Pubcos with regard to SCORFA. The claim that Pubco employees such as Business Development Managers help to promote and improve the business of their tenants is questioned by our members, most of whom see them as policeman of the tie and rent negotiators and not business partners. They appear to add little value to the business of our members in most if not all circumstances. The claim that machine management must also be discounted where there is a tie, they cannot claim SCORFA when they are already charging for the service and they offer no such service where a machine tie does not exist. Many other "services" the pubco claims are actually services that the tenant can already get for the same if not better cost, such example being ratings appeals and insurance.

6. Codes of Practice

6.1 We have already noted the commitment of the Pubcos with regard to machine income and how some pubcos are circumventing this commitment. (see 3. Machine Income). This is an example of how the Pubcos are viewing the codes of practice, not as a guide to ensuring a fair and equitable relationship between landlord and tenant, but a document to be circumvented where possible.

6.2 We have concern that some pubcos are exerting pressure on their tenants to sign for their Codes and so run the risk of obliging themselves to commitments outside the scope of their existing leases. Indeed some codes we have had sight of actually propose more onerous terms on the leaseholder to the benefit of the Pubco.

6.3 Members have expressed concern that regional managers and Business Development Managers continue to avoid or ignore standards set out in the code of practices.

7. Monitoring Equipment

7.1 Our members remain unconvinced about the accuracy of many of the systems utilised by Pubco's to monitor beer flow.

7.2 Where not specified within a tenants lease we believe that any equipment installed at a premises should be done with the expressed permission of the tenant and that the Pubco should reimburse the tenant for any wastage of calibration and installation along with servicing and for any running costs incurred by the tenant such as electricity to power the equipment.

8. Our Solution

8.1 The Pubco's continue to maintain that the existence of a beer tie is beneficial to their tenants. We are supportive of the IPC position that the Pubco's should offer open market free of tie options to all tenants. In doing so they would have to ensure that the benefits of their tie is one that the tenant understands and considers advantageous. If, as the pubcos argue, the tie is beneficial then they have little to be concerned with, no tenant will take the open market rent review offer. We believe this to be the acid test of the claimed benefits of the tied model.

8.2 The open market free of tie option should be made available to all tenants where the landlord does not have an estate of over 250 pubs, known as the de minimus option also supported for by the IPC. This would ensure small brewers are protected.

8.3 A statutory Code of Practice should be introduced.

May 2011

Written evidence submitted by the British Association of Pool Table Operators (BAPTO)

BAPTO is a long established (1975) trade association representing suppliers of coin operated Pool Tables, Juke Boxes, AWP Machines etc.

We have given written evidence to the Pubco inquiries in 2004, 2009 and 2010.

We are making this submission on the assumption the committees purpose is to look into what action has been taken by Pubcos following the recommendations made by the T&ISC in 2004 and the BESC in 2009 we therefore feel there is no reason to re-run the arguments that led to the committee's recommendations, the recommendations that are of concern to us are 19 (paragraph 129) of the T&ISC 2004, and 103 of the BESC 2009 they read as follows:

19 (Paragraph 129) The machine tie improves tenants' takings from amusement with prizes machines (AWP). However, as free of machine tie tenants retain 100% of these takings as income, while tied tenants by PUBCOS own admission receive an average 50% of these takings, it appears from the information the PUBCOS themselves submitted that in many cases free of tie tenants make more money from their second tier machines

than tied tenants do from their more up-to-date models, In our opinion, PUBCOS do not add sufficient extra value from their deals to justify their claims to 50% of takings from AWP machines. **We remain unconvinced that the benefits of the AWP machine tie outweigh the income tenants forego and we recommend the AWP tie be removed.**

(103) in 2004 the Trade and Industry Committee concluded that "in our opinion Pubcos do not add sufficient extra value from their deals to justify their claims to 50% of the takings from AWP machines. We remain unconvinced that the benefits of the AWP machine tie outweigh the income tenants forgo and we recommend that the AWP tie be removed". **That conclusion remains valid.**

We are however alarmed that under the heading topics to be considered by your inquiry is "if AWP machines are now being treated more fairly and tenants are being given genuinely free of tie option" This makes us fear the Pubcos are succeeding in moving the argument from the validity of the tie to the terms of the tie this is far from the recommendations of both committees that are totally unambiguous **"that the machine tie be removed".**

We give you the following details to support our case:

1. Tentants and Lessees are Still Paying Higher Rents For the Latest Awp's

To prove this is the case we enclose the latest rent lists of Punch Taverns[7] and Enterprise Inns[8] also the rent list from "What Amusement Machine"[9] the magazine for pub landlords showing them what rents they should be paying for their AWP machines this shows that for the latest machines:

(a) Punch Taverns tenants are paying on average £24.62 more per week for their latest machines and in some cases as much as £35.98 per week more.

(b) Enterprise Inns Tenants are paying £8.25 per week for their latest machines.

This after Enterprise Inns has supposedly stopped charging a royalty fee of £24.00 per week per AWP machine in January this year. They now charge an administration charge of £3.50 for each amusement product sited plus a 49 pence promotional charge on Pool Tables so a pub with two AWP's, one Pool Table, one SWP and one Juke Box will be paying £17.99 per week to Enterprise Inns in administration charges.

These facts alone must prove that while the machine tie exists Pubcos will always find ways to take advantage of their tenants it is pointless giving them more time the only answer is to make the removal of the machine tie mandatory.

2. *Are Pubcos Giving Tenants a Genuinely Free of Tie Option?*

The answer to this question is categorically no. The cost of a free of tie lease and the rent are much higher than a tied lease. The Pubcos build into the cost of the lease and rent the amount the pubco think they would lose by not having the tie, which goes completely against the recommendation by the Bisc 2010 page 39 (102)

(102) The pubcos have suggested that if the tie had been removed, following the Trade and Industry Committee 2004 recommendation, their lessees would have suffered more by the economic downturn and the resulting fall in machine earning. They argued that they have shared the loss of earnings which would not have happened with fixed rent. Enterprise said:

Had ETI accepted the 2004 Committee's "lost" income with a supplemental fixed charge, it is clear that ETI licensees would now be worse-off, having exchanged a declining source of income for a fixed cost. No mechanism currently exists by which any such supplemental fixed charge might be reviewed to reflect changing circumstances.

This rests on the assumption that pubcos would have been compensated by an ongoing fixed charge. Pubcos already have income from dry rent and wet rent. We do not believe that it would be appropriate to impose a fixed charge in return for removing a tie from which lessees received no benefit. What the Pubcos are doing is applying a "fixed Charge" anyway?

3. *Tenant and Pubco a Partnership ?*

I enclose a copy of the section of a tenancy agreement (more a dictat than an agreement) covering amusement equipment.[10] This is from a current Punch Taverns agreement and I think it sums up the whole attitude of Pubcos to their tenants when it come Amusement Equipment, they feel that they are in control and will do as they like to satisfy their greed, Irrespective what anyone else thinks or does. The Pubcos attitude is worse now than it was before the Trade and Industry Select Committee decision in 2004 (seven years ago) and I fear it will never change until the machine tie is removed by statutory regulation.

[7] Ev not printed
[8] Ev not printed
[9] Ev not printed
[10] Ev not printed

4. BBPA Code Not to Rentalise Machine Income

The only concession the Pubcos have made to the previous Pubco inquiries recommending that the machine tie be removed is to say they will no longer rentalise machine income this should be a simple thing to accomplish if approached with goodwill, I attach an article[11] in which the British Institute of Innkeepers illustrates how the Pubcos are already taking different views on this issue. What chance has an inexperience potential tenant got in dealing with these people.

5. Juke Boxes, Pool Tables, S.W.P.'S (Quiz)—(Non AWP Equipment)

Pubcos sole argument in defence of the AWP tie is that they add value to the machine takings. This argument does not apply to none gaming equipment, yet they still charge royalties and take a share of the cash box. We enclose details of how this system works. We have used £80.00 per week (gross takings) in our examples but many of these machines take much more than this. The more the machines take, the more and more disadvantaged the tied Tenant becomes. As you study these figures it will become more and more apparent that the Pubcos will do anything they can to maintain the tie (all figures we have used are verifiable).

In the examples shown below (in which we have used like for like machines) a tied Tenant would be £68.97 per week worse off than their free of tie counterpart. There is no justification for this situation to exist and even less for it to be allowed to continue.

POOL TABLE

(Pubcos charge a £5.00 per week Royalty fee on Pool Tables)

MACHINE TIED TENANT		*FREE OF TIE PUBLICAN*	
GROSS TAKE	£80.00	GROSS TAKE	£80.00
LESS £13.33 VAT	£66.67	LESS £13.33 VAT	£66.67
LESS £20 RENT (INC. ROYALTY FEE)	£46.67	LESS £15 RENT	£52.67
50% PUBCO	£23.23		
50% TO TENANT	**£23.34**	**TO FREE OF TIE PUBLICAN**	**£52.67**

In this example the Pubco would also receive a £5 Royalty payment from the supplier so the Pubco share would increase to £28.33

A free of tie Publican would receive **£29.33** per week more than a tied Tenant.

JUKE BOX

(Pubcos charge a £1.65 per week Royalty fee on Digi Juke Boxes)

MACHINE TIED TENANT		*FREE OF TIE PUBLICAN*	
GROSS TAKE	£80.00	GROSS TAKE	£80.00
LESS £13.33 VAT	£66.67	LESS £13.33 VAT	£66.67
LESS £1.47 PPL	£65.20	LESS £1.47 PPL	£65.20
LESS £22.96 FRONT MONEY	£42.24	LESS £35 RENT	£30.20
50% TO SUPPLIER	£21.12		
25% TO PUBCO	£10.56		
25% TO TENANT	**£10.56**	**TO FREE OF TIE PUBLICAN**	**£30.20**

In this example the Pubco would also receive a £1.65 Royalty payment from the supplier so that the Pubco share would increase to £12.21.These amounts relate to the same Juke Box.

A free of tie Publican would receive **£19.64** per week more that a tied tenant.

S.W.P. (Quiz)

(Pubcos charge a £5 per week Royalty fee on S.W.P.'s)

MACHINE TIED TENANT		*FREE OF TIE PUBLICAN*	
GROSS TAKE	£80.00	GROSS TAKE	£80.00
LESS £13.33 VAT	£66.67	LESS £13.33 VAT	£66.67
LESS 60% TO SUPPLIER (£40.00)	£26.67	LESS 50% TO SUPPLIER	£33.33
20% TO PUBCO	£13.33		
20% TO TENANT	**£13.34**	**50% TO FREE OF TIE PUBLICAN**	**£33.34**

In this example the Pubco would also receive a £5 Royalty payment from the supplier so that the Pubco share would increase to £18.33.

[11] Ev not printed

A free of tie Publican would receive **£20.00** per week more than a tied Tenant.

CONCLUSION

The moves made by Pubcos in relation to the machine tie are the bare minimum they judge they can make to "get away with it".

The removal of the machine tie is no nearer now than it was seven years ago, despite three Pubcos inquiries stating "The machine tie must be removed". The Pubcos will never give up the tie until they are forced to, they have too much money to lose that rightfully belongs to their tenants. It is also a massive boost to their cash flow and gives them a mechanism to get their hands on the cash before the tenant.

The only concession the Pubcos have made is not to rentalise machine income, but as illustrated earlier there is already confusion over this issue with different Pubcos taking different views on how this can be done.

Pubcos charging "Royalties" and taking a share of the cash box from ancillary equipment (juke boxes, pool tables, SWP's etc) is a total disgrace, yet everyone ignores this issue and the Pubcos keep taking the money and don't even make a defence as to their right to do so.

A free of machine tie option for tenants will remain a dream until the removal of the tie is made mandatory, history proves that.

The removal to the machine tie would be a massive boost to tenants but it would not be catastrophic for the pub industry. I would point out that after the brewers were compelled to sell off many of their pubs these pubs were leased out on long term leases with NO machine tie and that system worked well. It was only when Pubcos started to establish themselves that the machine tie stranglehold became the norm.

The removal of the machine tie will create many jobs in the amusement machine supply industry and would breathe new life into many small companies. At the moment there are four large companies (Gamester, Sceptre Leisure, I.O.A. & Games Media) and about 50 other smaller companies supplying machines under the tied system. There are 600 potential suppliers licensed by the Gambling Commission to supply this market. If the tie were removed it would introduce transparency and competition that would lead to lower rents and better service for tenants, the only losers being the Pubcos and the small number of existing suppliers who would have to compete for the business on a level playing field.

While the mechanism of the machine tie remains, any loss suffered by the Pubcos not rentalising the tenants machine income can be more than made up for at a later date by Pubcos increasing the "Royalties" (or administration charges) they charge and increasing their percentage share of the machine takings; It is the actual mechanism of the machine tie that needs to be removed (ie So that any Gaming Board certified supplier can supply a tenant without needing the approval of the Pubco).

The Pubcos have been given long enough to sort this issue out (seven Years). The last thing that is needed now is to give them more time, they have no intention of giving up the machine tie unless compelled to do so. The only answer to this issue is to make the removal of the tie mandatory, no ifs and no buts.

The final comment can be left to the T.ISC 2004 Chairman Martin O'Neill.

Committee Chairman Martin O'Neill was sufficiently moved to say that **"The issue of machine income was the last blatant example of the profiteering that had been common place amongst pub Landlord companies historically."**

20 June 2011

Further written evidence submitted by the British Association of Pool Table Operators (BAPTO)

I am making this second submission to the committee because I sat through both sessions of the oral evidence and there was not a single question on the machine tie or any reference to it, to say I was disappointed would be a gross understatement and it leads me to fear the committee maybe overlooking this issue and ignoring the unambiguous recommendation of the previous inquiries that the machine tie be removed. I would like to make the following points:

1. To illustrate how the machine tie not only allows pubcos to take advantage of their tenants but also allows them to distort the supply of amusement equipment to their tenants. I enclose an article published in the Publicans Morning Advertiser on the 9 June 2011 and a letter sent to "Coinslot" on the 23 June 2011 both by John Appleton a well respected figure in the coin machine industry.[12]

Enterprise Inns, Punch Taverns and Marston's are currently "supply" pushing video AWP's into their tenanted estates they want total control over these machines and instant information of machine takings at their fingertips irrespective of other considerations, the machine tie gives them the power to do this because this mechanism gives them control over 15,000+ machines far far more than any other player in the sector.

[12] Ev not printed

John Appleton fears that the pubcos action could cost the pub sector around £160 million a year in lost gaming revenue and lead to further demise in the British machine manufacturing industry a fear shared by many other people in the industry. To add insult to injury the pubcos are trying to make a virtue of the fact that the terms on these machines are (after paying licence fee & VAT) 1/3 to machine supplier 1/3 to the pubcos and 1/3 to the tenant, Great! The tenant now gets only 1/3 of a machine that takes less money.

Once again the pubcos abuse the power the machine tie gives them, without the machine tie video AWP's would have to go into the market place and compete on a level playing field against other products which is how it should be.

The pubcos and the BBAPA are always at the forefront of attempts to increase stakes and prizes on AWP's they have lost sight of the fact that AWP stands for Amusement with prizes they want to change them into gambling machines which suits the video format.

2. Many people in the coin machine supply industry who would like to see an end to the machine tie are afraid to speak out because they find themselves in a position where the pubco business is too big a part of their own business and if they speak out the pubco will take the business away from them. This is a similar situation suppliers to supermarkets find themselves in the massive difference between these two examples is that supermarkets use their power to drive prices down to their customers while the pubcos use their power to drive prices up to their customers

3. One of the arguments put forward by the pubcos and their supporters is that if the machine tie were removed the tenants when emptying their own machines would under declare the takings, what a sad state of affairs when to defend a corrupt system they have to accuse their tenants of being potential "crooks" perhaps they are judging everyone else by their own standards and what does this say about all the owners of free houses in the country. Are the pubcos implying that they are crooks?

4. I have read back over all the evidence facts and figures we have given to all the pubco enquiries over the years and those committees after studying all this evidence have all come to the same conclusion that the machine tie be removed, I personally feel worn out now and as if all the effort that has been put in has been a waste of time, it seems to me as if all the pubcos have to do is do nothing and they will "get away with it".

This issue is a classic example of the strong taking advantage of the weak and I personally believe if at the end of the day good does not triumph over evil then we are all wasting our time here.

Alan Boswell
Chairman (Bapto)

27 July 2011

Written evidence submitted by the Campaign for Real Ale (CAMRA)

1. Introduction

1.1 As a consumer organisation with over 125,000 members, CAMRA remains concerned that unfair contract terms imposed by the major pub companies on individual pub licensees are causing substantial harm to the pub sector and therefore to pub-going consumers, local communities and economic growth.

1.2 The result of the major pub companies continuing to fail to establish a fair and genuine partnership with their tied licensees will be the extinction of many thousands of pubs and the jobs they support. Many thousands of tied pubs owned by the major pub companies have steadily become economically unviable business propositions due to chronic underinvestment from squeezed licensees and the major pub companies who have taken on unsustainable debts based on inflated asset values.

1.3 CAMRA's comments in this submission relate to pub companies which control more than 500 tied pubs.

2. The Office of Fair Trading (OFT)

2.1 The OFT has repeatedly bypassed examination of the contractual issues between tied licensees and the major pub companies which were the primary focus of the 2004, 2009 and 2010 Parliamentary Inquiries:

> *"The OFT considers that issues regarding the contractual relationship between pub companies and lessees are matters for pub companies to address with individual lessees, or are issues for industry and other relevant bodies and/or Government to consider."*[13]

2.2 CAMRA deplores the reluctance of the OFT to consider these contractual issues. It is our contention that unfair contractual issues and restricted competition damages the ability of tied licensees to provide pub customers with excellent pubs, excellent service and good value for money.

[13] Office of Fair Trading—CAMRA super-complaint— OFT final decision—October 2010 p129

2.3 The OFT have recognised that:

> *"the use of restrictive covenants on the sale of a pub has the potential to harm consumers. In particular, the use of restrictive covenants can act as a barrier to market entry for pub operators, which can limit competition within a particular area, potentially leading to higher prices and reduced choice and quality for consumers."*[14]

3. Pub Company Codes of Practice

3.1 On a positive note, CAMRA commends Enterprise Inns, Punch Taverns, Marston's and Greene King for stating in their codes that they will not use restrictive covenants on pub sales. Admiral Taverns and Scottish and Newcastle Pub Company (S&NPC) have not shown the same regard for the free market and have reserved the right to use restrictive covenants. The Government has now committed to consult on banning restrictive covenants. CAMRA believes it is imperative that this ban is enacted to prevent pub companies imposing restrictive covenants in future in order to restrict competition.

3.2 The Framework Code of Practice requires Companies to set out whether the company will allow a guest beer supplied direct from a small brewer to be purchased outside the tie. The Codes adopted by S&NPC and Marston's are silent on this point. On the key issues of a free of tie option and a guest beer right, the BBPA's Framework Code of Practice provides only the requirement that companies should make their policy clear. This is a fundamental weakness of the Framework. The BBPA argue that they cannot go further due to concerns about competition law. Should the BBPA's concern prove to be valid, this clearly highlights the need for Government to put a free of tie option and a guest beer right on a statutory footing if progress is to be made.

3.3 Enterprise Inns, Punch Taverns and Marston's have included greater choice and flexibility for tied lessees in response to the BBPA's Framework Code. Whilst these new options are welcome, they do not improve the financial position of tied pub lessees. This is important from a public interest point of view as, unless tied pub lessees can gain firmer financial footing, they will continue to lack the ability to invest in their businesses. If tied pub lessees are unable to invest in the amenity of their pubs, they risk being unable to survive (particularly in the current economic environment)—leading to further pub closures and the resulting community and consumer detriment.

3.4 In summary, whilst limited progress has been made, the individual codes of the major pub companies have failed to eliminate unfair and harmful trading practices by substantially building upon the de-minimus requirements of the BBPA code.

4. Enforcement of Company Codes of Practice

4.1 CAMRA welcomes the efforts of the BII to establish a system to attempt to resolve complaints, but we are concerned that the organisation lacks adequate sanctions and resources to effectively take on this role.

4.2 The latest information provided by the BII states that five breaches have been identified, four of which have been resolved and one unresolved.[15] Given the scale of problems facing the tied pub sector these numbers are surprisingly low. CAMRA believes the reason for the low number of upheld breaches is not a reflection of lessee satisfaction but rather:

- That a whole host of valid tied lessee complaints are not covered by the Codes of Practice.
- Low lessee awareness: 23% of existing businesses are not aware that their company has a code of practice.[16]
- A belief that the BII lack sanctions to effectively resolve disputes.

4.3 The fundamental weakness of the BII's BIIBAS scheme is evident in the way in which it is communicated to lessees through Codes of Practice. This is demonstrated by the following extract from Enterprise Inns Code of Practice:

> *"In the event that you continue to believe that we have failed to adhere to our responsibilities or obligations under this Code, you may submit a complaint in writing, providing full details of the circumstances of your grievance, to BIIBAS. They will pass this information to us and use their good offices to ensure, as far as possible, that there are no misunderstandings or personality issues that are standing in the way of a more fruitful dialogue between us."*[17]

4.4 The BIIBAS scheme would be substantially more effective if pub companies committed to abide by the outcomes of the process and the presence of the scheme was more effectively communicated.

[14] Ibid. p131
[15] http://biibas.bii.org/Compliance
[16] BBPA/IPC Licensee Survey
[17] http://biibas.bii.org/_uploads/companies/codeofpractise/1-code-of-practice-booklet.pdf p.23

5. Royal Institute of Chartered Surveyors (RICS) Guidance

5.1 CAMRA welcomes the publication of new guidance by RICS and commends RICS for including licensee representatives as part of this process. The principle that tied tenants should not be worse off than if they were free of tie is not specifically stated in the new guidance. However, if properly interpreted and implemented, the guidance would in most cases ensure that this was the case.

5.2 The principal concern now is not the guidance itself but moves by the major pub companies to disregard the new guidance when setting rents. In the vast majority of cases there is simply no mechanism to ensure the correct assessment of rents:

- Where a pub company issues a new lease agreement, whether to a new lessee or existing lessee, the rent is determined on the basis of negotiation and not on a calculation produced and certified by an independent chartered surveyor. Lessees will usually enter these negotiations without the assistance from a RICS surveyor and are therefore at a clear disadvantage.
- Many new style leases have replaced provision for periodic rent reviews with annual inflation increases thereby avoiding the need to apply the RICS Guidance.
- Rent calculations continue to be carried out by Pub Company representatives who are not themselves qualified surveyors and are therefore not bound by RICS Guidance

5.3 CAMRA remain unconvinced that the major pub companies have the will to correctly implement RICS Guidance as doing so would likely result in substantial rent reductions. Additionally, we are alarmed at the re-emergence of Minimum Purchasing Obligations which mean that tied licensees will face a penalty should sales all below a certain level. This appears to be an attempt by the pub companies to protect themselves against the end of upward only rent increases and the potential long term consequences of fairer rents in line with RICs new guidance.

5.4 CAMRA believes that it would be highly beneficial for RICS and RICS qualified surveyors to have a much greater involvement in the calculation of pub rents.

6. Free of Tie Options

6.1 No major pub company has begun or has committed to begin a process of allowing tied lessees the option to become free of tie accompanied by a formal rent review process carried out in accordance with RICS guidance.

6.2 Speaking at a meeting of the all-party Parliamentary Save the Pub Group in June 2011, Simon Townsend, Enterprise's chief operating officer, said:

> *"I will go straight to the nub of the issue. We have not included the availability of a completely free-of-tie option within our code of practice"*

6.3 In order to avoid potential instability within the major pub companies, CAMRA would be supportive of the major pub companies phasing in genuine free of tie option over a five year period. Regrettably, the major pub companies have refused to even entertain this prospect.

6.4 Punch Taverns has introduced "free of tie pricing options".[18] This offer is in reality not a free of tie option as the lessee still remains tied to buy beer and other products from Punch Taverns. The offer allows tied lessees to commit to a higher rent (decided by Punch Taverns) in exchange for a discount on tied products which Punch Taverns assert is in line with free of tie prices.

6.5 Enterprise Inns has provided free of tie options in exchange for payment of an Annual Release Fee. Because the Annual Tie Release Fee is not a form of rent it is open to Enterprise Inns to set this at an arbitrary level. The following extract from the Heads of Terms Enterprise Inns provide to lessees is below:

> *"You can, however, choose to be free of tie on some or all of the following categories: one guest cask conditioned beer sourced from a SIBA brewer and dispensed from one hand pump, packaged beers, packaged ciders, flavoured alcoholic beverages, wines, spirits or minerals in exchange for payment of an annual Tie Release fee for each category released."*[19]

6.6 Marston's has introduced a free of tie agreement called "Ultra Advanced". This allows their lessees to become fully free of tie in exchange for a fixed charge. This fixed charge is calculated to be the equivalent of the money a lessee will save by being free of tie. The fixed charge is not part of the agreed rent.

6.7 The remaining major pub companies appear not to have taken any steps to amend their core lease offerings to provide some kind of free of tie offering to all their lessees.

6.8 The survey commissioned by the BBPA and the IPC reports that of existing tied licensees only 9% have been offered any changes to their existing agreements showing that there is limited penetration of these new lease options which in our view do not go anywhere near far enough.

---

[18] http://www.punchtaverns.com/Punch/Corporate/Media+Centre/Press+releases/Recent+releases/New+lease+agreement+offers+free+of+tie+pricing.htm

[19] http://www.enterpriseinns.com/Applicants/Documents/RPL%20HOT%20Oct%2010.pdf

6.9 There is unlikely to be substantial interest in these new options, even if proactively marketed to lessees, as any concessions on the tie are fully counter-balanced by requirements for an unsubstantiated increase in rent or an unsubstantiated Tie Release fee. Hence, there is currently no "genuine" free of tie option accompanied by a rent calculated under the RICs rental guidance for pubs.

7. Guest Beer

7.1 The previous Government established a clear expectation that the pub companies should voluntarily provide a guest beer option to those lessees who choose to remain tied. Guest beers have only been offered by Punch Taverns and Enterprise Inns and only then in exchange either for a higher rent or payment of a Tie Release Fee.

7.2 The failure of companies to provide tied lessees with the option to stock one guest real ale of their choice without financial penalty is hugely disappointing to consumers denied choice, small brewing companies whose growth prospects are limited and the tourism industry which would benefit from wider availability of local beers. A guest beer would also provide a modest boost to licensee profitability and pub companies would also receive some benefit from more sustainable pubs. Small brewers would also benefit through increased market access.

8. Conclusion

8.1 In 2004 the Trade and Industry Select Committee recommended that if the pub companies failed to accept and comply with an adequate voluntary code then the Government should not hesitate to impose a statutory code. CAMRA urges the committee to recognise the clear failure of the pub companies to accept and comply with an adequate Code and to recommend that the Government introduces a statutory code without delay.

8.2The following Chart highlights where the major pub companies have failed to fulfil the expectations of them and CAMRA's proposed remedies.

Expectation	*Outcome*	*Proposed Remedy*
Offer lessees a tie/non tie option accompanied by an open market rent review in line with RICS new guidelines.	Failed—No pub company has offered existing licensees a free of tie option accompanied by an open market rent review.	A statutory requirement for each pub company with 500 or more tied pubs to provide each of their tied lessees with a free of tie option. This free of tie option must provide for the lessee to insist the rent is determined by a Chartered Surveyor in accordance with RICs guidelines.
Offer lessees a guest beer option (John Healey MP—Community Pub Action Plan)	Failed—Offered only by two companies and only in exchange for a higher rent or Tie Release Fee	A statutory requirement for each pub company with 500 or more tied pubs to provide every tied lessee who chooses to remain tied with the right to sell one guest real ale purchased on the free market without any accompanying financial penalty or obligation.
Upward only rent review clauses should be removed by a deed of variation	Failed—pubco's have not removed upward only rent review clauses by deed. Emergence of new leases replacing rent review provisions with RPI increases.	A statutory requirement for pub companies enforcing a tie to comply with a code of practice that requires them not to enforce upward only rent clauses

Expectation	*Outcome*	*Proposed Remedy*
The major pub companies to treat it (BBPA CoP) as an absolute de-minimus requirement and to significantly build on it with their own Codes.	Failed—no pubco has gone significantly beyond the very basic requirements of the BBPA Framework code.	A statutory requirement for pub companies enforcing a tie to comply with a code of practice providing a free of tie option, guest beer option and no upward only rent clauses.
BII to accredit and enforce codes	Accreditation—Passed—BII has successfully accredited codes based on whether or not they comply with the BBPA Framework Code.	A review of whether the BII is sufficiently independent and well resourced to enforce codes of practice or whether a new organisation is needed.
	Enforcement—Failed—BII lacks the authority and powers to enforce the codes. Where the BII confirms a code breach the BII suggests to the company concerned that it re-examines the case. If the company still does not resolve the complaint the BII's only sanction is to list the code breach on their website.	A review of the sanctions that would be required to enable effective enforcement of the codes.

June 2011

Written evidence submitted by Mark Charman

1. Since the committees last enquiry and my submission to your previous enquiry I now only run a free of tie estate. When we have landlords they tend to be private landlords or small pubco's with realistic expectations with regard to rents and repair liabilities.

2. With that said, I do feel that I am in a position to comment further on the current tenant pubco relationship. In my current position I am interviewing on a constant basis. This year alone I have interviewed over 100 applicants that are either current tenants or have recently been a tenant with one of the major five pub companies.

3. In my view the situation remains largely unchanged. I still come across numerous tenants that are not only dissatisfied with their pubco but usually have a desperate story to tell. The new codes of practice seem to be treated as a bit of a joke. Forms are filled out, tenants are provided with information and boxes are ticked, but the underlying issue of a tenant not being able to make a decent living still remains. Furthermore, the aggression with which tenants are treated does not appear to have dissipated. I can give you a very recent example:

I met a very capable and experienced couple last year who turned down a position with myself in order to take a position with Punch Taverns. Punch Taverns were very keen for this particular couple to run a very well known public house with a good reputation. The couples were promised a fair deal, fair rent and were given assurances that some immediate maintenance issues would be attended to. Seven months on the couple are told they will not be getting the 21 year lease as originally promised and instead the pub is likely to be sold. Punch refused to install a boiler leaving this particular couple no choice but to install one at great expense. I should point out that they are trading the pub above expectation and their standards are incredibly high. There seems to be much of the same treatment whereby in their own words, this slightly naive couple have been used and abused and have been put through unnecessary emotional strain.

4. I am however glad to report that smaller pub companies are at long last facing the reality of the situation and are starting to make sensible business decisions for the benefit of all in the industry. There should be a word of caution however that a number of pubco's with large estates have been unable in recent years to let large proportions of their estates and have instead chosen to operate them as managed houses. I have seen evidence recently that one companies advertised deal for managers isn't quite as described and managers are sometimes finding themselves working for very little and on occasion having to pick up a number of the pubs utility bills. There seems to be some of the tenanted mentality towards treating people creeping in to these new managed estates. I believe great care should be taken to ensure a new problem is not created out of trying to solve an old one. In my view there is an unhelpful, unwilling and dirty undertone to the running of many of

the larger pubco's. My view remains that the tie is unworkable as a business relationship and regulation to remove the tie from estates with more than circa 50 pubs would be of great benefit to the industry and particularly the hard working people who run the majority of the countries pubs. However, I believe further regulation would be required to totally resolve the industries problems. Once a pub company has more than 1000 pubs they can become dominant and oppressive to those involved in them. Perhaps the committee should consider whether or not pubco's in the future should be allowed to grow beyond a certain number of pubs.

Written evidence submitted by Simon Clarke

RENTAL VALUATION GUIDANCE, COMPANY CODES, RENT REVIEWS NECESSITY FOR GENUINE FREE OF TIE OPTION AND OPEN MARKET RENT

1.0 Summary

1.1 The RICS have fulfilled the recommendation to redraft the rental valuation guidance.

1.2 The BBPA, perhaps inadvertently, have committed their members to follow the RICS guidance and individual Company codes confirm the same.

1.3 With effective compliance of the RICS guidance tied rents could be redressed to appropriate, fair and reasonable levels.

1.4 Tenant representatives are now seeing mass non compliance with RICS guidance.

1.5 My own rent review demonstrates non compliance with the RICS guidance and therefore potential Company code breaches.

1.6 The time offered to pubcos to implement reforms has been used to reinvent their agreements to offer alternative revenue streams in the event rents are set fairly and/or the profit from tied product prices is put under pressure.

1.7 Suggested Recommendations

- Mandatory, statutory code requiring compliance with RICS rental valuation guidance.
- A free of tie option, with open market rent, capable of third party referral if the parties cannot agree.

2.0 Personal Introduction

2.1 My name is Simon Clarke

- Tied publican.
- Chartered surveyor.
- Steering group member of Independent Pub Confederation (IPC).
- Steering group member of Fair Pint Campaign (FP).
- Called to both Business Innovation and Skills (BISC) and Business and Enterprise (BEC) Select Committee Inquiries to offer oral evidence.
- Presented various submissions to both Inquiries published in the subsequent Committee reports.
- Participated in the failed industry mediation attempt in 2009.
- Represented the interests of the IPC in the Royal Institution of Chartered Surveyors (RICS) working group assigned the task of rewriting rental valuation guidance on public houses.
- Select Committee chairman, Peter Luff MP, and the Committee's Inquiry Manager, attended a demonstration of Brulines equipment in my pub the Eagle Ale House, Battersea. I, together with my co-director have become a source of much of the evidence currently being used in active court cases relating to Brulines.

2.2 I wholly endorsed the findings of the previous Committees.

3.0 Rental Valuation Guidance

3.1 It was recognised, not least by the David Rusholme, Director of Valuation at the RICS at the All Party Parliamentary Beer Group debate two years ago, that previous RICS rental valuation guidance was being manipulated by some and as a result tied pub rents were being over inflated, leaving tied tenants at a disadvantage to free of tie tenants.

3.2 The former guidance was written by the RICS, Trade Related Valuations Group, chaired by Mr Rob May, the National Rent Controller for Enterprise Inns.

3.3 The RICS committed to consult the industry and undertook to re write the guidance. Given that previous guidance was sufficiently unclear, allowing manipulation and a great deal of latitude in interpretation, and the pubcos had influential representation in the group writing guidance, they had little to fear from a redraft.

3.4 To negate the risk of perception of conflicts of interest, the RICS, quite rightly, invited additional surveyors and industry experts to participate. Individuals representing IPC members and the BII were included in the forum to offer membership views and therefore impartiality overall.

3.5 The resultant new guidance is much clearer than the previous paper. The acid test of its success will only be demonstrated if it is followed. Whilst the phrase "the tied tenant should be no worse off than the free of tie tenant" is not expressly included, the general principle is addressed within the new guidance.

4.0 Company Codes

4.1 During mediation the BBPA committed their members to abiding by the revised RICS rental valuation guidance. The BBPA were not aware, at that time, that tenant representatives would be invited to participate in the process. Subsequent individual Company codes commit the pubcos and brewers to compliance with the new guidance.

4.2 I am already seeing evidence of systematic non recognition of the new guidance, not least in my own rent review. Failure to follow the guidance seems to indicate that the pubcos are dissatisfied with the possibility that, if adopted properly, falsely inflated tied pub rents may be redressed. As long as the new guidance continues to be ignored or manipulated nothing will change.

4.3 Policing of the Codes, and enforcing mandatory compliance with RICS rent valuation guidance, is now essential and the current enforcement or penalisation options available to the BII are insufficient to undertake such a task. No one has any powers over pubcos ignoring rental guidance.

5.0 Rent Reviews

5.1 Having consulted with David Morgan, founder member of Fair Pint Campaign, and Garry Mallen, of the ALMR, both of which have given oral evidence and sat on the RICS redrafting forum, we agree that there seems to be universal non compliance of the RICS guidelines. Messers Morgan and Mallen will no doubt present their individual views and findings in separate submissions.

5.2 My own rent review has just started. In the spirit of openness and transparency, I offered some trading information in exchange for evidence of comparables from Enterprise Inns, they have chosen not to disclose the latter, making a sham of their "open and transparent rent review" claim in their code. Enterprise Inns have offered a proposed rent assessment based on the information I have provided.

5.3 In order to establish open market rental value, the RICS guidance clearly requires a valuer to undertake a shadow profit and loss calculation by estimating a hypothetical turnover (fair maintainable trade—FMT) using comparables NOT relying solely on a tenants trading information. Costs should reflect benchmarking evidence and the rental bid should reflect the tied tenant considering their circumstances if they were free of tie.

5.4 Enterprise Inns appear to have estimated hypothetical turnover (FMT) and sales mix based on my pubs actual beer volume sales and known sales mix (which reflect my individual goodwill and occupation—**not** the foundation for RICS rent valuation and specifically required to be excluded under the terms of the lease).

5.5 Enterprise Inns estimated costs make no reflection of the ALMR benchmarking (which averages costs at 42% of turnover). Even Enterprise Inns have their own "in-house" benchmarking surveys indicating an average of around 42%, from "Milestone" their tenants open book accountants. The RICS guidance requires the valuer to reflect benchmarking findings yet still Enterprise Inns continue to fly in the face of the evidence seeking 35% or less as a cost allocation in valuation.

5.6 **I realise this may make little sense to a non valuer, but rent is extremely sensitive to fluctuations in the estimation of valuation variables. To demonstrate the implications of under estimating costs in valuation, getting it wrong by 7% (42% minus 35%) has the effect of at least halving the tenants earnings, whilst increasing the rent by the lost amount.**

5.7 Enterprise Inns estimated rent bids on the net profit before rent (divisible balance), are still based on a 50:50 split which would be ludicrous if tenants were to consider the lost profit as a result of being tied. Case law (the Brooker case) and now RICS guidance both require the valuer to consider that the tied *"...tenant may compare his own property with the circumstances of being free of a supply tie and consider the profit they might otherwise achieve under those circumstances."* Free of tie gross profit results in a higher tenants earning. There is nothing to indicate a tied tenant would not expect to earn the same amount, all other things being equal. In view of the latter, it is implausible that any tenant would consider a 50:50 split unless they were free of tie. In a tied relationship the pubco have already undermined the gross profit achievable in by demanding high tied product prices, the rent as a result should be lower to reflect the consequences of product pricing and a tenants rent bid weighted to maintain the same tenants earnings if they had been free of tie, for example, in the case, mentioned above, Brooker was a tied tenant, the split of net profit before rent was 35% rent, 65% tenant earnings. I should add lower rent is consistently cited as a benefit of being tied by the pubcos themselves.

5.8 In my opinion, Enterprise Inns' use our trading information to suit their argument, over estimating turnover and gross profit, under estimating costs, failing to reflect benchmarking and tied my expectations, had I been free of tie, are all non compliance with the RICS guidance.

5.9 A Code breach complaint has been registered with the BII, I do not anticipate the they will have the necessary enforcement or penalty powers to effect a remedy.

5.10 The RICS have stepped up to the task set out to them in recommendations requiring they reconsider rental valuation guidance. The new guidance is capable of delivering the required adjustment if complied with. We now need to enforce compliance with the RICS guidelines.

6.0 Efforts to Circumvent RICS Guidelines

6.1 Clearly the pubcos run the risk of RICS guidance becoming mandatory in the future and therefore the simplest method to avoid such an eventuality is by altering the agreements with tenants in order to impose new terms that have no need to refer to RICS guidelines.

6.2 Shorter agreements, potentially with no rent reviews but instead subject to inflationary increases are one such way to avoid any reference to RICS guidance.

6.3 Removing security of tenure by offering tenancies instead of leases means the tenant has no lawful right to renewal and no right to refer the rent at lease renewal to a leasehold valuation tribunal, who would be obliged to follow RICS guidance.

6.4 The introduction of "stealth rent". Minimum Purchase Obligation (MPO's) were voluntarily abolished during the days of EU block exemption compliance. Pubcos are now seeking to reintroduce MPO's attaching them to agreements. An MPO requires the tenant to purchase a fixed amount of tied products every year and penalises them if they do not. In a declining market, inflationary increases or MPO's could cripple a tenant but a combination of the two would be devastating.

6.5 Many new agreements require the tenant to agree to additional onerous terms, tied services at the tenants expense, open book accounting, stocktaking, maintenance and Health and Safety charges and decorating, repairs and maintenance funds, to name a few. These are simply pubcos building in the flexibility of charging unregulated sums for services which the tenant would otherwise source themselves, another stealth rent. Historically, pubcos have had the luxury of two income streams commercial rent (dry rent) and profit on tied products (wet rent), MPO's and tied services are examples of efforts to open up new uncontrolled or unregulated revenue streams in the face of fair rents returning and pressure on tied prices (in the form of FOT pricing options). These will be the subject of Select Committee Inquiries of the future if allowed to slip by unhindered.

6.6 The pubcos are "selling" these new agreements as if to offer some sort of concession and the unwitting prospective tenant may well be convinced by the purported virtues. An agreement with one, or a combination, of these onerous terms would successfully negate any progress that might be made in rent redress by RICS guidance.

6.7 Simon Townsend recently confirmed, at the Save the Pub Group debate, Enterprise Inns are offering limited free of tie options but the tenant is required to surrender their existing lease in exchange for a new agreement which includes many of the features listed above. Their Retail Partnership Tenancy and Retail Partnership Lease agreements, available online (using the link below) outline these additional charges and funds, inflationary increases and, in the case of RPT's no security of tenure.

http://www.enterpriseinns.com/Applicants/Pages/LeaseTenancyAgreements.aspx)

6.8 In reality, the majority of existing leases are perfectly acceptable in all but one respect, the tie obligations. In the event of statutory intervention resulting in a mandatory provision for tied tenants to be offered genuine a free of tie option, this could easily be documented in the form of a deed of variation to the lease. It is considered the Committee and governments message was that a genuine FOT option should be accompanied by an open market rent and most leases accommodate the eventuality of such a change should it be implemented by statutory intervention (Appendix 1, clause 3.2—a page from my lease which is a standard tied lease dated 2001).[20]

6.9 The pubcos bleating gives the impression that the eventuality of statutory intervention is an unheard of concept but, as can be clearly seen above, it has always been considered a possibility and indeed that possibility has been accommodated in the standard lease terms.

7.0 Committee Recommendations to Consider

7.1 A statutory, mandatory code for all companies operating the tied tenanted model, subject to independent enforcement and penalties for non compliance needs to be implemented. The code should require all to strictly adhere to the RICS rent valuation guidance.

7.2 Even the distant hope of fair and reasonable rents is undermined in the face of pubcos being able to alter tied product prices, or introduce stealth rents, to compensate their rent losses. A free of tie option to tied tenants

[20] Ev not printed

with an open market rent and independent referral, in the event the parties are unable to agree, is fundamental to avoid the unintended consequence of tied product prices spiralling out of control and unregulated tied service charges in the future.

If the Committee require any further information or my presence at the oral hearings I would be pleased to assist.

18 June 2011

APPENDIX 1

3. The Landlord may at any time give written notice to the Tenant requiring the rent to be reviewed:

3.1 at the end of each Review Year and on the day before expiry of the Term (the date of the end of each such years or the day before such expiry being called "the relevant anniversary") a notice given under this sub-paragraph being hereinafter referred to as "a periodic review notice";

3.2 at any time after the happening of any event (whether a decision of the court of competent jurisdiction or the enactment of legislation and whether of the United Kingdom or the European Union) whereby all or any part of the provisions of Clause 11 and the Third Schedule (or the fifth Schedule, as the case may be) may in the opinion of the Landlord be or become unenforceable by the Landlord (hereinafter called "a tie termination review notice");

3.3. at any time in the event of the Landlord giving notice under clause 15.3.4 (hereinafter call "a Type 'A' trading review notice"); and

3.4 at any time in the event of the Landlord giving notice under Clause 15.3.7 and that notice has expired (hereinafter called "a Type 'B' trading review notice").

Further written evidence submitted by Simon Clarke

RELATING TO QUESTIONS FROM MR. ZAHAWI AND MR. BINLEY

NADHIM ZAHAWI

Rics Guidance Interpretation

1. For the record I would like to clear up a few points.

2. Contrary to Mr Tuppen's assertions:

— I did not submit a business plan—my co director, David Law, did before we became business partners.

— I do not have a bank loan.

— I did not refer any business plan to a bank.

— I acquired the Eagle around 11 months before the rent review, the premium paid was clearly not reflective of the property being under rented as, at review, that benefit would be lost if it existed. The premium was paid to secure my business partners (whose wife was heavily pregnant) a home (in which he had lived for almost 10 years), employment prospects and income—we were essentially a special purchaser.

3. Mr. Zahawi was trying to establish from Ted Tuppen the "fundamental" issue at stake between myself and Enterprise Inns in respect of rent assessment and the interpretation of RICS guidance.

4. At the hearings, Mr. Tuppen seemed keen to discredit my evidence by ridiculing the proposal of a nil rent and to make my complaint simply one of differing valuation methods—that is not the case, put simply my complaint is based as follows ;

(a) Enterprise code states they will follow RICS guidance and be "open and transparent" in review discussion and negotiations and discuss comparables. The foundation of rent assessment is a hypothetical turnover, otherwise known as "fair maintainable trade" (FMT), of a reasonably competent operator (REO). The actual tenants individual figures would reflect goodwill, improvements and occupation (all of which are to be disregarded at rent review under the terms of the lease and RICS guidance). In arriving at FMT one of the starting blocks is barrelage which should be established using comparables. In their proposal to me, Enterprise have used an unsubstantiated figure of 370 barrels as a starting point, this is exactly the same as the arbitrators award of five years ago and within a couple of barrels of our existing three year average. Obviously, this demonstrates our actual barrelage and, therefore, not necessarily that of a reasonably competent operator (REO). They should be using comparables not my barrelage. I have asked for comparables, which Enterprise have refused to supply. I have also asked for the "Volume Reports" which they do showing our sales mix and barrelage in relation to the average in the region (an Enterprise Inns in-house volume and mix benchmarking system and a useful tool no longer openly available Appendix 1),[21] this would show, amongst other things our beer volume sales in relation to the average in the region, and if we are to use the arbitrators

[21] Ev not printed

previous decision we can estimate a reasonable reflection for the pattern of sales in the region over or under that—also not provided.

(b) Costs in the valuation should reflect benchmarking (another RICS guidance requirement), or some good reason to deviate from it. ALMR estimate an average of 42%, Milestone, Enterprises own benchmarking survey, concurs—42%, Enterprise have quoted me considerably less, I have asked why they have deviated from benchmarking—no reason given.

(c) The RICS guidance says the valuer would reflect, amongst other things, that the tied tenant would consider their circumstances if free of tie (7.18 & 7.19) and reflect their perceived profitability in their rental bid. These two RICS guidance paragraphs are taken directly from High Court case law—the Brooker case. Despite what Ted says, I believe this forms part of the firm guidance to which David Rusholme refers, that the tied tenant should be no worse off. I drafted these paragraphs and I submitted it for the RICS approval at the re-drafing panel. Rob May, Enterprise Inns National Rent Controller, not only approved the drafting but was involved in the Brooker case—so Enterprise Inns know it exactly what it means to convey. There is no way a tied tenant, considering they could earn £60,000 on a 50:50 split of a free of tie divisible balance, would settle for £45,000 tied without good reason—maybe the countervailing benefits are worth £15,000, if so the pubco should be able to quantify the benefits.

5. Please do not get hung up on the offers from either party, it is negotiation nothing more at this stage and I am pressing them as a REO in possession of a company code, not as a surveyor.

6. It is fairly well accepted that a typical tied gross profit would be 2% or 3% either side of 50% and free of tie GP the same, either side of 65%—for easy numbers I have used 52% and 62%.

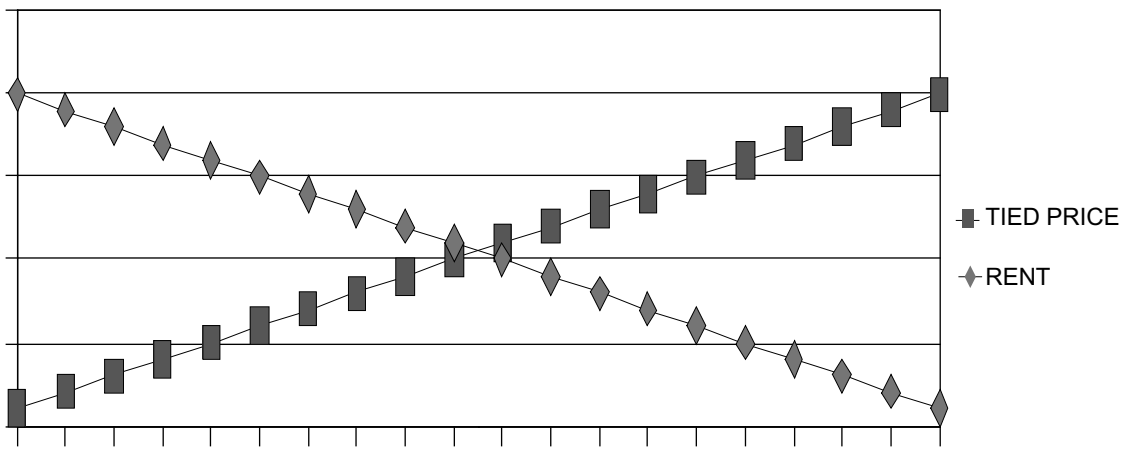
7. My offer of NIL, as odd as it may sound to some on first reading, is based on the final point above, regardless of FMT or costs, the fundamental difference between tied and FOT is GP. If we hypothetically take a 360 barrel pub. If the divisible balance, FOT, is £130k, based on a 20% difference between GP and costs (62% and 42%) then, all other things being equal, if the GP is reduced by 10%, because the increased costs of tied product prices have the effect of deflating tied tenants GP, the divisible balance would now be £65,000 (based on a 10% difference between GP and costs (52% and 42%). The FOT tenant would earn £65,000 and pay £65,000 in rent, the tied tenant (guidance 7.18 & 7.19) would expect to earn the same as being FOT £65,000 leaving no rent. Sounds hideously unfair on the landlord but what is being missed is that they have already taken their cut in tied product price (£200 per barrel profit x 360 barrels) £72,000—they are still actually better off than if they had offered the pub FOT and the tenant is no worse off despite the "dry rent" being nil.

8. If any committee member is having trouble with this I would be pleased to meet or offer further information.

9. The long and short of it is, neither Enterprise Inns, or I, have so far done a rent assessment in accordance with the RICS guidance, me, because I am currently acting as a REO and need the information they refuse to give, them, because they don't want to—it means a much lower rent, not NIL but much lower.

10. I have simply put forward a hypothetical scenario demonstrating that the consequence of increased tied product prices is a lower rent (below) and sought their substantiated rebuttal and counter proposal, which they have failed to deliver.

Reflective, only to demonstrate relationship



— There comes a point where tied prices have the effect of negating the rental value.

— In order to offer Enterprise Inns a valuation in accordance with the RICS guidelines, as a chartered surveyor, I would need relevant information some of which they have obligated themselves to offer in the "open and transparent" rent review negotiation described within their code.

— In the absence of comparable evidence neither I, nor they, have an effective starting point to establish an FMT and therefore a rent assessment in accordance with RICS guidance is extremely difficult to achieve.

— I have requested the necessary information which would enable me to undertake a proper rent assessment but Enterprise have declined to cooperate. This I believe is a code breach.

11. To conclude, my initial offer was not based on a professional rent assessment but the sentiments of a reasonably efficient operator with limited information to hand considering the profit they may make if they were free of tie. I undertook this exercise deliberately, precisely to demonstrate the difficulties faced by a "normal" tenant in assessing his rent. General evidence such as barrelage sales history can be benchmarked by dates and locations or regions, indeed Enterprise conduct such an exercise in house. ALMR and in house benchmarking surveys are available to establish estimated costs.

12. David Rusholme at the first hearing confirmed the tied tenant should be no worse off by quoting para. 7.21 of the rent valuation guidance. 7.18 & 7.19 substantiate this.

13. If Enterprise Inns use a specific tenants barrelage as a starting point for calculation of an estimated turnover, do not consider benchmarking and do not acknowledge that the tied tenant should be no worse off within the RICS guidance then they seem to fail, on at least three counts, to follow the RICS guidance—a further code breach.

14. If Enterprise were to comply with their code, and offer an open and transparent negotiation, I would be furnished with the necessary information enabling me to conduct a valuation in accordance with the RICS guidance.

15. Whilst an offer of nil may appear unrealistic to some, please consider five years ago an Arbitrator concluded my rent should be £45,750. Since then we have seen a drop in

national beer volume sales of around 25% (BBPA figures), gross profits have dropped as a result of tied price increases above and beyond inflation and costs increased as a result of inflation, utility increases, higher minimum wage and higher rateable values, amongst other things. Enterprise Inns unsubstantiated offer of £45,000 today reflects all these detrimental effects in the form of a £750 reduction in the Arbitrators rental decision of 5 years ago. In my opinion, as neither offer if based on essential and relevant information, at today's date, neither party has yet conducted a rent assessment in accordance with RICS guidance. I am unable to until they cooperate and fulfil their code obligations hence my code breach complaint to the BII.

16. *Suggested Recommendations*

(a) Despite concerted efforts to agree firm and clear RICS guidance, relating to the tied tenant being no worse off, the differing interpretations, helpfully highlighted by Mr. Tuppen, demonstrate that continuing manipulation of valuation guidance will continue if the matter is not fully clarified by the RICS. It is accepted that the guidance is a technical document and a tool for experienced valuers to follow but the "spirit" of the document should be clear to the average man and incapable of misinterpretation.

I would like the committee to consider a recommendation either that:

— the RICS redraft the guidance on this specific issue to avoid future manipulation and make it absolutely clear what the guidance seeks to achieve in this regard;

Or, at the very least

— just as they did in 2009 in their "Pubco Forums Report", the RICS issue a statement confirming that if the guidance is followed correctly the tied tenant should be no worse off than the free of tie tenant.

(b) Pubcos should make their "Volume Reports" available to the ALMR for consideration into developing further information for a benchmarking/database system.

The information, presented in a local, regional or national level for example, is no breach of confidentially between the landlord and tenant. The reports used to be available to all tenants until they were used in rent reviews as evidence by tenants demonstrating they were out performing the region and therefore their Enterprise Inns rent proposal was excessive and may have failed to disregard their goodwill, improvements and occupation.

BRIAN BINLEY

Capital Values

17. Mr. Binley questioned me specifically on a capital value issue. Assuming the free of tie rental value were say £65,000, he considered the pub may be worth something to the order of £1 million. If this were the case he suggested a property company might expect to see a 10% return and therefore it followed that my numbers may not "add up". I digressed into the value of pubs for alternative use and never got to answer the question appropriately. Whilst Mr. Binley's logic was quite correct, the yield he suggested would probably not be appropriate.

18. Enterprise Inns themselves claim that their recent freehold sales have achieved an average yield of around 6–7% (in fact, the Eagle was sold as part of a sale and leaseback portfolio of 29 pubs in January 2011—Appendix 2[22]- the average initial yield was 6.7%. Applied directly to the estimated FOT rent of £65,000 this would equate to a capital value of £970,000—pretty close to Mr. Binleys £1 million estimate—£65,000 x (100/6.7) = £970,000).

29 July 2011

Supplementary written evidence submitted by Simon Clarke

With regard to the ongoing interpretation issues of RICS guidance I thought you should be made aware of Rob Mays views and my response. The two attached letters were "open".

Clearly, if Rob is right and I am wrong then the RICS guidance does not seek to resolve the issue of the tied tenant being no worse off than free of tie tenant.

Rob May and I were both on the RICS panel rewriting guidance and I believe he knew very well the spirit behind the wording we published in the guidance. His views and Ted's oral evidence do however highlight there is a massive discrepancy in guidance interpretation and it is imperative the RICS clarify the position as a matter of urgency.

If my interpretation is wrong then so be it—we have achieved no ground on rent assessment or tied product prices and the main reason for the committee inquiry, tenant profitability remains untouched.

15 August 2011

LETTER TO MR ROB MAY, ENTERPRISE INN PLC FROM SIMON CLARKE

EAGLE ALE HOUSE—RENT REVIEW

We refer to your detailed letter dated 3 August 2011, which whilst informative, again fails to actually address the queries and requests we made. We are seeking comparable evidence and reasoned explanations why Enterprise Inns have deviated from the RICS guidance. Sadly, experience has taught us, we should be reluctant to take anyone's word for it that the Regional Manager and/or Licensed Trade Valuer have acted appropriately (remember five years ago? RM first proposal was £59,000—arbitration award was £45,000—I rest my case).

Just to be clear, we may have some differences of opinion on guidance interpretation and rent assessment, but leaving them aside, the preliminary issues here are:

- Enterprise Inns failure to be "open and transparent" and supply requested, and promised, information.
- Enterprise Inns failure to substantiate their proposal.
- Enterprise Inns failure to demonstrate that they have not relied upon the information supplied by the tenant.
- Enterprise Inns failure to follow RICS guidance or offer reasoned explanations why they digress from it.

The time that has elapsed since the Enterprise Inns rent proposal (27 April 2011) with no substantiation, despite repeated requests for comparables, does rather suggest that Enterprise are unable to back up their proposal and that our suspicions are well founded, despite your assertions to the contrary, that Enterprise have indeed relied upon pub-specific evidence when calculating FMT, your most recent letter, whilst lengthy, does nothing to negate this conclusion. Rather than argue about it, or ask us to take your word for it, just prove it and send the information asked for, and promised, by the RM and LVT.

We are simply asking for the basis Suzanne Delaney and Gary Sellwood so "*carefully considered"* in order to create and present their "*rational opinion of FMT at the review date in the hands of a reasonably efficient operator"*. Given you agree it is not appropriate to use any pub-specific evidence it remains a mystery that Enterprise Inns RM's and LVT's always seek it and their resultant rent proposals seem to consistently be based on numbers conveniently close to the figures supplied by tenants, where it supports an over inflated rent relying on tenants goodwill, improvements and occupation, which should all be disregarded under the rent review clause and RICS guidance.

All we have requested, as REO's not surveyor's, is the "open and transparent rent review negotiation" Enterprise Inns have promised in their code. Obviously, given our involvement with the select committees and RICS guidance panel, we are far better informed than the average REO and able to recognise Enterprises efforts to avoid code commitments and RICS guidance. If we are having trouble promoting meaningful dialogue and adherence to code obligations then a REO has no chance at all, demonstrating the Enterprise Inns code is nothing more than a sham, being meaningless and ineffective. The latter corroborates the IPC point and neither the industry or select committee should attach any confidence in voluntary codes which do not address the

[22] Ev not printed

issues of primacy and, where issues are covered, the pubco has the opportunity to blatantly ignore them at will as they can be confident of no penalty from the BII who have no enforcement powers and are able to offer no substantive sanction.

At a surveyor level, we clearly have differences of opinion, and I accept we may have difficulty in reaching an amicable settlement, but that is no reason not to try. At worst we should be able to minimise the issues for a third party to consider. Leaving aside rental bid, we should seek to establish an FMT, GP and costs, or at least close the gap in our differences. To this end, once again, we repeat our request for an open and transparent negotiation and the information promised to us by Gary and Suzanne at our meeting—that being the barrelage information of the tenants on the list we supplied (attached) or, if there is a confidentiality issue and Enterprise Inns propose negating their opportunity to admit the information as evidence at third party referral, the operators contact details in order that we may approach them ourselves. The Enterprise Inns, "Volume Sales Reports" will offer us a basis for an average regional barrelage and sales mix, from which either one of us may chose to adjust and qualify our opinions on a reasoned basis accordingly.

Given past performance, on the assumption Enterprise Inns will be unable to support their proposal as requested, if we are to progress at all, the above information is required which will assist in our preparation of our rent assessment and a substantiated counter offer for your consideration. Withholding the information severely hampers a REO's opportunity to make a rent assessment and any counter offer will be as meaningless as the initial Enterprise proposal, if it is based on nothing more than opinion and hearsay. You have asked us for our counter proposal which we would be pleased to supply on receipt of the information requested.

With all the latter in mind, in the event we are unable to negotiate a mutually acceptable settlement, we believe that it is now important this review is conducted in the most effective and formal way and to that end it seems imperative we refer to arbitration and not independent expert, there being little cost difference in reality. Given Enterprise Inns failure to engage since the review notice (eight months ago) and substantiate their proposal, after almost four months, it seems in order to establish the appropriate information for a valuation based on RICS guidance, we may need to rely on specific disclosure offered by the Arbitration Act. As this particular review relates in part to interpretation of RICS guidance we consider it important that a reasoned award is published by an arbitrator for our mutual benefit, the select committee, the industry as a whole and RICS, to enable consideration to be given to guidance revision if necessary where interpretation confusion remains.

We are informed that Colliers CRE acted in the portfolio sale and lease back transaction of 29 pubs for £42.6 million, between Enterprise Inns and Max Corporation Group, which included the Eagle, clearly rental values would be of great importance to the new freeholder and as such it would probably not be appropriate for anyone at Colliers to be acting as a third party in this instance. In the light of this, we feel it would be unreasonable to put Gareth Jones in the position of third party and as such would suggest an alternative is sought to act.

Assuming Enterprise Inns wish to maintain they have nothing to hide, and have confidence in their convictions, we look forward to your confirmation that an arbitration would be most appropriate. We would suggest the following individuals as possible arbitrators Peter Gwilliam, Neil Richmond or Angela Warr King all of which should be known to you and we are satisfied are adequately independent enough to avoid perception of conflict of interest.

If Enterprise Inns were to continue to insist on a review by independent expert it would not be unreasonable for some to draw the conclusion that you do not consider their position strong enough to persuade an independent arbitrator that your proposal is a reasonable reflection of open market value and that, in reality, Enterprise consider an independent arbitrator may find contrary to Mr. Tuppen's interpretation of RICS guidance and prove his view to be incorrect.

11 August 2011

LETTER FROM MR ROB MAY, ENTERPRISE INNS PLC, FROM SIMON CLARKE

EAGLE, BATTERSEA: RENT REVIEW 9 NOVEMBER 2011

As you know, our RM, Suzanne Delaney, and LTV, Gary Sellwood, worked carefully to create and present to you a rational opinion of the Fair Maintainable Trade as at the rent review date, in the hands of an REO operating the pub on the current lease, tie and price list terms. It is wrong to suggest that they have simply used the information you supplied. We don't generally use any pub-specific evidence when the RM or LTV creates their worked **FMT opinion** as this is not an affordability test for the actual operator.

Their assessment is also not related to the workings used at the previous rent review. It may be misleading to try to compare rent assessments for the same pub at different dates; what matters is the market perception of trade potential and value at the relevant valuation date.

You have asked us to explain what evidence supports the key parts of our P&L model:

(a) Our opinion of the best sustainable business plan for each pub and its RSPs for all products is based on our investigation of the local market and the trading style and prices at competing pubs. From this, one creates a hypothetical business plan for the Reasonably Efficient Operator (REO). I draw your attention to the definition of the REO at 2.10 of the RICS Guidance. The REO does not include the current actual operator (the tenant).

(b) The fair maintainable trade volumes are based on this business plan. We note that delivery records may or may not be of assistance in respect of the tied beers. It really depends on one's view of the optimum trading style, the quality of the incumbent operator and new opportunities in the market. The estimated volumes multiplied by RSPs creates turnover, to which we add estimated non-liquor turnover and other income.

These opinions are based on the RM's experience of trade assessment generally and locally, and on the similar assessments for other pubs where deals have been agreed. Whether the assessment includes gaming machine income depends on the style of operation of the REO, not on whether there is an actual machine currently on site.

(c) Our opinion of the gross margin is arithmetic, based on these RSPs and our actual tied wholesale price list for all the beers, then adding an opinion of the discounts (off our tied price list) obtainable in the open market for the ciders, FABs, wines, spirits and minerals.

(d) As the BISC inquiry was told by the ALMR, benchmarks of % of costs are available from them but they do not also provide the £s figures because their contributors are commercially sensitive about the data.

Many of a pub's operating costs are fixed costs, so when we have quoted operating costs (before rent) of £137,900 pa for the Eagle they represent 33.5% of the projected turnover of £411,600 pa, but if the FMT turnover opinion was reduced to £350,000 pa and overheads were unchanged the cost percentage would be at 39.4% of turnover. This illustrates that incomplete information must be treated with caution.

The percentage operating costs reflect the operational efficiency of the building in its location—is it the right size for the available trade, is the trade style "stand-up and drink" or "sit down and eat" (the former is the more cost-efficient), is it operable at quieter times with a single bar person etc?

We have some regard to the un-audited ALMR and Milestone reports, which show an overall average operating cost of 40%. However any average **requires** that the more cost-efficient buildings are run at costs well below 40% to compensate for some large, inefficient properties where costs are above 40% on low turnovers.

Such statistics should be audited by experts because the end product risks being biased by the mix of pubs actually trading above or below FMT, the range of cost-efficient and cost-inefficient buildings and operators, the mix of multiple and solus operators and different trade wet/dry/other trade mix.

The Eagle is a one-bar pub in a low-density pub area with a substantial expected FMT turnover, so it is bound to be more cost efficient than average to operate, leading to a substantially lower than average costs percentage of turnover.

(e) Rental bid is based on our understanding of supply and demand for tied pubs to let and to assign locally. In this area the pub estates are largely fully let, so there is little evidence of new letting transactions. There is demand from new lessees to take on tied pubs in this area, which we know because there is an active lease assignments market. Where demand is strong and supply is tight, rent bids will be relatively high.

We have used the term opinion many times, because every FMT assessment we prepare is based upon the accumulated knowledge and experience of our team. Any external valuer similarly applies their own knowledge and experience.

With Regard to the Process to Try to Settle This Rent Review

1. I note that you have highlighted the Brooker case, as well as your interpretation of the RICS Guidance.

2. It is hard to see how we can start a productive negotiation when we appear not to be valuing the same thing. You have repeatedly asked us to assess a value as if the pub lease is free of tie, but this pub is on a beer tied lease and that is the basis of valuation that the rent review clause in the lease requires. See RICS Guidance 6.2 "It will be the actual lease terms that will need to be considered".

3. The RICS Guidance does not say that "a tied REO would consider their circumstances if free of tie". It warns the valuer in paragraph 7.18 that the TENANT may do this, then, at 7.19 it says "The REO may have regard to the fact that free houses are available in the market". Again, see section 2.10 for the vital distinction between the REO and the actual tenant. The subject property is a beer-tied house and the best comparable evidence for a tied pub lease are similar pubs on similar lease terms, as stated in the Guidance at the end of 7.21.

4. I am pleased that we agree on both the principle of the expert process and the identity of Gareth Jones to be that expert. I have checked that he is available for this case and he confirms he is. I have attached a joint letter of appointment, would you please sign and return to me. I will countersign, attach a copy of the lease and send it to Gareth Jones.

3 August 2011

Written evidence submitted by Stephen D. Corbett

1 Introduction

1.1 My observations are underpinned by thirty years of professional experience in the pub trade. I write this submission from the view point of someone with both free-of-tie and tied pub experience having operated pubs, bars and restaurants all of my adult life. Most recently I operated a busy tied Enterprise Inns pub with takings of over double the national average. My pub closed its doors for the final time in November 2009. The closure of the pub took with it my entire life savings leaving a financial black hole of over £250,000. I have not operated a tied pub since.

1.2 In 2008, along with five industry colleagues, I founded the Fair Pint Campaign which was borne out of the frustrations of the iniquitous beer tie and immoral actions of the pub companies that operate it. Fair Pint is a coalition of supply-tied lessees and other industry professionals who have come together to ensure fairness for the many thousands of tied tenants who are struggling at the hands of their pubcos and brewers. In particular, the campaign has looked to expose the complete lack of regard that pubcos have paid to the 2004 T&ISC, 2008 BESC and the 2009 BISC inquiries and to persuade the Government to intervene and take regulatory action to ensure all tied tenants are given a genuine option to be released from their beer tie arrangements.

1.3 Both the BESC in 2008 and the BISC in 2009 made some sensible and powerful recommendations designed to secure the future of the British pub and breathe life back into a sector so badly in need of reform. Sadly, almost two years after the last inquiry the situation for tied tenants has worsened. Pubcos, whilst papering over some of the committees low priority concerns, have largely ignored the substantive issues concerning tenant's personal income and business profitability. The tied supply model and the property companies that operate it are the main contributor to pubs systemically going out of business with thousands of tied tenants losing their pubs, their homes and their livelihoods. Even as government observes the practices of the pubcos is this period of self-proclaimed reform it is abundantly clear that the very existence of the model has created a restrictive and anti-competitive market place which has effectively enslaved the tied tenant through rental guidance manipulation and charging excessively for beer.

2 Foreclosed Market Place

2.1 The pub industry is seeing an annual decline in beer sales or approximately 10% year on year, but surprisingly the numbers of UK companies brewing beer has increased to almost 1,000. There are over 3,000 brews available in the British market place yet many brewers still find it difficult to gain access to market as they have to conform to a standardised price structures for brand representation of pubco product lists. The Society of Independent Brewers (SIBA) is the only pubco accepted route to market for the majority of British brewers and to become a member of SIBA the brewer must agree to sell beer within a stringent pricing arrangement. Up until 2009 those pricing obligations were available on the SIBA website. They were removed in 2009 just prior to an OFT investigation.

2.2 SIBA offer a Direct Delivery Scheme to the major pubcos as a cover to seek to deter allegations that they are foreclosing the market. The Direct Delivery Scheme does provide access to a market which would otherwise be totally foreclosed, but the scheme is far from ideal and it is difficult and expensive for brewers to engage with it. Fundamentally, the tied tenant remains unable to negotiate prices.

2.3 Although the scheme is a national one, it is far from ideal, it relies on brewers delivering their own products to pubs. This means that the range of beers available to each publican is limited to brewers who are willing to deliver to them.

2.4 It is accepted and understood by the industry as a whole that small independent brewers will be required to standardise their list prices in order to the meet the requirements of the pubcos. Price fixing remains illegal in the UK.

2.5 Levels of discounts offered to publicans on tied products are similar between individual pubs, but there is a pattern in arrangements which mean that beers from small brewers receive either significantly less discount or no discount at all. This means that beers from small brewers either have to be sold at a higher price if the publican is going to make the same margin. This means that the market for beer from small brewers will be restricted as, despite the attractiveness of beer from small brewers, consumers will be reluctant to pay inflated prices.

2.6 Despite claims that the scheme gives smaller brewers access to thousands of pubs throughout the country, the fact that brewers have to deliver their own products means that the advantages to them in terms of expanding their potential customer base is limited. In reality the Direct Delivery Scheme, as orchestrated by the pubcos,

is simply a way of small brewers purchasing the right to sell to tied pubs, which raises a number of competition related concerns.

3 Price Fixing And National Wholesale Manipulation

3.1 Strangely, in a declining market place with less demand for a product we have an increase in the number of suppliers. In a normal free and competitive market place with an over-supply of goods you would normally expect the price of those goods to decline. This is not so in the UK beer market.

3.2 Because of the dominance of the pubcos and their collective buying power, (Punch and Enterprise collectively own around 30% of all Britain's pubs) they could command bigger discounts from the brewers. Brewers faced with a problem of a declining market had no choice but to accept the price offered by the dominant pubcos or else risk having their products removed from pubco price lists. In November 2008 Enterprise Inns threatened to remove Carlsberg and Castlemaine XXXX from their price list which would have seem the removal of these products from almost 8,000 pubs across the country. Carlsberg had little choice but to comply.

3.3 The price of beer sold to the entire pub sector is accomplished by a complex discounting arrangement whereby free of tie pubs (FOT) are able to command volume related discounts set against a national brewer's price list. Typically a small independent FOT pub can command around £200 a barrel discount yet a tied pub, which can only buy products from their pubco at a price set by that pubco, is unable to negotiate discounts and is therefore restricted to pay the artificial national brewers list price.

3.4 Put simply, the pubcos acting as a middle man in the supply process colluded with the brewers to collectively force up the wholesale beer price so that they could collectively take the lion's share of tied tenant's profits. This has led to tied beer prices now sitting around double those available to a FOT pub leaving tied tenants unable to compete in a highly restrictive market place. This point alone is the single most important factor in the widespread closure of pubs and the unprecedented number of business failures across the UK.

3.5 Pubcos do offer a small amount of discount to some of their tenants and therefore claim to be sharing the benefits of their purchasing power. However, the brewery list price has become so divorced from the actual open market wholesale price of beer to become meaningless, apart from a way for pub companies to be able to claim that they are selling at a discount whilst considerably overcharging their tenants.

3.6 The significant divergence of list prices from wholesale prices would make no commercial sense if the market were an open and competitive one. I believe that there is prima facie evidence of market distortion which should be further investigated.

3.7 Pubcos demands for higher and higher discounts have led to increases in the list price charged by brewers. We are now faced with a situation where the list price is totally unrelated to the actual open market wholesale price. This is the product of pubcos demands for higher discounts. Rather than acting as a downward pressure on wholesale prices as the OFT suggested in 2004, the pubcos' demands for higher discounts have led to an upward pressure on list prices which is the price, less their small discount, paid by tied tenants.

3.8 Pub companies are motivated by increasing the difference between the prices they buy beer at from brewers and the price they sell it to their tenants. They have no interest in pressing brewers for lower prices if they can make their margins by increasing the list price and therefore the price that their tenants pay.

3.9 There are many instances of small brewers being asked to raise their list price in order to be accepted on a pubco price list. Evidence given to the Trade and Industry Select Committee inquiry into Pub Companies in 2004, explains how this happens:

> *It was suggested to us that small brewers found it difficult to gain wholesale price "listings" for their products from pubcos because small brewers' price differential, or discount, was considered too low by pubcos. One small brewer told us when they tendered their product to a particular pubco, the pubco "had no interest in the price we would actually sell our beer to them for, or even what the price to the tenant would be. What they were interested in and were very interested in was DISCOUNT". Their tender was rejected due to the low discounts they were quoting. The small brewer re-tendered the following year quoting a higher wholesale price: "our solution was simple for the following year—up went our list prices and up went our discount, the price we quoted was exactly the same but the pubcos' slice goes up".*

3.9.1 The repercussions of the wholesale anomaly have reached far wider than most educated people could have ever imagined. The industry regulators either chose to ignore price rigging in the sector or effectively didn't fully understand the complex nature of the brewer's barrel discount arrangement as market distortion touched all most every part of the UK beer market.

3.9.2 Pubcos offering free of tie pricing (In some cases this can be as mush as £100–160 a barrel) does not solve the problem and equates to nothing more than a temporary discount scheme. A sticking plaster over a gaping wound if you like. As recently as 2001, the price differential between the tied and free of tie sector was marginal but with tied tenants inability to negotiate more competitive prices this gap in price/discount rapidly increased. Relying on pubcos to offer competitive prices to their own tenants is a dangerous game as we have already seen. Once the eyes of government have been removed from

the sector, an unregulated an archaic discount system based entirely on trust (price does not form any part of a tenants lease agreement) will still allow the pubcos to manipulate the barrel price and claw back, in a relatively short space of time, any lost profit.

I believe the above supplies sufficient evidence to show that a cartel or concerted pricing practice operates which are contrary to basic Competition principles.

4 SUMMARY

4.1 The pubs should be put back in the hands of the people who care; the people who have a direct interest in not only the welfare of the pub and its customers but the very community in which the pub sits. Before the pubcos emerged from the 1989 Beer Orders, the pubs were the centre of the community, a place that not only the tenant and his staff worked, but a place where they raised their families and cherished the whole experience. They may not have owned the bricks and mortar but the relationships with the brewers were based on honesty, integrity and respect. The Industry has had its differences throughout history, but never has it faced the problems it faces now. The pubcos, aggressive in their methods, have taken the trade down a dead end street. Without government intervention the pubcos and brewers that copy their model will continue to destroy the very backbone of Britain's heritage.

4.2 Our great Industry is at deaths door, thousands and thousands of tied tenants through a combination of high rents and vastly over inflated beer prices have either closed their pub doors or are just waiting for the inevitable. The tied business model was built and operated on an aggressive combination of acquisition and growth and the pubcos have totally abused their power. All along this corporate growth ladder tenants have been falling off the rungs by the bucket load. Who really knows the true cost or damage to society that these sinister and immoral pubco actions may have caused.

4.3 The 2009 BISC committee advised that the OFT could not be trusted to investigate the relationship between pubco, tenant and consumer. This recommendation sadly, turned out to be correct. A Competition Commission referral, as outlined in the BESC 2008 report, remains the only comprehensive option for safeguarding half the nations stock of pubs. At the very least the Business, Innovation and Skills Committee should stand by their previous recommendation that all tied tenants should be given an option to be free of tie and this should be accompanied by an open market rent review. This option alone will redress the imbalance of power and allow tied tenants to police their tieing arrangements with their dominant and abusive landlords.

4.4 I would be very willing to provide further information on any points that might require further clarification, and would be delighted to give oral evidence to the Committee.

June 2011

Written evidence submitted by Paul Davies

1. Along with my Partner, I am the leaseholders of The Cricketers Arms, Bedford, a Punch lease that was negotiated in 2005.

2. I am a degree qualified electronic engineer with many years experience in the design and operation of measurement systems, I submitted to the last sitting of the committee my concerns of the use of the Brulines flow monitoring system by the pub companies and the potential for wrongful accusation of buying out of tie due to serious flaws in the system.

3. The committees recommendation in the follow up report 4 March 2010 was

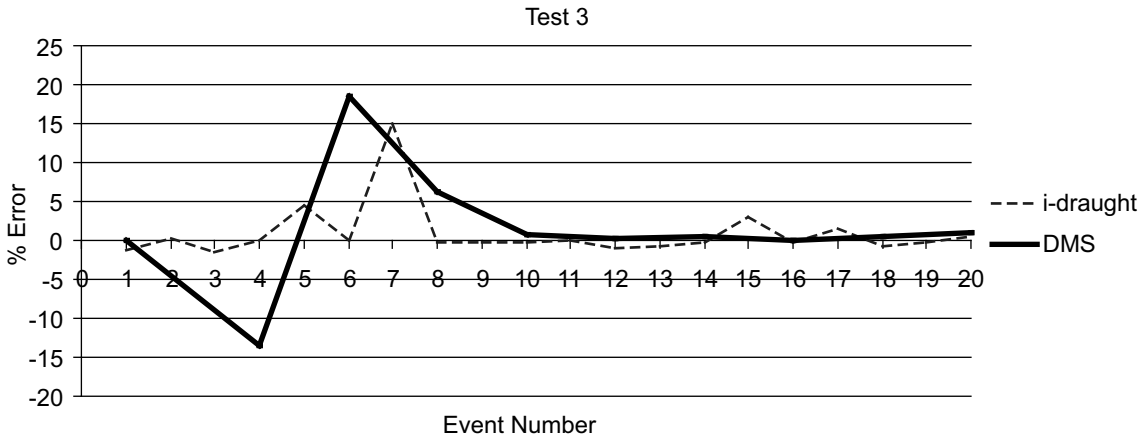
> *"that the Government, through the National Measurement Office, urgently clarifies the position of beer flow monitoring equipment in relation to the Weights and Measures Act 1985. Such equipment must be included under the Act for calibration and verification purposes."*
>
> This was modified in the Government's response to
>
> *"Government is clear that the industry should voluntarily ensure that all such measuring equipment is calibrated by the National Measurements Office. However should the industry fail to do so within a reasonable time frame this will result in Government prescribing the equipment to ensure fairness."*

4. In response to this, Brulines commissioned the National Measurement Office (NMO) to undertake tests on the i-draught and DMS versions of their flow monitoring equipment. These Brulines designed and commissioned tests were not the voluntary calibration the Government was requesting.

5. The results of these tests were published by the NMO without any conclusions by the NMO. The results were analysed by Brulines and their own conclusions were published in their "Comprehensive Guide To Flow Monitoring". They concluded in their analysis that the equipment is fit for purpose. The NMO drew no such conclusions.

6. Brulines use a very simple method of calculating the error for each test. They sum the errors giving equal weight to each point. In this method a large negative error will be canceled by an equally large positive error giving a false impression of accuracy.

7. To give an example of this, the NMO Test 3, Brulines give the error for this test as -0.71% for both the i-draught and DMS systems. As can be seen from the graph of the percentage error the DMS system saw huge positive and negative errors.



The fact that these cancel each other may be coincidental, further testing should be done to confirm that a large negative is always cancelled out with a large positive as Brulines suggest is the case.

8. In response to Brulines' Comprehensive Guide to Flow Monitoring I undertook a more scientific analysis of the NMO results and Brulines Comprehensive Guide To Flow Monitoring and concluded that both the i-draught and DMS systems are not stable or repeatable enough to conclude that they are fit for purpose.[23]

9. The systems do not cope well with every day dispense occurrences, such as barrels running out and entrained gas. Heavy reliance is placed by Brulines on their "robust auditing" to rectify the failings of the systems. To date there is nothing to support that this robust auditing process will recognise and correct the problems encountered in the NMO testing or use in the field.

10. I include my more detailed documents analysing the NMO test results and Brulines Comprehensive Guide To Flow Monitoring. I also include my explanation of the calibration "k" factor which is so important in the operation of such systems.[24]

11. I apologise for the length of these documents, but they are considerably shorter than the NMO report and Brulines Comprehensive Guide To Flow Monitoring.

19 June 2011

Written evidence submitted by Simon Daws

I wish to submit the following as evidence to the latest consultation as regards the Pubco Enquiry.

My evidence relates to:

- Request for a Free of Tie and Open Market Rent Review Process.
- Upward only rent reviews.
- Leases outside the Codes of Practice.
- Tied v Free of Tie supply prices.
- Licensee Surveys.

1.0 I am a BII Member and lessee of two Enterprise Inns pubs. My ownership of the Royal Oak commenced in 2000, at that time being leased from Whitbread Pub Partnerships. I conduct all my relations with Enterprise Inns in a business like and formal manner, and I see my Regional Manager four times a year. My other pub, again located near Cheltenham is called The Gloucester Old Spot and is leased from Enterprise Inns also.

1.1 I recently asked them to permit me to go free of tie in both pubs, and have an open market rent review to establish a workable and fair financial relationship under which I could take my business forwards. In some part this is to test the creedence of their claims to offer Free of Tie deals and to have removed upward only rent increase clauses.

1.2 In the light of the ongoing BISC Enquiry I feel my request reflects the industries' wish for greater freedom and transparency for Licensees, but it would appear that my reasonable request has not received equal treatment.

---

[23] Ev not printed
[24] Ev not printed

1.3 Enterprise have made it clear to me that should I wish to make a free of tie rent proposal, that it would be considered under a new 20 year commercial lease and would fall "outside the scope of the Enterprise Inns Code of Practice". Contrary to evidence and promises given in the last BISC session, it also stipulates upward only rent reviews. I have since spoke with my RM and Simon Townsend face to face about this issue and Enterprise Inn's position has been verbally reinforced.

1.4 Now, either these firms, do or do not operate under a Code of Practice as accredited by, my Professional Body the BII. How can they operate peacemeal, choosing to grant Leases as it suits them outside of this Code? An industry wide Code of Practice has to be exactly that?

1.5 What the deal they are offering really represents is exchanging the profit that they make from us in barrelage for a tie release fee, which itself then becomes subject to annual RPI increases and a five yearly review. It is robbing Peter to pay Paul, and has no measure of fairness that a rent would have using the RCIS appeal system. At no point would the "free of tie, fair maintainable rent" of the pub be established, and I would continue to be subject to any increase in the Tie Release Fee that they deemed fair on a five yearly upward only basis.

1.6 They profess to have moved on, with Codes of Practice but these fail to address the core issues of the Pubco debate, namely Pub Retailer's profitability and thus onward viability of their business.

2.0 I further enclose evidence of the inflated prices that we have no choice but to pay for their beer. I want either lower beer prices or, and better still to be released from my tie with a full and fair rent review. The difference in pricing of randomly selected beers, lagers and stouts are

2.1	*Free Trade Price*	*Enterprise Price*	*Difference*	
			£	%
Wye Valley HPA	62.08	93.39	31.31	50.4
Amstel	103.49	138.93	35.44	34.2
Heineken	109.99	151.95	41.96	38.1
Guinness	109.99	145.91	35.92	32.6

3.0 Simon Townsend of ETI, professes that most of us "opt for the low rent—higher beer price option". I want neither and I have opted for neither, I want fair rents and fair supply prices for beer.

4.0 I also wish to contest Enterprises use of "Licensee's Surveys" which they have engineered to profess that by saying "Yes I have received my Code Of Practice" actually means that I am happy with it. I was very candid in the way that I answered their loaded questions and the committee should ask to see a transcript of these questions to understand that The Pubco's interpretation thereof is dishonest.

20 June 2011

Written evidence submitted by Devon & Cornwall Business Services Limited

I watched a recorded session on BBC Parliament for your interviews of panels which included Ted Tuppin of Enterprise Inns. It was notable that under questioning Mr Tuppin appeared somewhat less than forthcoming and attempted to lead the committee off the question, which was picked up by one or two of your members.

In our dealings we come across Pubs which are Enterprise, Punch and Admiral as well as free houses.

Of all the Pubco's, Enterprise Inns seems to be the most unfair in the stable. To demonstrate I would like to take issue with one of my own field's comments that Ted Tuppin used to attempt to demonstrate Enterprise's commitment to being fair and ask for your opinion.

Ted Tuppin stated that they insisted that all new tenants and lessees had to have a qualified accountant to sign off their business plan and then retain that accountant for a period of a year. The accountants are contained on a list and age the only ones which Enterprise allows to be used. This is because they insist on "open book accounting" this is where Enterprise has full access to the books and records of the tenants. There are a number of problems:

— No chartered Bodied Accountant (ICAEW, CIMA, ACCA, CIPFA) would automatically release such figures to any third party which is exactly what a Pubco is to the tenant or lessee—this is against the Data Protection Legislation so we would require Client's written permission. The Pubco's accountants do not.

— The Pubco's accountants levy a monthly charge in excess of £250 a month which is a cost which many cannot afford. We for example look at volume of paperwork, condition of profitability and work with the client to try to improve the business.

— Many of the accountants are far removed from the client and thus most transactions are by post!

— Most of the Enterprise Accountants used by most Pubco's are not members of the Chartered Bodies of Accountants, therefore are qualified by buying a qualification rather than by studying and working for the qualification. HMRC are fighting against accountants like this who have in some cases swindled the Public Finances out of Millions of Pounds—one case in St Austell is for £1 million on its own.

— One Accountant originally on the Enterprise inns list actually went into receivership.

What is amazing is that if a tenant moves site and wants to retain their own accountant this is not allowed by Enterprise whereas for Punch there is some flexibility, particularly if the accountant is known to a BDM or higher.

The question is whether the committee is happy for a Pubco like Enterprise to actually encourage unqualified accountants to exist by handing them business levels which they could not normally expect.

I think the committee should bring Enterprise Inns back to ask them why in this case they are actually forsaking a client's wellbeing so that they can look into the affairs of their tenant and raise rents as they push the pub's business up.

My add on point here is that the Pubco's probably are taking a commission from these accountants for the business levels introduced to them, in my view this is wrong they should act in the best interests of their tenants so that they keep occupancy of their pubs consistent.

I am grateful to you for taking the time to read this letter.

Nick Siddaway FCMA Director

11 July 2011

Written evidence submitted by Stephen Docking

I write as an individual, regarding my experiences with the Tied Business Model as operated in my case, by Enterprise Inns plc, up until March 2007 the time of my Lease surrender followed by personal bankruptcy; my submission to the Inquiry and subsequent treatment as an "individual case" and the Supplementary Memorandum from Enterprise Inns plc August 2009.

As an individual, with little direct experience of the workings of "Committee", may I first say how difficult it is, not to be intimidated by the process of submission. No doubt, the use of on-line access has brought the workings of "Committee" to a wider audience and, for that, us poor complainants must be thankful.

As a Personal License Holder with some 35-plus years experience in the hotel & catering trade, I can hardly be described as a "newcomer". My interest in the Inquiry into Pub Companies goes back to 2005. Having followed press reporting and being into my fourth year of tied-leasing and experiencing the difficulties brought about in trying to make or run a profitable business; I really needed to learn if anything could be done to redress the balance.

Having just disposed of one of two Tied-lease premises at a loss of some £60,000, I was able to turn my full attention to my original project, a town centre premises in a South Wales coastal town. After four or five years in the premises, I had brought a previously closed and run-down pub, to be the leading "independent" in the town with a turnover in excess of £10,000 weekly. The real difficulty was in making a net profit out of that £10,000— given the constraints imposed by the greed of the Pub Company and the late-discovered anomaly that is the "divisible split" in profit.

At the time, I complained about a lack of input from the "BDM"—the area manager charged with helping me build a bigger better business. Four changes of BDM in as many years, made absolutely no difference to the "support" I received—it was still nil.

Working 100-plus hours per week and paying a host of "expert" lawyers, accountants and stock-takers to deal with a range of problems, belied the fact that the Tied-lease system as operated by the likes of Enterprise Inns is inherently weighted against the tenant/lessee. They continue to get away with this unfairness because of their duplicity. They know little about the practical aspect of running a pub business but they get coaching in how to obfuscate, and deal with Committee questioning. They appear to be expert only in re-letting property—the Churn.

Following my submission to the BESC in 2008, I was one of a number of selected cases to be dealt with on an individual basis, at the suggestion of the then Chairman.

It is the response of Enterprise inns (by way of Supplementary memorandum) ref: www.publications.parliament.uk/pa/cm200809/cmselect/cmberr/26/26we18.htm with which, I wish to take issue.

(1) Enterprise claimed I sought to re-invent circumstances and blame them entirely for my financial situation:

There was no re-invention on my part—merely the fact that for five or six years, in the absence of any support or assistance from the so-called BDM, I had sought to deal almost entirely alone with problems of a long-standing nature, of which they were totally aware. They were happy to let me do so—in the certain knowledge that I would fail. The only reason I was in debt to HMR&C was because, under financial pressure from the Pub Company, I had on a number of occasions used receipts of VAT payment to assist my cash-flow. On one occasion I had owed the VAT £28,000 whilst Enterprise were in credit—I recovered from that position but was unable to do so in 2006–7 due to the extent of my capital expenditure on THEIR premises, combined with their inactivity in relation to the upcoming Ban on Smoking.

(2) Enterprise inns, with no knowledge or investigation, glibly claim that I failed to resolve a four year dispute which led to HMR&C petitioning for bankruptcy: Their "knowledge" of a four year dispute is based on my conversation with a Regional Manager in which I mentioned a long, drawn-out "routine inquiry" into my tax affairs pre-dating my business arrangements with Enterprise. However, had Enterprise been good enough to provide me with a cheque for £10,000 (of a volume-related discount of £13,000 which was due to me at the time) I could have settled 50% of that liability in an instant. Seemingly, the worst mistake I made was "not to raise concerns or complaints in relation to the profitability of the three sites he occupied..." Well, of course I raised concerns—I raised them with each of the BDM's, I raised them with Head Office personnel when I attended the "Pub of the Year" award ceremony—as a Finalist. I raised the issue with Mr Tuppen CEO and with other Board members—from whom I received NO reply.

(3) They claim my submission is "littered with fabrications and innuendo, none of which is supported by the documentary evidence (they) have." They do not challenge a single line of my submission—they merely seek to dismiss it. They do not have an answer to most of the points raised, that will not incriminate them and their tawdry business practices.

(4) "...all matters handled by administrators acting on behalf of...": Yet another supposition by the anonymous respondent from Enterprise Inns. As far as I am aware, Enterprise did not make a claim via the Official Receiver for "monies owed" by me. It was seventeen months later that I discovered what those "monies" could be. I had visited the offices of Enterprise Inns to enquire whether the derisory sum of £13,000 for my fixtures and fittings had indeed been paid to the Receiver. I say "derisory"—I had not long completed a ground floor refurbishment of the premises costing me in excess of £30,000.

The majority of that investment was "claimed" by Enterprise as "Landlord's fittings"—the installation of fixed seating, new and matched skirting boards, wall-boarding and fitted glass shelves throughout, new flooring and bar-fronts and a hand-built fire-surround in matching Welsh oak. All fitted with the knowledge and "support" of the BDM who failed to point out that such a refurbishment would not form part of saleable F&F! What I learned on that Head Office visit, was that Enterprise had issued a Dodgy Dilapidations Dossier—effectively wiping-out my minimal credit position and keeping everything, but everything, for themselves. It's what they do. It's how they earn extra revenue. They drive their tenants into the ground with high rents and even higher tied- beer prices; they insist that the tenant's repairing obligations are met but often fail to attend to their own historic responsibilities and then to add insult to injury, they profit from the Churn, constantly charging and re-charging for Dilapidations, of which they fail to attend.

(5) My "...scurrilous and entirely false insinuation in relation to the fire..." seem like hollow words now. The fact that "...all statutory compliance certificates were in place at the time.." are not borne out by the fact that Enterprise inns were fined £15,000 plus £7,500 costs in a prosecution brought by the Vale of Glamorgan Council: http://www.morningadvertiser.co.uk/forum.ma/thread-for-post/79311 for two offences in relation to breaches of Health & Safety regulations concerning compliance testing. It was patently NOT in place, at the time they claimed. The story about "an unattended chip-pan" was a complete fabrication on their part. The tenant, who was severely injured in that event both physically and psychologically, lurched from disaster to further disaster in a very sad turn of events—but Enterprise would claim that they bore no responsibility for that, either. The pertinent fact is that Enterprise were fully aware of the shortcomings in relation to the missing compliance certificates—because they sought to charge me for that requirement at the time of their Dodgy Dilapidations report. These Company "representatives" are merely playing a game with you. They are as dishonest in their dealings with the Committee as they are with their tenants and lessees—and they use colourful language and seemingly compliant turns of phrase to hoodwink anyone who dares to question their ethic.

(6) In an effort to dispel the myth of "Churn", their response to my claim of licensee changes is to refer to "failed substantive agreement". That is patently rubbish. It does not provide for the fact that in their desperation to keep open a failing house, they will recruit anyone who has the slightest chance of temporary success—and a line of credit. Deposits are taken and lost. F&F are sold or rented at the highest possible price and re-taken for nothing. Dilapidations are filed against the out-going tenant and not acted upon.

I am incensed, that a further four years on we are no nearer to ridding this once great industry of the parasite Pub Companies who bring nothing to the party—other than a desire to reduce their ludicrous levels of financing and to increase their individual earnings.

The so-called Code of Practice obviously requires just that—lots more practice. The headlines will show a handful of "successful" cases where parts of the Code have been implemented. The reality is such, for the majority of tied tenants that absolutely nothing has changed. I receive emails on a regular basis from struggling tenants, having read of my experiences, looking for help or guidance on how to deal with their particular Pub Company.

In most cases I can only offer cold comfort—they are bounded by compliance requirements from so many statutory and regulatory bodies—and working all the hours under the sun in an effort to stay afloat, the last thing they need is a complicated battle on contractual issues with their rapacious landlord.

The reality is, most people just give up quietly. They take the view that the Pub Company cannot be beaten and, more concerned about where they might live next and keeping their partner/spouse/family together, they just give up. A sad indictment of a once thriving trade, decimated by the out of control actions of a very few all-powerful Pub Companies.

I sincerely hope, in line with the previous Committee's leadership under Peter Luff MP, that the recommendation of this Committee will be the referral of the entire workings of the leased and tenanted pub market, to the Competition Commission. From the so-called claim of low-cost entry, to the ludicrously expensive supply of tied products together with supplier discounts paid only to the Pub Company (for purchases by individual pubs), and the wholly unfair share of machine incomes and arbitrary use of Dilapidations schedules; the Pub Companies (as opposed to brewers) should be found to be unfit for purpose.

June 2011

Written evidence submitted by J Mark Dodds

1. Summary

1.1 Pub companies do not do what they say on the tin. My tied pub turns over £750,000 a year; almost four times as much as the national pub average. I am a model, multi award-winning, entrepreneurial tenant. Even S&NPC say this. This "success" is down to my own long experience in the catering industry, my personal flair, endeavour, vision, energy, hard work and substantial financial investment in "my own" business. S&NPC has not spent a penny on the premises I have owned a tied lease on for over fifteen years; In the next few weeks I will be made bankrupt with over £300,000 debts to Inland Revenue, business rates, my bank, lease hire companies, myself (the biggest loser) and to S&NPC, the pubco whose inabilities, intransigence and poor business practices created this hole. My suppliers will not be affected as my payments to them are all up to date. But eleven full time and five part time staff will lose their jobs and a local institution will come to the end of what would in free of tie conditions be a continuing business serving its community.

2. The Reality

2.2 The tied pub industry is totally morally bankrupt at the top and that is why it has descended to the state of disarray that it's in. The people responsible for these events turn a blind eye because it suits them, their pay packets, their bonuses and their pension schemes. Simon Townsend recently told me "I may not be liked but I AM a gentleman". He's lying to himself, as does everyone employed by pubcos. It's the only way to work for them.

2.3 The behaviour of landlords who work this way is quite simply completely unacceptable in contemporary society. These Rachmanesque tales are the practices of early Capitalism unbridled. Elsewhere this could be described as entrapment into bonded labour through deception and misrepresentation. We hear news of people being brought into the UK illegally on the promise of getting respectable work cleaning homes or as nannies and being tricked into work in conditions of slavery. It makes headline news. In our industry it's accepted as pedestrian routine.

2.4 Bringing up "caveat emptor", as everyone does, to skirt around the true causes of serial business failure (churn) in the tied pub sector is wrong. It puts distance between the legally weak position of bankrupted lessees against the absolute wrongness of the behaviour directed toward them by their abusive landlords and is splitting hairs. Unemotionally and objectively, this type of professional behaviour is just very bad business practice. By no measure of contemporary expectations of professional standards in any area of commercial activity can this behaviour be condoned.

2.5 When property companies overstate income and understate overheads when marketing their buildings, as pubcos do all the time, it is misrepresentation pure and simple. Pubcos have been completely free to do this for the decades since they were established because there is no industry arbiter, no scrutiny, no objective overview no one to pull them up and make them pay for their essentially illegal activities.

2.6 The tied pub sector has been allowed to get off the hook of regulation for well over a decade beyond its natural life expectancy (the beer tie was supposed to wither on the vine by 1998) because politicians have been concerned not to compound the dreadful error of the Beer Orders and then being lied to by pubcos, the BBPA and most other bodies whose hands are in each others' pockets enough to be convinced that intervention would lead to the closure of even more pubs than are already being shuttered up forever all over the UK.

3. The Story

3.1 The story is mine but its pattern will be broadly familiar to Select Committee members who've read pubco inquiry evidence before. It's the story of thousands of tied tenants whose businesses and lives have been destroyed by the "tied business model" leaving a landscape of boarded up pubs in their wake. The pub industry is being bled dry while the nation looks on, unaware of the tawdry business reality that sits underneath the scenes of devastation of a significant part of our society's particular heritage.

3.2 I am about to be made bankrupt. On 28 June 2011 I am in court for a forfeiture hearing for my lease. I cannot defend myself in law; I cannot meet my rent demands anymore; my cash flow has run out; my business has been bled dry. This is the outcome of my 2005 rent review where S&NPC applied to increase from £54,000 to £96,000 when I argued vociferously, with open book accounting, that any increase at all would put me out of business. S&NPC simply ignored all my evidence, as do pubcos with all their tenants at rent review. Having almost been put out of business by my 2000 rent review where it went up by 68% I vowed that I would see the process through arbitration and to the bitter end, hoping against hope that a eventually sustainable rent would be settled on through the construct of the law and common logic. In the event the review was legally resolved in October 2008 and I lost, owing S&NPC a total of £126,000 back rent and legal costs. Going through arbitration cost me £47,000 and contributed to my current debts.

3.3 As with all tied lessees, my pubco earns more than I do out of my business. It has consistently taken well in excess of £150,000 a year while the paltry £9,000 income I paid myself at the beginning as a budding entrepreneur fell steadily as the pubco's rent and beer charges increased; unsustainably. I have not taken a salary from my pub for the last six years, since my last rent review, because there has not been any profit for me to draw on. The last rent review has put me out of business.

3.4 Pubcos do not support tenants at all. Pubcos' relationship with tied tenants is entirely adversarial. Evidence proves that Codes of Practice exist only virtually, to be downloaded in pdf and admired from afar. Try finding tenants who have a good word to say, or a good experience, about a relationship with a pubco. The only tenants who support pubcos cautiously are those who have so much to lose thy dare not be open about the reality. Typically these will be bosses of multiple operators who hold a lot of tied leases... their businesses are in such a precarious financial position that it is not in the interest of the pubcos to let them go down the pan. Otherwise support for the tie does not exist. In fact, contrary to all application of rational logic, pubcos actual practices, actions and inactions, contrive to force individual tenants out of business. At base this is why there are so many closed pubs all over the UK.

3.5 Below I indicate that S&NPC fails to comply with even a single aspect of their COP. I state with absolute conviction that my experience is in perfect alignment with that of lessees of all pubcos; even those cuddly "Family Brewers" who keep their head beneath the publicity horizon behave exactly the same way when dealing with tied tenants whose business is falling. Bad business practice, intimidation tactics and corporate bullying are routine in the tied pub industry. It is not complicated; It seems irrational and perverse but Pubcos behave this way simply because they can, they always get away with it; there is no overseer to bring them to account; when they are asked to account for their actions in front of government, Oft and so on, they are also asked to bring the evidence of their behaviour with them. Quite rationally, they only bring the packaging and never get out the contents for you to rummage through. COPs mean nothing; in practice they do not exist.

3.6 You will see that submissions from individual tied tenants are charged with emotion. Although they are recounting what actually happens to them their "evidence" will come across as being more anecdotal than as fact. Thus this evidence will be devalued and regarded as impossible to act upon. It will be in stark contrast to the evidence submitted by the employees of the pubcos and their indentured representatives such as BBPA.

3.7 The "evidence" put in front of the Select Committee by pubcos is considered as rational, objective analyses of their pub industry backed up by figures that contradict everything every individual tied lessee submits. This is because it's all made up. It is not reality, pubcos hold all the figures and stats for the whole industry, and they make them say what they want. Tenants have only their own experiences to recount and no way of verifying them with reams of stats. Tenants do not even have the resources or time to talk to each other on a regular basis to share information and experience.

3.8 The pubcos and their reps have suntans, they have pensions and company cars, they have weekends off, often abroad. They have evenings to themselves and their families, they have time to reflect and make decisions about how to invest their earnings, where to go on holiday and how to spend their bonuses. They are paid to write their BIS submissions during working hours and they have secretarial help, legal teams and IT departments to draw upon whenever they feel the need for support.

3.9 It is impossible for a tied tenant to write a submission such as this without expressing emotion. When you are a tied tenant You are broke. You are overworked. You have emotional problems brought on by stress.

You have sleepless nights. You feel threatened. You are scared. Your life, your livelihood, your family and your closest relationships with significant others are on the line. You are depressed. You can see no future. You have to write your submission when your head is full of the above, between shifts, after mopping the floor last thing at night. After taking in the beer delivery at 7am and cleaning the toilets at 8am. And you have no one to turn to for advice about how to write it. You are isolated. You're on your own.

4. What Has Happened Since 2010—Some Nice Words Were Printed

4.1 Code of Practice. Objectively S&NPC's COP is a convincing document.

4.2 The S&NPC COP has never been given to me, or sent to me by post; I found it on the BII website; it seems not to be available from S&NPC's own site.

4.3 No employee of S&NPC has ever referred to the company's COP without my bringing it up first.

4.4 Point 3 of the COP states: "Lessees and representative bodies will be consulted before any changes are made to this code". At no stage have I, as a lessee, ever been told that the COP exists let alone been asked to comment on proposed changes. BII and FLVA are the examples given of representative bodies who may be included in consultation. BII is not representative of lessees and FLVA is funded entirely by fees paid by pubcos.

4.5 Point 7.2 "Making Commitments" States: "it is important that the lessee ensures that written confirmation is received from S&NPC whenever they believe that a specific commitment has been made. This is vital to avoid any misunderstandings later.

4.6 The COP has been revised since 2010 but there is no evidence that it has been distributed to tenants. Its creation and availability is designed to nod in the direction of being in the shop window of an upstanding company than as business reference tool.

4.7 Evidence is that S&NPE employees never act within the spirit or detail of their own published document. Prior to COP, post COP, their behaviour has unwaveringly been the same throughout sixteen my years with the pubco. While their published material is improved and updated their behaviour on the ground does not alter one jot.

4.8 In October 2008 I specifically asked, verbally and in writing, for a COP rent review due to adverse trading conditions. My request was completely ignored. Any further reference by me to the COP has consistently studiously been ignored... the COP's existence has never been acknowledged, except obliquely in a meeting in March 2011 where S&NPC's Regional Director said: "Going back through the paper work, why did you ask for a COP rent review in 2008?" He went on to explain "You understand that a COP rent review is not possible when a rent review is already underway?"

5. Communications

5.2 The COP contains a lot of stuff about Contact and Communication. It reads nicely. The default position with a pubco is NOT to answer queries from tenants unless they are of the most anodyne nature. They only return calls about the least contentious matters imaginable.

5.3 Pubco employees never put anything in writing. Nothing is provided in writing unless it is a legal document that states at the top: "Without Prejudice" and has printed at the end: "I have chosen not to take legal advice and understand my obligations contained in this agreement" and "I have taken legal advice and understand…" tick as appropriate.

5.4 I have thick files full of notes taken during phone calls and meetings I have had with S&NPC employees. I have always followed up calls and meetings by sending emails, and in many cases letters, and sent these to the relevant S&NPC employee for confirmation of agreement. I can honestly say that the normal response is nothing. These communications range from simple confirmation of meeting content through to acknowledging important operational changes to my business where S&NPC have committed to commissioning essential work to the cellar or beer dispense equipment during a refurbishment. Not only do they not reply in writing, they often do not even do what they committed to during the meetings. It is clear that Company policy is that all these communications are routinely completely ignored.

5.5 Calls, emails or letters to anyone at S&NPC, no matter to whom in whichever part of the organisation, whether it be credit control, property, operational issues or legals, are generally ignored—unless it is to do with your paying them money. And if it's to do with your NOT being able to pay them money, there is nothing they can do—they will not discuss.

5.6 There is no recourse to this train of events because, quite simply, there is no one to turn to. There is an internal complaints process. Making complaints to apubco is like throwing tissues into a bottomless waste bin.

6. Resolving Issues

6.1 Point 11.3 of the COP states a whole lot of important things about how S&NPC will respond to "issues". Not a word of it is even remotely adhered to. When an Area Manager has failed to do something as promised their line manager takes their side. When dissatisfied with the response of the line manager there is no one else to refer to. Call head office: "We do not give out the numbers of people further up the business". When you write to the Managing Director, the matter is always referred back down to the regional team who then tell you that such communications are "not helpful" but that they will try to get the relationship back on a firm footing. Get in touch with the overall Chief Executive about the whole "issue" and, eventually the Regional Director will say "there was no need to get in touch with him". And nothing ever changes.

6.2 My local MP is Harriet Harman. In an attempt to gain some traction in the "issue" stakes I corresponded with Harriet about my 2005 rent review and the actions of S&NPC. Harriet kindly wrote to the MD of S& NPC and got a reassuring response from the Commercial Director which told her that nothing was at issue and there, essentially, was no problem. Working with this unending reality is a thoroughly intellect and life sapping process.

7. The Impact of the Tie

7.1 There are no countervailing benefits. It is all "what's yours is ours and what's ours is… ours".

7.2 At this time of year the value of my weekly beer order through S&NPC is around £2,000. If I pick up the phone and make an order for exactly the same products and quantities of beer from a local wholesaler, the bill is £1,300.

7.3 When I place an order with S&NPC I have to pay for the beer three days before delivery. It is called Cash With Order. I can readily get thirty days' credit through a local wholesaler. If I were able to negotiate an annual supply deal the beer would be substantially cheaper through the wholesaler.

7.4 Typical of the sector is the level of rent set for tied pubs. It is a myth that tied pubs are let cheaper than free of tie. My pub in Camberwell is in the middle of three of the most socially and economically deprived wards in Britain. I have one of the most difficult catchments of any pub but I have always managed to attract custom because I am an exceptionally good operator (as told by S&NPC). My current rent is £65,000 a year. The rent on a free of tie leased pub, The Vale, local to me in East Dulwich (this type of pub is few and far between) with a hugely wealthier catchment, within a few seconds' walk of a busy commuter rail station is £58,000.

7.5 Last year S&NPC began taking £450 a week through Direct Debit from my bank account in an attempt to force me to repay the back rent owed from the 2005 review. They did this without consent, without warning, without reference to me. I cancelled DD payments and demanded to be reimbursed. They point blank refused. They then stopped delivering beer—even when I had paid for it in advance (£2 or £3,000 a week) because I would not pay the £450 against the rent. I told credit control these are separate issues. One is trade, one is property. I was told they can do anything they want with the accounts. This was a lie. This happened every week, for months. A fight every Monday over getting beer. The disputes meant that payment would be delayed and the beer deliveries would not be made on the normal Thursday run. They would not deliver on Friday unless I paid £150 to have it delivered outside then normal run. If I do not have beer I cannot trade so I'd pay the delivery "fine", make a note of it, and carry on the dispute with Regional Director.

7.6 S&NPC sent bailiffs to my pub because I had not paid rent on DD. The reason I had not paid rent was that someone at S&NPC's accounts department had tapped in the wrong digit on the DD call and it was rejected by their system. There was more than enough money in my account but nonetheless the bailiffs had a demand for £6,000 plus £400 for their costs and they would not leave, even when someone at credit control told them it was a mistake. They were at the pub for four hours on a busy Friday lunchtime. They made an inventory of everything on the premises, telling my customers and staff that I had defaulted on the rent. I complained about this action to everyone from Area Manager to Managing Director, asking for a letter of apology that I could use to reassure my employees that their jobs were not in danger of being lost; no one ever got back to me, no one apologised. The Area Manager said it was a mistake but they always send bailiffs in when a tenant defaults "to protect the company's interests". He even told me, "it actually is your responsibility to make sure that you pay the rent on time". I had never missed a rent payment before. Not once.

8. Conclusion

8.1 Since I signed my lease in 1995, in fact, I have never been more than two weeks away from bankruptcy. This is what happens to the majority of tied lessees. The only ones who survive are those whose business far outstrips even the pubco's dreams of "Fair Maintainable Trade", they make rubbish margins because of the tie but are cash rich. I've been stuck in the middle, in an awful ground hog day limbo, lasting this long because I have managed to duck and dive, rob Peter to pay Paul for all these years solely by dint of my business having strong cash flow and by learning, of necessity, how to navigate through impossible financial odds which now, as recently published in the pub industry trade press, put the majority of tied tenants in the position of being out of business within two years of signing their tied lease.

8.2 The above is a fleeting glance into the shadows of the darkness that lies in the business practices of the pubcos. In truth the experience, skills, talent, hard work, vision, cash and determination to succeed which I brought to this business have earned me nothing other than a steadily accumulating mountain of debt, a broken relationship with my partner of seventeen years, and imminent bankruptcy. For the last six years I have earned nothing directly from my business. My partner and I survived only by being paid Working Family Tax Credits and from undeclared income gained by renting out the flat above the pub against the terms of my lease. No wonder my partner left me and took our two boys with her.

21 June 2011

Written evidence submitted by the Fair Pint Campaign

SUMMARY

Codes of Practice development of BBPA's Framework Code;

The BBPA Framework and subsequent Company Codes do not address the issues that are the root of the Select Committee Inquiries, balance of the relationship, tenant profitability. It follows the Codes are far from robust. No pubco has sought to address the preliminary issues, of fundamental commercial importance and as such minor developments on none essential issues are relatively meaningless.

It should not be difficult for pubcos to comply with the, relatively low priority issues addressed in the Codes. We would not anticipate many Code breaches to be documented as the Codes do not address the real priority issues. Most complaints fall outside the Codes conditions.

We do not consider the BII to be a credible or effective policeman of the industry.

The BII have no real enforcement or penalty powers. Any apparent Code dispute resolutions are seen as a temporary concession while under scrutiny.

AWP machines

No pubco has satisfied the previous Committees repeated recommendations; to offer free of tie options.

Flow monitoring equipment;

The previous Committee have misinterpreted, or been misled, into the false belief that the BBPA Framework Code adequately seeks to reconcile the problems with flow monitoring equipment. It does not, contrary to the Committees interpretation, there is no inclusion of a mandatory requirement for additional evidence above and beyond the data from flow monitoring equipment in any accusation of buying outside of the tie.

The Committees interpretation of the BBPA Framework, outlined in the BISC summary should be made a mandatory clause within an enforceable statutory Code.

BBPA advice to prospective publicans;

There is no significant advice being offered by the BBPA to prospective publicans. The BBPA do not represent publicans and have no individual publican membership.

New RICS guidance

The guidance is a vast improvement on its predecessor, if applied correctly the tied tenant should be no worse off than if free of tie.

We are already witnessing wholesale none compliance with the new RICS guidance by the pubcos. Even compliance on the RICS guidelines alone would not inhibit the pubcos from adjusting the price of tied products to compensate themselves for any lost revenue as a result of rents being set fairly.

The creation of an industry benchmarking survey;

There is no industry benchmarking survey.

Complaints procedures and disputes mechanisms;

There is no effective and independent complaints or dispute mechanism.

A dispute resolution system has been introduced by the BII. By their own admission the BII do not claim independence, they have no authority or enforcement powers and the resolution mechanism is perceived as ineffective amongst tenants, demonstrated by the limited take up. We do not believe the BII are the appropriate organisation to fulfil this role.

Genuine free of tie options with an open market rent

No pubco offers a genuine FOT option in accordance with the Committees recommendations.

Previous Committees have made it clear that a FOT option with a huge unsubstantiated rent increase is not good enough. An open market rent review under the RICS new guidelines is what is required with a FOT option.

BII guidance

The BII have a pre entry training (PEAT) course available on line, it takes about two hours.

We do not consider this adequately informs prospective tenants of the type of pub leases available and what the options mean in reality. Free of tie, tied pricing and tied agreements are complex and business support and countervailing benefits if available difficult to quantify and understand without individual specialist expert advice.

Introduction

1. The Fair Pint Campaign (FP) is a membership organisation that campaigns for the interests of tied tenants. FP has a membership of around 1,000 tenants, funded entirely from donations.

2. FP provided written and oral evidence to the Business and Enterprise and Business Innovations and Skills Select Committee Inquiries on pub companies. We welcomed the Committee's views that the balance of risk and reward between pub owning companies ("pubcos" including brewers) and tied tenants is unfairly skewed towards pubcos and the fact that, despite bearing most of the risk, tenants do not receive a fair share of the benefits.

3. FP is a founding member of the Independent Pub Confederation. We endorse the IPC Charter. The collaboration of tenant organisations and CAMRA is the first time a collective and genuine voice has been given to publicans and consumers in an industry which has for too long being dominated by the property and brewing interests represented by the BBPA.

4. We believe that the agreement between the BBPA, BII and FLVA to a Code Framework is a totally inadequate response to the problems highlighted by the Select Committees, and shows unwillingness by the industry to consider change which would rebalance the relationship between tied tenants and pubcos in any significant way.

5. The OFT's reasons for their rejection of CAMRA's super-complaint showed that the Select Committee was correct in its judgement that the OFT would not be able to scrutinize the pub market in a satisfactory way. They have failed to understand the industry and how the unbalanced relationship between tied tenants and pubcos, highlighted by the Select Committee, leads to clear tenant and consumer detriment.

6. FP believes that developments in the industry since the publication of the Business and Enterprise Select Committee report strengthens the case for government intervention in the sector. The major pub owning companies have shown that they are unwilling to take any steps to significantly alter the balance of risk and reward between landlords and tied tenants and have used the time offered to simply seek ways to circumvent reform under a veil of apparent compliance.

7. We believe that the Committee ought to repeat its recommendation that Ministers refer the pub sector to the Competition Commission with a view to freeing up competition in the market by rebalancing the relationship between tenants and pub owning companies including action to prevent companies being able to use supply ties in an exploitive way.

8. The tied model in its current form does not work and is in urgent need of reform. The only achievable way we see to avoid a Competition Commission referral is to recommend a mandatory, statutory Code, with genuine penalties for Code breach and capable of independent enforcement. This Code should encompass all the previous Committees recommendations most fundamentally, a free of tie option with an open market rent for new and existing tied tenants, and a guest beer right for all tied tenants, in accordance with the IPC's Charter.

9. *Overview*

10. Since 1966, there have been at least 25 separate inquiries, not one has given the tied model a clean bill of health, all have allowed its continuation with reservations.

11. The operation of the tied model has been deemed unfair by successive Select Committees, and by the last government, all have concluded that reform is needed. The issue was how that reform should happen, the debate now is whether or not it has.

12. A Code of practice has never been the issue and was only ever regarded as a way of introducing some of the recommended and required reforms, to be effective it relies on the key reforms being included in Codes—they are not.

13. FP have always felt that the Code route was potentially dangerous, as the mere publication of them, without the core demands of the Select Committee, may inexcusably be regarded by some as sufficient.

14. Instead of implementation, the time offered to pubcos and brewers by previous Committees has been used to avoid reforms and reinvent their agreements, introducing annual inflationary increases, often with no rent review or lease renewal rights, offering no security of tenure, and effectively circumventing the new RICS rental guidance. We have also seen the resurrection of Minimum Purchasing Obligations (MPO) which require the tenant to purchase a fixed amount of tied products every year and penalise them on failure.

15. An annual increase in rent and/or obligations to purchase a predetermined amount of tied products in a declining market is a recipe for disaster. This recent evolution in agreements is considered to be nothing more than an effort to avoid genuine reform and outwit the Committees recommendations and RICS guidance in an attempt to maintain the rent roll at the tenants expense.

16. *Whether the Pub Companies' individual Codes of Practice are robust enough and whether the maj or pub companies have built upon the de-minimus requirements of the BBPA's Framework Code;*

17. Previous Committees sought an industry agreed Code. Influential organisations attended a mediation in an attempt to reach a common agreement. The mediation failed, the BBPA Framework, and individual Company Codes born from them, are not industry agreed Codes.

18. Only the BII and FLVA agreed to the BBPA's Framework proposal, both organisations derive income from the pubcos. This income stream is perceived to be a potential conflict of interest, jeopardising the organisations impartiality.

19. FP sought at mediation to ensure that the BBPA Framework incorporated the previous Committees recommendations, most particularly relating to the tie. The failure of the mediation is indicative of the fact that the BBPA were not prepared to address anything but the low priority issues thereby ensuring the "bar" was set low. Individual company Codes would have little benefit to tenants.

20. Whilst the issues of importance are absent, even from an enforceable Code, tied tenants profitability will not improve and they will continue to suffer abuse from dominant pubcos who maintain the power of the relationship. Like their predecessors the individual Company Codes are neither robust or specific to the priority issues.

21. *If the Codes of Practice are being complied with;*

22. We would not anticipate many Code breaches to be documented as the Codes quite simply do not address the priority issues. We are aware of many instances where a complaint has been made to the BII who have confirmed that they are restrained from implementing a Code breach complaint investigation as the issue falls outside the Codes jurisdiction.

23. The majority of complaints FP receive relate to abuse, intimidation and profitability, none of which are breaches as they are not addressed in any Code. The whole purpose of establishing a weak Code is to maintain "usiness as usual" under a veil of complicity, which in reality is meaningless.

24. Survey evidence will be put to the Committee, through IPC and other member organisations, demonstrating that Code requirements such as circulation of the Codes, mandatory pre entry training (PEAT) and awarenesses of the pub independent rent review scheme (PIRRS) are all well below the anticipated standards.

25. *How the BII is policing the Codes and whether this is effective;*

26. There is still considerable anxiety amongst tenants that raising a complaint will encourage repercussions from their pubco and many continue to suffer in silence. FP have seen a huge increase in direct contacts from tenants feeling bullied and intimidated but there is very little confidence that registering a complaint would be anything more putting themselves in the firing line. Many tenants seem to be aware that complaints in respect of bullying or profitability are not Code breaches and that the BII are powerless to enforce or penalise pubcos even if a Code breach could be established.

27. FP do not consider the BII have been effective in policing Codes as they lack credibility amongst tenants, whether this is as a result of their perceived conflicts of interest, there being financial connections with pubcos, or the reality of their "paper tiger" status is difficult to assess.

28. Robust Codes, and the successful policing thereof, go hand in hand and are both vital to the success of any reforms. FP shared the Committees cautious welcome to the BII's role in policing the Codes of Practice, they were the reluctant choice from a limited and imperfect list of potential candidates. The selection of a body to scrutinise a Code written by the people who fund the same body does not seem to be an ideal starting point, given the suspicion that exists and the problems faced by the industry.

29. FP do not consider the BII to be a credible or effective policeman of the industry. What is needed is something that is mandatory and statutory, like a license to operate tied and tenanted pubs. To obtain the license an individual company would need to sign up to a Code encompassing the priority issues of profitability and abuse of a dominant position, which is genuinely enforced with real financial penalties by an unquestionable independent body.

30. *The enforceability of the Codes;*

31. The Codes cannot be effectively enforced as they are not independent of the companies being regulated, incapable of being rigorously enforced and upheld, and carry no significant or effective sanctions for any breach of their provisions.

32. The only effective remedy will be a truly enforceable, mandatory Code of Practice with access to independent redress. The estate agency and grocery market provide effective models for this type of government intervention.

33. *If AWP machines are now being treated more fairly and tenants are being given a genuinely free of tie option;*

34. Previous Committees have expressly sought the removal of the machine tie. Neither the BBPA Framework or any individual pubco Company Code has attempted to accommodate this recommendation. FP consider this to be a clear example of avoidance of an express and simple requirement.

35. There has been an "apparent" tentative step to remove the AWP income from the divisible balance in rental valuation but in reality, once again, the pubcos have simply sought to present the illusion of concession whilst financially engineering revenue from AWP income back in elsewhere.

36. No pubco has seriously offered free of tie options. This was a basic and fundamental Committee requirement and their failure to deliver reform is a clear indication of the resistance to offer anything of real benefit to the tenants.

37. *The treatment of flow monitoring equipment;*

38. Contrary to the Committees understanding, outlined in the BISC summary, the BBPA Framework does not adequately seek to reconcile the problems with flow monitoring equipment. The BII have confirmed there is no inclusion of a mandatory requirement for additional evidence, above and beyond the data from flow monitoring equipment, in any accusation of buying outside of the tie.

39. Some pubcos and brewers have sought to rise to include the Committees interpretation in their Codes. One notable exception would be Enterprise Inns, their Code simply requires that, if suspected of buying out, the tenant should produce their confidential trading information for inspection, failure to comply may result in a fine with no additional evidence to support the accusation other than the data from flow monitoring equipment. Tenants are reluctant to disclose this confidential trading information as it is typically used, inappropriately, as a basis for the assessment of rent at review or lease renewal.

40. FP have been actively seeking intervention and enforcement of the Weights and Measures Act 1985 by Trading Standards authorities and many flow monitoring systems have been tested in individual pubs. Whilst inaccuracy has been successfully established as commonplace, no authority is prepared to act. The Local Government Ombudsman is currently investigating at least two Trading Standards departments in respect of their failure to act where inaccuracies were established, and tenants possibly falsely or unjustly fined, on the flow monitoring information alone.

41. Flow monitoring equipment is not prescribed, verified or stamped and as such only falls under the Weights and Measures Act 1985 if proved to be "in use for trade". In their "Comprehensive Guide to Flow Monitoring", Brulines state openly that they are *"…confident that the commercial application of its equipment, as utilised by our customers and as described in this guide, is not "use for trade" ie measurements are not taken directly from the flow meter and applied as fines or levies."* We of course know this to be blatantly misleading and I include in the Appendices invoices clearly demonstrating that measurements from Brulines equipment are used directly to calculate the fines (Appendix 1).

The flow monitoring dispute still rages and for good reason, the fining of tenants provides a sizeable income for the companies involved, documents from Brulines indicate the level of fines since 2006 has steadily increased from £2.7 million to around £10 million a year (Appendix 2).

42. The National Measurement Office, have clarified the position of beer flow monitoring equipment in relation to the Weights and Measures Act 1985, the system is not prescribed, verified or stamped. Tests were undertaken but the NMO have drawn no conclusions and have importantly not accredited the system as accurate or fit for purpose.

43. FP agree that the Committees interpretation of the BBPA Framework addressing flow monitoring should be made a mandatory clause within an enforceable, statutory Code. The system should not be in "use for trade" as defined in the Weights and Measure Act 1985.

44. *The advice being provided by BBPA to prospective publicans;*

45. Other than a modest document on the BBPA website very briefly outlining the agreements available there is no apparent advice being offered to prospective tenants. The BBPA have no tenant membership and arguably are not the appropriate body to be providing advice to prospective publicans given their clear and undeniable relationships with pub owning companies.

46. *The effectiveness of the new RICS guidance on pub rental valuations and whether it provides clarity on the principle that a tied tenant should be no worse off than a free of tie tenant by defining what constitutes a countervailing benefit;*

47. We consider the new guidance has sought to clarify a number of issues and it is a vast improvement upon its predecessor. There are clauses within the guidance requiring the valuer to consider the hypothetical tenant as if they were free of tie and reflect that in the rental assessment and examples of countervailing benefits have been listed.

48. The effectiveness of the new RICS guidance relies upon its implementation. The RICS are not in a position to take disciplinary action against non surveyors and this is seen as a fundamental flaw. Individual Company Codes, in the main, contain a requirement to follow RICS guidance but already we are seeing non observation of its contents.

49. We are aware of several ongoing rent review and lease renewal negotiations with various pubcos, none appear to be making reference to the RICS guidance particularly in respect of the tenants bid. We are aware David Morgan of FP proposes offering a detail submission in this regard which will substantiate our findings.

50. It has recently come to our attention that Enterprise Inns, having little faith in the ALMR benchmarking findings, conduct their own benchmarking surveys. Under the newer Enterprise Inns agreements, lessees are required to agree to open book accounting. The appointed accountants undertake the benchmarking surveys. The results of these surveys demonstrate that, even within the Enterprise Inns estate, costs as a percentage of turnover are practically exactly the same as the ALMR's findings, 42% for pubs turning over £3,000 a week. The October 2010, survey is attached in Appendix 3, the net of rent overall cost is shown in red. You will also note that tenants of pubs turning over <£3,000 a week are earning -£41 a week, a loss of over £2,000 a year. The average, £3,000-£6,000, sees tenant earnings at just £9,000 a year (£163 a week).

51. To quantify the importance of ignoring the benchmarking, I attach in Appendix 4 two calculations, one is taken directly from the Enterprise Inns 2011 Interim Accounts, seeking to demonstrate their average tenant earns an estimated £35,000 (plus a notional £10,000 benefit for living above the pub). The other calculation uses exactly the same figures changing nothing but the costs to the appropriate benchmarking evidence, 42%.

52. By simply adopting the appropriate average costs of 42%, instead of Enterprise Inns unsubstantiated 35%, the tenant earns £10,680, not the £35,000 claimed. This corroborates the Committees survey findings from the BEC 2008 that 67% of tied tenants are earning less than £15,000 a year.

53. We have seen no evidence of transparency or openness during review negotiations and we are already seeing evidence of systematic non recognition of the new guidance. On an optimistic note, we consider the apparent refusal by some to follow RICS guidance demonstrates that, if adopted properly, it may have the desired effect and deliver the required adjustment to falsely inflated tied pub rents.

54. FP foresee wholesale non compliance with the new RICS guidance if no mandatory clause within an enforceable statutory Code exists. As long as the new guidance continues to be ignored or manipulated the problems of false, over inflated, rents will continue unhindered into the future.

55. *The availability and effectiveness of complaints procedures and an independent disputes mechanism;*

56. The BII has recently introduced a dispute resolution service. FP representatives have acted as advisor's to tenants at informal mediation with some degree of success, however, we very much see this as reluctant participation by the pubcos under the spot light of scrutiny.

57. As there is no complaint procedure of dispute mechanism with any enforcement power requiring the participants to comply with the genuine third party findings an effective mechanism remains unavailable.

58. *The availability of genuine free of tie options ie an open market rent review under RICS new guidelines, ability to buy beer from any source;*

59. The BESC 08 stated quite clearly the only way to effectively "test" the fairness of the tie was to offer a genuine free of tie (FOT) option, which allows tenants to purchase beer in openly competitive market, from any source, at a fair and reasonable rent.

60. Select Committees & government presented a clear message to the industry on what is required—**a FOT option with a huge unsubstantiated rent increase is not good enough. An open market rent review under the RICS new guidelines is what is required with a FOT option.**

61. Some "*purported*" FOT options are currently available. In reality, none satisfy the BESC recommendation and government requirement, a genuine FOT option, essentially, has to come with an open market rent.

62. The options being touted fall in to two basic categories, and both amount to attempts to hoodwink the Committee, government and naïve prospective tenants coming into the sector.

63. FOT **pricing** options, such as Punch Taverns are now offering are simply a PR spin, a clever use of the emotive words "free of tie" which are, in reality, temporary discount schemes in exchange for a rise in rent. **Fundamentally, these are not FOT, the tenant is still obliged to purchase from the pubco.** Under these agreements the pubco still achieve a profit margin due to their buying power, this is valuable to the pubco and the opportunity for the tenant to remove it, with a genuine FOT option and open market rent, is what would redress the balance of bargaining power between the landlord and tenant. The main feature of a genuine FOT option is the ability for the individual tenant to police their tied relationship with their pubco. If the tenant is able to exit an abusive relationship, then the pubco will be discouraged from bad behaviour and encouraged to promote a relationship that truly benefits both parties to the agreement. The Committees test of the "fairness" of the tie but an impossibility under the FOT pricing schemes.

64. A few agreements are FOT in exchange for an annual fee compensating the pubco for lost revenue and therefore saving the tenant nothing. These agreements allow the tenant to acquire products from any alternative supplier but typically offer tie release only on limited products. Full release offers, on all products, are few and far between and are offered only in return for an unsupported increase in rent, an annual tie release fee. Most full releases that do exist are temporary, like the Marston's, "Ultra Advance" agreement, this is a "bolt on" agreement to the tied lease and lasts for only three years. The tenant has no right to renew the temporary release on products.

65. Enterprise Inns say they offer FOT options but only with an entirely new agreement. In practical terms, Enterprise typically offer release on certain low volume sales products to fully tied tenants (like wines, spirits and minerals). An option to be FOT on all products, including beer, is not available other than on extremely rare occasions (Enterprise Inns have only 94 out of their estate of over 6,700 on completely FOT agreements). FP are aware of no existing tenants that have been offered any form of FOT option on all products. Any tenant wishing to relax their tie would be required to agree a new lease agreement. Enterprise Inns new agreements are significantly more onerous than existing agreements containing, for example, inflationary increases, minimum purchase obligations and open book accounting.

66. A genuine FOT option could quite simply be offered in the form of a deed of variation to existing leases.

67. FP do not consider there will be any significant interest in any of the "new" options as they do nothing more than seek to give with one hand whilst taking back with the other, in an attempt to offer the illusion, to the next Select Committee, of compliance with the genuine FOT option recommendations, whilst failing to address the key requirement, an open market rent established in accordance with the RICS guidance and, failing agreement between the parties, determined by a third party (arbitrator or independent expert).

68. FP would deter any tenant from accepting any of the supposed FOT offers currently available from any pubco or brewer. Put simply none of the offers increase tenant profitability.

69. In evidence presented to BESC 2008, the Committee were faced with two irreconcilable pictures of the industry. The pubcos claimed that their tenants preferred the tie and would keep it, if offered genuine FOT options. FP claimed the higher costs imposed by ties meant that lessees were at a disadvantage to free of tie competitors and that, if offered, most tied tenants would take the FOT offer if it were accompanied by an open market rent.

70. The pubcos have now dropped their line of argument in this regard, falling back on their last line of defence, and the perhaps finally the truth of the situation. The recent admission by Roger Whiteside that "It (*going further than the FOT pricing*) would put the business model into serious jeopardy if that were to happen overnight.". The implication being that what is being sought is an immediate abolition of the tie. This is not the case. The proposal is for a fair option implemented over a phased period (on letting, at rent review or lease renewal), its very availability would encourage pubcos to offer a fairer tied agreement and a more cooperative relationship if they wished to maintain the benefits of their buying power.

71. FP believe that the compromise of a genuine FOT option with an open market rent is a bare minimum standard requirement if the industry is to recover from its spiral of decline. Without the option, there will be nothing to improve the tenants profitability and abuse and intimidation will continue unhindered, in an entirely foreclosed and anti competitive market. Pubcos will only be obliged to offer a competitive tied agreement if they are forced to offer a genuine FOT option.

72. *The guidance from BII on the type of pub leases available and what the options mean in reality to prospective lessees. This includes free of tie, tied pricing and discounts as well as the business support countervailing benefits available.*

73. The BII have a pre entry training course available on line at the cost of £20, it takes about two hours.

18 June 2011

Supplementary written evidence submitted by The Fair Pint Campaign

SUPPLEMENTARY EVIDENCE RELATING TO TENANT COMPLAINTS AND DISTRESS

INTRODUCTION

In the absence of a tenant representation body that has any credibility amongst tenants and whose remit is to effectively address tenants complaints. Fair Pint Campaign members have been fire fighting tenant problems, between running pubs and in many cases fulfilling the obligations of second jobs. We have been doing our best but have a number of hurdles in coordinating and presenting these problems for the committees consideration.

Sadly, many of these cases are in the early stages or are still active and very sensitive. The tenants have typically experienced "over muscular" approaches by the pubco or brewer and are extremely concerned about "raising their heads above the parapet".

1.0 SUMMARY

1.1 Fair Pint are extremely concerned with the increase in reports of intimidation and complaints in respect of pubco or brewer behaviour over the past 12 months.

1.2 We are receiving on average around five calls a day, both direct to Fair Pint steering group members, Simon Clarke, David Morgan (through his helpline) and Steve Corbett and our associates Dave Mountford and Chris Wright who are trying to assist tenants facing intimidation bullying and uncooperative responses from their pubcos.

1.3 For many these calls are too late and the damage is already done, reporting the pubco behaviour to the BII will not save their business, even if it were a justified code breach, which given the content of the codes is rare. As has repeatedly been submitted, the primary issues, which led to the inquiry, such as tenant profitability, due to over inflated rents and tied product prices, and intimidation and domineering are not covered in the codes.

1.4 Simon Clarke is seeking to assist where possible on the issues relating to accusations of buying out, based solely on Brulines data, rent reviews and lease renewals. Steve Corbett has the unenviable task of addressing the calls from severely distraught tenants with accounts of unfair treatment, an over muscular approach, breaches of codes of practice, threats of bankruptcy and many more.

1.5 Even the BII have been referring cases to Fair Pint in the knowledge that the codes are unable to adequately address the issues at stake.

1.6 Over the eight months 30 of the complaints have been about Enterprise, 25 about Punch, 18 others and seven about family brewers.

1.7 These figures have not shown up in the BII data for a number of reasons, some were in the complaint pipeline, other's because they have been resolved, most because the codes do not cover the tenant issues.

1.8 More has to be done to protect pubco lessees.

1.9 SUGGESTED RECOMMENDATIONS

1. We ask the Government to act now to bring in a new statutory code and a code adjudicator. Pub companies have failed to take up the opportunity offered to them of one last chance of self regulation.

2. The code should include a free of tie option, with open market rent, capable of third party referral if the parties cannot agree.

If the Committee require any further information or our presence to discuss the contents of this submission we would be pleased to assist.

Simon Clarke
Steve Corbett
For and on behalf of Fair Pint Campaign

18 August 2011

Written evidence submitted by the Federation of Licensed Victuallers Associations (FLVA)

This submission is made on behalf of the Federation of Licensed Victuallers Associations (FLVA) which is a members' organisation that has since 1992 looked after the business interests of self employed licensees and was a co signatory to the Framework Code of Practice. (FCOP)

Executive Summary and Recommendations

1. The FLVA accept the need for PubCo's to retain the beer tie subject to the points made in this document. In particular a more equitable split of the beer discounts available to the PubCo's. (paragraphs 23–28)

2. The FLVA recommend a removal of the wine/spirit/mineral tie from all existing agreements. We accept this may need to be followed by an interim rent review reflecting the increased retail margins. The review should also recognise the current changed trading environment at the outlet in today's economic climate.

3. The FLVA require a formal and transparent linkage between the wholesale prices enjoyed by the PubCo's and those offered to their tenants, insomuch that supplier "price increases" should only apply to the tenant at the same time and at the same price as those increases are levied on the PubCo concerned. Providing a true countervailing benefit.

4. We recommend the FCOP rental treatment of tenants share of AWP income be implemented now across all existing agreements.

5. The FLVA recommend a minimum licensee's profit return after rent of £20,000.

6. We recommend the establishment of PubCo/tenant forums as a means of maintaining dialogue between business partners and discussing new initiatives or tied pricing arrangements. (paragraphs 17–20)

7. A strict timeframe (12 months) for the implementation of 6 above.

8. All pub owning companies should be expected to establish and hold their own discreet tenant forums at both a national and regional level on a three monthly basis. There should be no exemptions, all PubCo's who submitted a Code of Practice should follow this process.

9. Within this submission we draw particular attention to the position of existing tenants. PubCo initiatives usually focus on new tenants and practices where such improvements have been introduced. We require greater emphasis on the plight of existing tenants. (paragraph 29)

Topics to be Considered

Whether the PubCo's individual Codes of Practice (COP's) are robust enough and whether the major PubCo's have built upon the de-minimus requirements of the BBPA's FCOP

10. The PubCo's COP's are welcomed, and are in the main being complied with, in particular the transparency brought at rent review. We believe that much of the code should be enshrined within the lease or via binding collateral deeds in existing leases ensuring continued adherence by the PubCo and any successors in the event of a sale, giving full opportunity of redress for the tenant if breached. With regard to de minimus requirement, we feel that this in general has not been built upon with minor exceptions.

Are AWP machines now being treated more fairly and tenants being given a genuinely free of tie option

11. The removal of AWP income (where shared) from the divisible balance in the rent calculations is being adhered to and is a welcome move. However existing tenants are still penalised until the next rent review date. We recommend an immediate across the board adjustment to bring old calculations into line. We are however not averse to the principle of tied machines, there is an argument that large scale management of machine income can be beneficial to both parties. What must become transparent is that no "royalty" payment is received by PubCo's which could potentially distort machine rental.

The treatment of flow monitoring equipment (FME)

12. We recognise the absolute right of the landlord to have the terms of the tie contained within the lease adhered to but the interpretation of FME results are still being used as the sole source of evidence of transgression with a charge first, validate later attitude. Unreliable registering of beer line cleaning, or the purported lack of it, calls into doubt the validity of the data used by which guilt is measured.

The effectiveness of the new RICS guidance on pub rental valuations and whether it provides clarity on the principle that a tied tenant should be no worse off than a free of tie tenant by defining what constitutes a countervailing benefit

13. The RICS guidance clarifies the point that the valuation process and procedure is the same for all sectors and should not result in a different approach to rent setting in one sector of the trade nor produce an "advantage or disadvantage" to another sector of the trade. This differs to the often voiced opinion that "a tied tenant should be no worse off than a free of tie tenant". The guidelines state that the landlord's share of the perceived

divisible balance taken as rent is likely to be between 35%–65% dependent upon several factors, including supply and demand, terms of trading and quantum of profit. These factors would mean that the same pub, offered on more beneficial trading terms, would mathematically bring about a higher rent on free of tie terms. We would welcome the opportunity to expand upon the implication of this in relation to current tied non discounted agreements in the market place today in oral evidence.

14. With regard to countervailing benefits, we agree with the RICS in that support services offering special, commercial or financial benefits are difficult to quantify as they represent differing values for tenants of differing experience. As such RICS guidance offers no help in this regard in rent calculation processes.

15. The FLVA believe that as part of any rent calculation the establishment of an overreaching minimum level of retained tenant's income of £20k from the divisible balance within all rental calculations. Potentially indexed to the UK average wage statistics.

The creation of an industry benchmarking survey

16. The introduction of benchmarking would be a welcome and useful tool in order to validate many of the assumptions made within FMT rent calculation models. However this will take time to produce. In the short term (12 months) a national data base of substantive rents could be assembled and made available by PubCo's via the BBPA for use by all.

The availability and effectiveness of complaints procedures and an independent disputes mechanism

17. The FLVA believe that there may be a need for such a mechanism should the current COP's not be embodied via the collateral deed mechanism (paragraph 10) Many disputes could be resolved before the need of such a formal procedure by the introduction of regional and national tenant forums. This would establish "in house" dialogue between the PubCo and a representative body of its tenants.

18. We believe that the business partnership would be enhanced and mutual support given by the formation of Tenant/PubCo forums. We have advocated this for many years, and our officers have participated in, the formation of PubCo/tenants forums as a vehicle for constructive dialogue between parties. These have been at a national level where contentious issues have been resolved which were impacting upon the PubCo/Tenants business. A historic example of this was the Inntrepreneur Licensees forum in 1995. These forums could discuss the recalibration of existing rental/discount levels, repair obligations, operational issues, and new agreements, all being discussed prior to implementation. Current officers of the FLVA have undertaken such roles successfully in the past which brought about significant benefits to tenants. We would offer our support again to provide functional support to these forums thereby ensuring consistency of approach and representation across such forums. It would be perhaps for another body such as the BII (the industry's training & education body) to ensure these forums are representative.

19. Improved beer tie arrangements can only be brought about on a PubCo by PubCo basis through the tenant forum approach.

20. The avoidance of disputes and the commercial and tangible benefits achieved through forum discussion would assist in bringing about a fair and sustainable level of profitability to the tenant. This would allow tenants a better chance of remaining competitive against the managed and free trade sectors within the industry, whilst also establishing respectful lines of dialogue between business partners which are long overdue.

21. It is in light of these points that we support the principal of a fair beer tie, whilst recognising that the terms of many current agreements have become imbalanced and distorted in favour of the PubCo's.

The availability of genuine free of tie options i.e. an open market rent review under RICS new guidelines, ability to buy beer from any source

22. We are not aware of any genuine fully free of tie options being made available. Some packages we have seen are offering discount levels approximating to current free of tie discounts whilst the tenant remains tied for supply.

23. We do not support the oft touted solution of a fully free of tie lease because of the following.

24. The buying power of the pub companies is undeniable and there should not be an assumption that the current free of tie market discounts will remain to a solus operator. They will be replaced by discounts from the brewers in relation to the potential volumes of the individual tenants concerned, thereby putting them in an inferior negotiating position.

25. Optimising his commercial terms with a brewer with regard to loan/discount arrangement may preclude a tenant from stocking other brewers products thereby limiting consumer choice and inhibiting market availability for smaller brands/guest beers.

26. This flowback of profitability from the PubCo to the brewer, many of whom are non UK based, would be without any guarantee that this increased profitability would in any substantive way flow back into the pub. At present the potential exists for PubCo's to invest in tied pubs by way of capital schemes, share of repairing obligations and to fund business recovery programmes. Perversely this profit flowback to the brewers could

further support other brewers customers through enhanced discounts i.e. supermarkets, thus bringing about further pressure to the community pub, with subsequently more pub closures.

27. Any potential PubCo/tenant relationship would be commercially impracticable as the PubCo's would essentially become property companies with little shared interest in the trading entity of the pub. This would manifest itself in reduced investments in pubs, and a total emphasis by the emergent property company on rental return. Property companies operating free of tie leases would not be bound by the FCOP.

28. PubCo's should offer supply contracts with a fair division of their discounts which consolidate prices, for say a three year period, with increases only in line with the PubCo's suppliers increases in cash terms.

The guidance on the types of pub leases available and what the options mean in reality to prospective lessees

29. There are many new and varied options available to prospective tenants in today's market. Critically there are also a very large number of historic agreements where tenants are locked into leases with rental levels and profit margins at anticipated levels of trade/costs, which bear little resemblance to current day trading conditions. This is often due to circumstances outside their control ie the smoking ban and predatory supermarket pricing. These historic agreements and those tenants locked into them urgently need a similar level of focus as new entrants to the trade. This position has been exacerbated by the introduction of the new PubCo agreements on more advantageous rent/discount terms. PubCo's should not just be reactive to calls from tenants in distress but positively address their plight.

30. Under no circumstances should any improvement of trading terms be fully negated by a subsequent rental increase. This would put the business risk wholly at the door of the tenant by transferring the benefit of improved beer purchase terms into that of a fixed overhead of rent.

31. It is recognised that the freeing of the tie on wines/spirits/minerals would assist the partnership by delivering a better benefit to the licensee with little consequential loss to the pub companies.

Written evidence submitted by the Federation of Small Businesses (FSB)

The Federation of Small Businesses (FSB) welcomes the opportunity to respond to the above named consultation.

The FSB is the UK's leading business organisation. It exists to protect and promote the interests of the self-employed and all those who run their own business. The FSB is non-party political, and with in excess of 200,000 members, it is also the largest organisation representing micro and small sized businesses in the UK.

Small businesses make up 99.3% of all businesses in the UK, and make a huge contribution to the UK economy. They contribute 51% of the GDP and employ 58% of the private sector workforce.

Pubs make up the heart of our communities, yet they are shutting their doors at the rate of 25 a week across Britain. This is extremely worrying given the Government's growth agenda with its small business focus, its focus on generating employment opportunities and the survival of the high street as recently highlighted by the Mary Portas Review.

The FSB represents 4,213 publicans. Around 62% are tied and 38% are untied. We are disappointed to say that, seven years on from the Committee's initial inquiry, tied tenants are still getting an unfair deal and consumer choice remains limited due to a lack of competition.

The problem with the situation as it stands is important for both consumers and small business growth. The current set-up does not enable tied tenants, who are at the same time small businesses, to compete fairly in the marketplace. Tenants are immediately put at a disadvantage by the costs of the tie, rental costs and other financial demands put upon them by their pubco. At the same time, consumers suffer as their local pubs are forced to close and they have a smaller range of beers to choose from.

Our response is focused on the full results of a survey of our publican members undertaken earlier this year. It complements the submission to this inquiry from the Independent Pub Confederation (IPC), of which the FSB is proud to be a founder member and those of the IPC's members. Other members are: the Association of Licensed Multiple Retailers, the Guild of Master Victuallers, the Fair Pint Campaign, Justice for Licensees, Unite the Union, the Campaign for Real Ale and the Society of Independent Brewers. The FSB fully supports the IPC's Charter.

Our evidence speaks for itself. We consistently remain of the view that a statutory code of practice written by an independent body must now be put in place, which: provides tied tenants with the option to become free of the tie; an open market rent review; and an option for selling a guest beer for those who choose to stay tied. An independent ombudsman must also be established to monitor compliance with the code.

It is imperative that action is now taken by Government to resolve the situation.

As one respondent to our survey said:

> "Like many tied tenants I would like the opportunity to go free of tie and shop around for the best deals for myself and my customers. I believe that given this freedom I would be in a position where I could shop around for the best deals allowing me to be more competitive. The pub companies seem to want the best of both worlds by restricting our purchases like we own a franchise, whilst expecting us to maintain their properties and run the rest of our business like an independent."

We trust that you will find our comments helpful and that they will be taken into consideration.

20 June 2011

SUBMISSION

1. The FSB surveyed its publican members earlier this year.[25] The survey was undertaken in anticipation of the Committee's inquiry. Topline results were used in recent media work and also as part of our evidence to the All Party Save the Pub Group in June this year.

2. 53% of respondents were leased or tenanted tied pubs, 11% were leased or tenanted free of tie pubs and 37% were freehold. 26% had been tied for over 10 years. 37% are tied for beer only, 18% are tied for beer, wine, spirits and soft drinks including minerals, with nearly 30% being tied for either of the above plus Amusement with Prizes (AWP) machines.

Overview of the tie

3. When asked the question: *Do you feel that your pubco tie arrangement enables you to compete effectively in the marketplace?* 84% of the FSB's tied publican membership responded in the negative. A slightly higher proportion (90%) do not feel that their pubco tie arrangement allows them to make a fair profit, with nearly 95% indicating that they would like the opportunity to shop around for better beer prices. Furthermore, 87% indicated that they would like to be free of the tie.

4. These figures are consistent with previous surveys undertaken by the FSB. They reinforce our view that very little progress has been made and that tied tenants are operating on an uneven playing field vis-a-vis their non-tied peers. As stated in our covering letter, this also impacts on consumer choice.

Code of Practice

5. The FSB survey specifically asked questions in relation to the development of the British Beer and Pub Association's (BBPA) new Framework Code and its interpretation by the pubcos when developing their company codes.

6. Our survey clearly shows that the spirit and sentiment of the Code as envisaged by the Committee has not been adopted by the BBPA, its pubco membership, or the British Institute of Innkeeping who have responsibility for accrediting the code. Nearly 70% of tied tenants responding to our survey indicated that they had received (between October 2010 and March 2011) a copy of their pubco's code of practice. Yet only 62% indicated that they had signed up to the code. Perhaps more importantly exactly half thought that the code of practice they received was intended to be legally binding for both tenant and pubco, yet only 19% were advised to take legal advice before signing. Nearly 31% did not know whether the code they received was intended to be legally binding or not.

7. These statistics suggest an acute lack of transparency and honesty in the process. Future problems would be avoided if, as outlined above, the Framework Code were put onto a statutory footing, clarifying the situation for all parties and allowing independent scrutiny.

8. The problems experienced by small businesses with the new codes became evident when we asked the question: *Is your companies' new code of conduct likely to improve the business partnership between yourself and your pub company?* In response nearly 70% said "no". The FSB is of the view that this statistic alone is strong enough to show that the system in place is not working and that reform is required.

Flow measurement

9. Our survey indicated that 83% of tied members used Brulines to measure flow. The FSB is of the view that there remain problems with the way flow is measured and monitored.

10. Comments surrounding the installation of flow monitoring equipment included:

(A) "Frequently seems to give the wrong readings, stating I am buying beer out of tie, when I don't."

(B) "Not accurate enough and I have to wait nearly 14 days for information to be updated. Hardly a tool I can use. The Pubco have access to the information almost immediately."

(C) "Beer flow monitors do not distinguish between water and froth."

[25] The FSB surveyed 163 pub owners from 7 February to 21 March 2011 and received 74 responses.

The FSB is concerned that pubcos are threatening to penalise tenants for buying beer outside of their tie when they are not, by writing the use of flow monitoring equipment into their codes of practice.

Rent

11. 41% of members estimated that rental costs were between 10% and 15% of their turnover. 22% indicated that they were between 15% and 20% of their turnover. Perhaps most importantly nearly 40% said that rental costs were not lower than non-tied pubs in their area (50% of respondents did not know the answer). The FSB concludes from these statistics that higher rental costs are prohibiting tied tenants from operating in a fair and competitive market place.

Competition

12. The FSB is of the view that the competition regime to date has not been as favourable to small businesses as it appears to be to big businesses. We especially feel that the Office of Fair Trading (OFT) has not been sufficiently effective in enabling consumers to benefit from the small business market.

Over the last year, the FSB has been disappointed that some competition issues have not been addressed, to the detriment of the consumer. There is a perception amongst the small business community that whilst consumers are receiving a good level of choice overall, they could be receiving an excellent level of choice—potentially at a lower price—if small business concerns were addressed. The OFT's response to the super-complaint from the Campaign for Real Ale (CAMRA) on the beer tie notably neglected to address this.

13. Government is consulting on a proposal to merge the competition functions of the OFT and the Competition Commission. This is welcome however the new body must have a dedicated unit looking at the issues affecting small businesses.

14. As we said in our response to the recent Government consultation on *A Competition Regime for Growth: Consultation on options for Reform*, we welcome in principle the Government's proposal to extend the super-complaint system to SME bodies. We feel that this would be an excellent opportunity for issues affecting small businesses, such as the beer tie to be thoroughly investigated.

Supermarkets

15. Whilst not directly relevant to the Committee's inquiry, we feel it is useful here to highlight the impact of supermarkets on pubs. Our survey asked tied, free of tie and freehold pubs about the impact of the off-trade on pubs. 77% indicated that this had a negative impact upon their business in the past two years.

16. It is also worth mentioning here that 84% of all publicans said that VAT and Duty had had a negative impact upon their business in the past two years.

Conclusion

17. As indicated above, the evidence given in this response is not exclusive and will complement that provided by the IPC and its members.

18. In March 2010, the Business, Innovation and Skills Committee stated that this was the last opportunity for self-regulated reform. It said that if industry could not deliver by June 2011, then Government intervention would be necessary. The previous Government accepted that it would take action if problems remained. The current Secretary of State for Business, Innovation and Skills, Vince Cable confirmed to the Committee in July 2010 that if a satisfactory arrangement had not been delivered, then there would have to be legislative action.

19. The FSB has been involved in the process since the beginning. Our evidence has been regular and constant since 2004 stating that little progress has been made.

20. We do not believe that significant improvement is likely via a voluntary mechanism. Therefore, the only solution would be the immediate implementation of a statutory code of practice written by an independent body, which: provides tied tenants with the option to become free of the tie; an open market rent review; and an option for selling a guest beer for those who choose to stay tied. An independent ombudsman must also be established to monitor compliance with the code.

Written evidence submitted by Nicola Francey

Overview

1. My name is Nicola Francey and I manage The Sun and Doves pub on behalf of Mr J M Dodds who is a Scottish and Newcastle Pub Company (S&NPC) leaseholder in Camberwell, South East London. We have been in the pub since 1995 and we are approaching our 16th year here.

2. I am also a founder member of the Fair Pint campaign and I took part in the Industry mediation process in September 2009 as a representative of Fair Pint.

3. My own experiences in the 15 years of working within the tied pub industry have led me to believe that the only way forward for a sustainable, vital pub industry is to remove the barriers created by the tie and encourage entrepreneurialism and diversity within our market place. Too many people have been burnt by their experiences as a tied publican, often with desperate results—losing homes, life savings, dignity, sanity, and ultimately leaving the industry never to return.

4. Too many publicans have had what little profit margin they had squeezed and squeezed over the years by unfair increases in rent, high prices for beer with increases imposed by the pub company never matched by an increase in the "discount" offered by that pub company in the initial contract. This has left publicans with little profit to weather the storms of an economic downturn, the smoking ban and increases in duty. The profit in their pubs is retained by the pub company whose risk is at best, having to look for a new tenant to fill the gap left by another exhausted and bankrupted tenant.

Summary

5. The key to a successful pub industry is a tenant's profitability. If a tenant's profitability can be improved by setting a realistic rent, regulated properly and a realistic price charged for the beer they are required to purchase through their agreement, then many more publicans would be able to survive. Smaller profits but from many more businesses contribute to a more stable, more attractive industry. It is time to move away from the boom and bust and concentrate on the small things, done well.

6. The industry has been required to self regulate since the Select Committee report of 2004, yet five years later, a further, more damning report into the state of our industry was produced. Does this show effective self regulation? No. Will a further year, with greater pressure put on the pub company's at the heart of the issue, show any further developments? No.

7. The pub company's efforts over the last twelve months have been to take the select committee recommendations and subvert them with all the resources available to them.

8. Regulated rent reviews have been abandoned by pub companies in favour of retail price index linked rents avoiding the RICS rent setting guidance, free of tie "pricing" offered in return for an increase in rent, where the rent is set by the pub company again avoiding RICS rent setting guidance, complaints continue to be made by tenants but they either take so long to be addressed by the pub company concerned, that the tenant gives up before getting to the BII's complaints procedure, or their complaint is outside the remit given by the BII.

9. The spirit of the recommendations has been taken and manipulated by the companies whose previous market manipulations have led us to this point.

Codes of Practice

10. Many companies already had Codes of Practice prior to the changes suggested by the pub companies following the mediation process in 2009. The newer Codes have perhaps resulted in more clearly written documents, but they still place the onus of responsibility on the tenant. It seems that many of the codes are simply updated to include the PIIRS scheme. They do not address the fundamental issue of tenant profitability.

11. My experiences during the Industry mediation process in 2009, led me to conclude that the BBPA and its member organisations, by pressing for amended Codes of Practice, hoped to sidestep the major issue of the tie and hide behind competition law. It showed how little the pub companies are prepared to compromise in order to ensure their tenants profitability. This short term attitude will ultimately lead to failure across the whole sector.

AWP Machines Clause

12. In the S&NPC Code of Practise it clearly states "machines for example AWP machines, SWP machines, etc can only be installed by suppliers nominated by S&NPC". This does not constitute a genuinely free of tie option.

13. The pub company can still share the income derived from the machines. But at least the pub company clearly states that "S&NPC receives royalty income from machine suppliers to help offset related administration and management costs." Surely, their share of the income derived from the machines installed could help offset related admin and management costs?

Code of Practice Rent Review Clause

14. In S&NPC new Code of Practice the company "readily acknowledges that the rent review can result in a reduction in rent". When we asked our Area Manager if, in our September 2010 rent review the company would consider a reduction in our rent, we were met with a categoric, "No". The only way we could challenge this would be to go through an arbitration process.

15. We had previously gone through a lengthy and difficulty arbitration process for our 2005 rent review, when the pub company wanted to increase our rent from £54k a year to £82k a year, a 52% increase in rent. The Arbitration process went on for a further three years with the Arbitrator reaching a rental figure of £65k per annum and has left us with large legal fees, and an enormous back rent bill and ultimately our business failure.

16. The PIIRs scheme, as a low cost alternative to the rather bruising Arbitration process, although recommended in the updated S&NPC Code of Practice, was not referred to by the company's representatives when discussing the 2010 rent review.

Enforceability of the Codes

17. In the S&NPC Code of Practice a tenant is required to sign and acknowledge that the code "forms part of the legally binding contractual relationship between us." The implication is that the tenant can at any time be legally challenged over the Code of Practice and my concern is that it will be used as another means to threaten the tenants when challenges are made.

18. The interpretation of the codes is determined by the pub company that writes them. The enforcement of the codes is by the company who writes them. The only redress that the tenant has, is the BII, and only after they have exhausted the complaints procedure of the pub company they are in dispute with, and who can determine whether or not beer gets delivered and therefore whether or not the pub can trade within the terms of its original agreement.

19. And what power does the BII have, other than to publish the outcome and hope that the companies are shamed by their actions? Has this form of shaming ever stopped any of the abuses perpetrated and documented before, from being repeated? No, they are still taking place and are still being documented.

Free of Tie Options

20. As a participant in the industry mediation process in September 2009, I was in a position to see whether the BBPA and its members would consider addressing the issue of the tie, and consider becoming more flexible in its approach. They refused.

21. Since then, free of tie pricing options, offered by the major pub companies have started to appear. They are deceiving as they do not offer a truly free of tie option. They simply offer a bigger discount on the price of products, bringing them in line with the prices that many tenants can find through their local suppliers or national cash and carry stores, but the payoff in an increased rent, set by the pub company that determines the prices of your beer. Hardly fair or adequately regulated.

Conclusion

22. The pub companies are looking to subvert the Select Committee recommendations, and ignore the spirit of the recommendation, which was to redress the balance of power in the pubco/tenant relationship.

23. It seems that the pub companies continue to aim for complete control whilst dressing up their new agreements as partnership deals. The balance of risk and reward is not addressed by merely offering free of tie pricing. I believe that a truly open market where rents and beer prices can be freely negotiated by both parties is the only way forward and I urge the select committee to enforce the recommendations made in its previous reports and to ensure that pub companies give *all tenants a genuine free of tie option that must be accompanied by an open market rent review.*

June 2011

Written evidence submitted by Fuller, Smith & Turner plc

1. Introduction

In this report Fuller, Smith & Turner P.L.C. is pleased to take the opportunity to respond to the committee's call for evidence that the recommendations set out by the BISC in 2010 have been adopted.

2. History

Fuller Smith & Turner PLC have been brewing beer and running pubs from their Chiswick Brewery headquarters since 1845. Today we brew over 200,000 barrels of cask conditioned ales and run 365 pubs throughout the south of England. We are one of a number of successful independent family brewers who

like similar independent companies in other industries are passionate about their people, their pubs and their business model.

The model revolves around a tie on wet products and takes it's origin from a desire to sell our own cask ale beers at the finest quality possible. By buying pubs brewers such as Fuller Smith & Turner were able to produce and distribute quality beers to be enjoyed locally by their customers. As transport facilities improved so the distribution network has expanded to the present levels of production stated above.

Our estate of pubs is made up of 166 Managed and 196 Tenanted houses all of which operate under the full wet tied system.

3. The Tie

With the security of the tie, Fuller's buy, insure and maintain the properties operated by our tenants. The tie system provides a lower cost of entry for a tenant setting up in business and creates new employment opportunities for entrepreneurs. As business increases or decreases the tied system allows for the financial impact to be shared between company and tenant thus decreasing the risk of failure and closed pubs.

4. The Current Situation in the Pub Industry

The past three years have seen an unprecedented period of change and challenge for our industry.

The smoking ban, an increase of over 35% in beer duty in 36 months and the recession, allied with aggressive pricing strategies by supermarkets have put an enormous strain on the pub market.

Whilst, we have not been immune to pub closures within our own estate we do firmly believe that the number of closures have been far greater in the free market where banks and property landlords are less understanding than pub companies such as ourselves. There is no advantage to us to see good landlords/tenants suffer and leave our business as our fortunes are so closely aligned. This is why in the main we have increased the support available during these trying times.

5. Fuller Smith & Turner Survey of Tenants

In the past year we conducted a survey of all of tenants who are on a substantial agreement (three years or more) with the company.

Highlights from the report were that:

(a) 76% are happy with the head office support they receive;
(b) 71% are happy with the training support they receive;
(c) 95% agree or strongly agree they are happy with the relationship with their BDM (Business Development Manager);
(d) 90% agree we keep them informed of legislation changes;
(e) `85% are happy with the marketing and support they receive;
(f) 85% say the BDM has a good understanding of their business;
(g) 98% believe their BDM acts with honesty and integrity;
(h) 80% believe their BDM is innovative;

and most importantly

(i) 80% would renew the agreement they have with the company.

We also regularly hold open forums with tenants to find out how they believe we can improve our business relationships.

6. BISC Committee Recommendations and Evidence of Compliance

We would now like to comment on the action Fuller Smith & Turner has taken to comply with the BIS Committee recommendations:

(a) *Code of Practice*

Our Code of Practice was submitted to the BII in April 2010 and was accredited by BIIBAS on 3 June 2010.

(b) *Coverage of Codes*

The Codes apply to all tenants or lessees on a substantial agreement with Fuller Smith & Turner. The Codes were explained to each tenant who signed to say they had received the code. All new tenants receive the code as part of the letting procedure.

(c) *PEAT (Pre-Entry Awareness Training)*

We insist of all new applicants with the exception of anyone who has been in the trade for some years to undertake the PEAT qualification.

Guest Ales

We operate rotational guest ales once per fortnight which tenants are able to take the opportunity to stock. However, our own portfolio of ales is so strong only 33% of tenants take advantage of the scheme.

(d) *Rent Reviews*

To further confirm the removal of upward only clauses, during 2010–11 rent reviews carried out by the company resulted in 31% remaining static, 19% were reduced and 50% increased. Overall rents at review fell by over 6% during the year.

A shadow rent calculation is provided at rent review.

(e) *AWP Machines*

We operate a tie on machines on a 50/50 split basis. Once again we believe the tied system serves both tenant and company well in that we keep a close watch on the quality of machine, the income and the need to change or improve the machine as income slows. We employ a consultant to deal with these matters who tenants can contact should they have any issues.

We have completely removed machines from the divisible balance on rents.

(f) *Brulines Flow Monitoring Equipment*

Brulines is installed in 80% of our houses. We believe we have one of the most constructive approaches to deficits and the lowest occurrences of actual buying out of the tie throughout the industry.

(g) *PIRRS*

We fully support the PIRRS scheme and every tenant during rent negotiations are informed of its existence. It is also a part of the Code of Practice of which as previously said every tenant possesses a copy. We have had no referrals.

(h) *RPI*

We believe nobody envisaged RPI figures rising to the levels they have. Over the past three years we applied negative RPI when it became applicable to all rents but more importantly we have capped RPI at a maximum of 3% since 2008 whenever the RPI figure has risen above that level.

(i) *Business Support*

We believe that during the past year various companies have introduced new ideas to their tenancies and leases to make them more attractive to applicants. Whether by way of freedom of the tie, partial freedom or improved allowances and services it confirms that in a competitive market place the best agreements will prevail. We believe the committee should take note of this thought that if an agreement were not competitive then new applicants are unlikely to apply.

For our part we have always had very competitive rent levels together with a host of services some of which are listed below. This fully justifies the difference between a free of tie and tied rent system.

- Some of the very best pubs throughout the South East of England.
- A portfolio of fine ales arguably the best in the country.
- Lessees enjoy £44 discount per own produced beers and £24 on beers produced outside of Fuller's. Likewise tenants receive £20 and £10 respectively.
- Capital Investment in our houses is at an all time high.
- Revenue Investment and repairs to houses reached a new high in 2010–11.
- Training courses were increased in number and reduced in price to an average of £50 per course.
- RPI has been capped at 3%.
- Free Rating Advice for all tenants.
- Free signage for both lessees and tenants.
- Free design advice when a tenant/lessee wishes to carry out a refurbishment of the house.
- Minerals at a very low wholesale price direct from Britvic.
- In house magazine with over £1,000 at cost offers per annum.
- Master Cellar scheme which pays out over £1,000 at cost in beer if achieved.
- Free membership of the BII.
- Mystery Visitor twice per annum free of charge.

(l) *Business Development Managers*

In the past we have used the Ashridge Management School to assist in training Business Development Managers in all aspects of their business.

We fully support the new BDM training modules proposed by the BII and have booked the two newest members of our team on to the first courses that should be available later this year. We have a mentor

system in place for new BDM's and each is assigned a buddy to make sure they have access to any information they require.

We have 196 pubs with 5 BDM's each being responsible for circa 40 pubs. Our tenants expect and we insist on a call rate at worst of once every eight weeks. Many houses are visited far more often than this.

(m) *Restrictive Covenants*

We have removed restrictive covenants.

8. CGA Survey

We fully co-operated in the independent survey carried out by CGA and recognise that whilst the results are heading in the right direction there is still more to do across the industry to ensure fairness to all.

We fully encourage greater awareness campaigns on the following subjects:

- making sure every tenant and applicant is aware of the Code of Practice;
- Making tenants aware of the PIRRS scheme;
- aking tenants aware that upward only rent reviews have been removed from the majority of agreements; and
- ensuring every tenant is aware that any breach of the Codes should be reported to the BII who will carry out a full investigation and report on Breaches made by Companies. We further believe that by using this scheme any rogue company practices will be indentified as will any rogue BDM's.

9. Conclusion

We acknowledge that there was a need for change in the pub industry however you will see from our own survey results that tenants of Fuller Smith & Turner have a high regard for the way we operate the company and believe we have a good landlord/tenant relationship.

It is generally acknowledged that having the discipline of a more extensive and exacting industry code has been a positive and productive process for our company. Not only has the exercise been instructive in looking at our own internal procedures, we believe it has better informed tenants and lessees with more rigorous and transparent processes being beneficial to all concerned.

We believe we have met the majority of the BIS enquiry recommendations (bar the question of a tie which is deep rooted in our business model) and argue that we have gone beyond them with many innovative and additional ways of supporting our tenants.

The Industry Framework Code of Practice is driving change in the pub sector, and we believe that it is now important to allow the industry to continue to build on the good start that has been made.

We also have very strong feelings about the strength of our business model compared to others and if there are problems with individual landlords they should be addressed by them.

We urge the committee not to tinker further with the livelihoods of good businesses such as Fuller's that have been in existence for over 165 years to achieve headlines they seek elsewhere. We would also like to thank the committee for allowing us to take the opportunity to update the position at Fuller's since the new Code of Practice was introduced and would welcome dialogue with any member of the committee should they so wish.

16 June 2011

Written evidence submitted by Keith Heaviside

After watching the Commons Committee meeting regarding Pub companies this morning I am compelled to write to you with current issues I have with a large Pub co.

I managed to see that Punch and Enterprise were present at this Committee meeting but I did not pick up on any other Pub co's.

My full time position is working within the finance sector, I work daily with balance sheets, accounts and business plans giving me a very good footing at being able to see if my pub business is succeeding or failing.

I have a tenanted pub through Admiral Taverns, I went into this public house on a tied agreement and a set rent, I have had this pub for just over two years and in my first year of trading things went well with no increases on rent or stock.

At the start of my second year 2011, the Pub co sent me a letter informing me that they were exercising their right to an RPI in my rent, this was closely followed with three increases in beer prices blaming the brewers, VAT and then their own overheads, I have had to pass on that cost as much as possible to the general

public and it has now pushed the priced on a pint of beer from £2.40 to £3.10 in the space of six months, this has made me the most expensive Pub in the town of Barnard castle. Three other tenanted pubs have closed down in the past 12 months and the others are Pub co owned and run and they're able to offer beer prices 15p–20p per pint lower in cost.

The Pub co also runs a brew lines system, this indicates every drop that goes through the lines and if you show anything over what has been bought through the brewery the fines are extortionate. When we run low on lager or beer we borrow from another local Pub, we then replace that barrel on the next order, but in some case it may show a difference of 5–10 pints in our favour. Eight months ago this was the situation and the Pub co have fined me over £1,000 for a difference that would cost around £100.00. I have been fighting this with the pub co for the past eight months but they are adamant this must be paid and have even threatened to stop supply.

The agreement with the AWP machines is also one that is weighted in the pub co's favour, it is 50–50 on any profit made on the machine after the rental on the machine is paid. By the time we pay the electric bill on these machines there are no profits to be had, but the Pub co has 100% cost free profit.

The BDM that was looking after us offered no support in any way, any issues that arose were brushed under the carpet and we are still awaiting the response from the Pub co on the fire safety equipment and lighting, it has been deemed unsafe for use and condemned. The Pub co have been aware of this for over 15 months but are not willing to spend any money, even though it is a legal requirement and it is there responsibility.

As for the Pub co's allowing tenanted pubs to go free of tie this is how they would work it.

Current offering	*Tied in agreement*	*Free of tie agreement*
Rent	£12,500 per annum	£36,500 per annum
Tie in	Draught, bottles, alcopops	would be free of tie

We are a wet trade pub and 85% of the business is draught.

Admiral makes it so that a tied in agreement would be your only option and restrict free trade, we do not have enough trade to go free of tie and cover a rent of £36,500 per annum.

Looking into a free of tie agreement I could reduce the cost of a pint by around 17p per pint and still make the same profit that I do now.

My year runs from April to April and I have the latest set of accounts showing that in the latest 12 months we are running at a loss.

The restrictive law needs to change to allow free trade and competition and to stop the average of 25 pubs per week closing.

I have invested nearly £15,000 in refurbishment into this pub and am now at a stage where I can see myself losing the lot.

3 August 2011

Written evidence submitted by the Institute for Public Policy Research (IPPR)

In January 2011 IPPR was commissioned on behalf of CAMRA and the Campaign for a Fair Pint to investigate the current status of the tied pub industry. This memo presents several of the preliminary findings which will be released in a final report due to be published in July 2011. The following observations are based on a poll of 424 tenants of tied pub outlets conducted by CGA Strategy in April 2011.[26]

MANAGEMENT AND EXPERIENCE

— Nearly two-thirds of all tied tenants have managed their pub for more than three years. 15% however have been managing their pub for less than 1 year while the remaining 17% have had their pub between one and three years.

— When tied tenants were asked how much longer they plan to manage their pub there appears to be some doubt about longevity. 1 in 3 tenants do not believe they will continue to manage their pub after three years with 14% predicting they will no longer hold the pub within one year.

— 3 in 4 tied tenants have had experience in the pub industry prior to managing their current pub. The core of respondents that did not have prior experience—37%—had worked in a "professional" category, this includes office workers, teachers and managers. 11% had previous catering experience.

— 42% of tied tenants said they did not have any training before they signed their lease. Tenants who have not had any industry experience or training equate to roughly 10% of all tied pub outlets.

[26] All of the major pub companies are represented in this sample, varying according to their proportion of the market.

Financial Stability

- A significant number of tied respondents—46%—claimed that they earn less than £15,000 per annum. Only 11% claimed their personal income was over £30,000 per year.
- A majority of all tied tenants—58%—state that they are financially struggling.
- When investigating the reasons causing financial instability, 90% of tenants facing difficulties blamed the recession. 88% of these respondents noted the strain of the beer-tie, followed by 87% mentioning competition from supermarket pricing.
- When investigating the tied model further, IPPR calculations show 78 per cent of those who mentioned the beer-tie as affecting their financial stability also mentioned the cost of rent as a contributing factor. The claim that lower costs in the dry rent offset the beer-tie is not a view shared by an overwhelming majority of tied tenants.

Pubco Evaluation

- Approximately one-third of all tied tenants have not received information relating to their Pubco's code of practice.
- A vast majority of tied tenants—71%—believe that the new code of practice will have no significant effect on their business while only 17% believe it will benefit them.
- Just 36% of tied tenants believe that a dispute with their Pubco would be dealt with fairly. 40% of tied tenants do not know if their Pubco would objectively deal with a dispute, indicating a lack of consultation regarding guidelines and procedures for such matters between companies and tenants.
- Only 1 in 3 tenants believe that their Pubco offers any value to their business. The majority—52%—claim their Pubco adds no value while 16% are unsure.
- Of the minority that claim their Pubco does add value 86% indicate provision of business training as the most noted reason. Recognition of brand name was stated by 59% of these respondents followed by general training with 57%.

Written evidence submitted by Huw Jones

Submission Relating to Rent Review Process Dated as 1 May 2010

- Enterprise did not start the rent review process in a timely manner. The first quote we received was dated less than a week prior to date the new rent was due to be in place.
- The Enterprise representative promised information verbally and then refused to provide it when requests were made in writing.
- Enterprise did not explain their calculations or assumptions relating to the figures they provided us with.
- Prior to a meeting the Enterprise rep agreed via email that minutes could be taken and distributed for sign off as accurate. Information was promised in the meeting but when the minutes were distributed for sign off the rep stated that they were simply our notes of the meeting and would not sign them off.
- In the same meeting the rep was obstructive and rude as well as either feigning ignorance or being unaware of basic finance and business practice.
- The Enterprise representative ignored most questions posed in writing.
- During our final meeting Enterprise came with two representatives and showed us settlements from prior arbitrations. They were a number of years old and related to premises nothing like our premises. It was a fairly clear intimidation tactic as they showed settlements where rent was a much higher percentage of turnover compared to what they were offering on our premises.
- Subsequent to the issuing of a Calderbank offer from Enterprise we were still trying to debate the validity of their figures and engage in dialogue about them to avoid arbitration. The final pieces of feedback we received were from the two reps we had been dealing with. Both were notional P&Ls demonstrating their position in terms of the rent but had significantly different figures within them.
- Overall there was no identifiable process.

1. We sent our P&L to Enterprise in early March as the new rent was due in place on 1 May. We requested that the process be started but did not receive a quote until the end of April. This did not contain the analysis promised and was described as an offer to reduce our rent from £48k to £44k despite the fact that our current rent was £41.5k. This was pointed out and concede after we produced recent rent invoices. We received no further information until a new quote for £41k arrived a week later.

2. We requested analysis of turnover, margin and overheads but they were not initially provided. We had to pursue these and did get them in the end but they were clearly not representative. When queried on this the response was that it did not matter what we thought of the figures as changing them would not result in a change of rental offer.

3. Numerous times we were promised information verbally but it was never provided (margin analysis).

4. We were very concerned by the fact that the rep was willing to agree to minutes being taken prior to a meeting but would not sign them off afterwards. We had arranged this as we thought he was misrepresenting his position. We also arranged for a second rep from the estates department not involved in the rent review process to be present.

5. Enterprise state they consider fair maintainable trade and average competent operators when calculating the possible trade of the pub. We had been assured verbally by the Enterprise rep repeatedly that we were excellent pub operators and were exceeding fair maintainable trade. Despite this the Enterprise quote contained a profit figure of 14% higher than out latest accounts. We thought this was inconsistent and had queried these figures strongly. In the meeting we asked what if we were better than average competent operators and whether we exceeded fair maintainable trade. This was met with laughter and we were told it was a ridiculous thing to ask. These are Enterprises measurements and they seem able to quantify them to produce their estimates so we looked on these as rude and unprofessional.

6. We had been querying the margin % figure as Enterprise stated it used the costs and sales prices associated with our pub. Enterprise calculated it as 4% higher than we did. We produced a weighted sale average to back up our figure but the Enterprise rep claimed that something like that was not something they would do. Eventually it was conceded that it was and that he would provide it. This information was never provided and the rep subsequently stated via email that they were not required to provide anything more.

7. After this meeting we distributed the minutes for sign off but the Enterprise rep refused and reneged on the promise to provide information he had made in the meeting. We countered that the 4% difference was £12k in profit that we as a pub were not making and that he should demonstrate his calculation as either they were using incorrect information in the rent review process or he (as our business development manager) should show us how we should be making this extra profit. He refused so we asked for his line managers details as we thought that either he is carrying out the rent review incorrectly or deliberately not fulfilling his role as our BDM. He refused this request for his managers details twice.

8. Our final meeting involved the Enterprise rep we had dealt mostly with (our BDM) and a more senior rep who oversaw rent reviews over a large area. Enterprise had often stated that rent was viewed as a percentage of turnover and talked about the possible range. In this meeting we were shown a number of arbitration settlements from other pubs. These were old or not pertinent and the progress of the meeting appeared rehearsed.

9. The last information we received came on the same day from the two reps we had the meeting above with. One showed high turnover and high costs and the other low turnover and low costs. Both came to roughly the same rental figure by calculation but from different angles.

10. We wanted to go through a defined process but that did not happen. We were never engaged in meaningful debate about the trading levels and cost profile associated with the pub. The rep behaved in a misleading manner which hindered the process.

11. We have numerous emails and other information to back up all of the above but it would lengthen this submission significantly. We are happy to provide this separately.

6 June 2011

Written evidence submitted by Phil Jones

Introduction

1. The evidence I am submitting illustrates the unwillingness of Pubcos in this case Enterprise Inns to adhere to the previous recommendations of this committee and those of its predecessors. I have been the licensee of an Enterprise Inns pub where my parents have been leaseholders for five years. Our experience of running a tied pub has been financially unrewarding and emotionally demoralising. Our family have worked to build not only a business but a focal point for the community. We have worked hard to support several charities raising many thousands of pounds. Even in a business that trades at over two hundred brewer's barrels a year, in the five years we have traded, £798,000 has been paid to Enterprise Inns through rent and tied purchases a staggering 57% of our turnover and the business has yet to pay back its initial capital investment.

Reason for the Submission

2. There are fundamental problems with the business model currently being operated by the Pubcos that cannot be addressed through a self-regulating, voluntary code of practice. Unfortunately our experiences show that Enterprise Inns is incapable of changing its approach towards us and no doubt other tenants. The Pubcos are extracting a disproportionate income from their pubs leaving them almost all unviable for the tenants under the current tied agreements. This has resulted in a massive decline in pubs that are vital community assets. The evidence is all around us, in every town and village across the country; either boarded up shells that were once crucial community assets or hugely under-invested pubs that are struggling to stay in business.

Risk and Reward

3. Since the last Committee report much time has been spent by the BBPA and its members stating that all the industries problems are now solved with the introduction of their new Company Codes of Practice, all observing the BBPA Industry framework and promising as a result of these codes there is no need for Government intervention. The reality of these codes is that they do nothing to change the balance of risk and reward between tenant and landlord of a tied pub. The codes have been used to distract attention from the real issue affecting tied pubs; the financial health of tied tenants. Like any business we do not expect hand outs but should expect (when entering into a contract) that contract to allow our business to operate freely and if successful be profitable for both parties. Pubco policies such as "Business Recovery Plans" would likely be unnecessary in almost all cases if trading terms were equitable from the outset.

The Answer

4. Key to redressing this balance, at the very least is offering all tied tenants the option, periodically, to go free of the tie with the option accompanied by an open market rent review. Although this is a key recommendation of the previous committee, the Pub Companies have failed to address it albeit a misleading attempt of offering free of tie pricing in new leases that come attached with Tie Release Fees and a direct uplift in rent and some leases go further to circumnavigate updated RICS guidance by removing rent reviews completely but still increase annually in line with inflation. These so called offers would actually result in us being further disadvantaged.

The Cost of Tie

5. The cost of the tie to tenants has been addressed on previous occasions by the committee however its relevance has never been so fundamentally important. In 2004 the Trade and Industry Select Committee commented that "… the actual wholesale price paid by pubcos' tenants is in reality higher than is available to free house operators because of the higher discounts that are available to these operators." In that report evidence showed that the differential between tied and free of tie tenants per brewer's barrel (BB) was around £100. The 2008 BEC report revealed in evidence submitted by the ALMR the differential between tied v free of tie discount had increased to around £140. Although Enterprise Inns submitted their own evidence suggesting that discounts of up to £42.12 a BB could be achieved if over 500 BB were sold, in reality the average tied pub sells 180 BB per year and Enterprise admit that nearly half of tenants receive no discount at all. In 2011 the widening gap between free of tie and tied prices becomes more evident.

(i)

Product	*FOT Net Price*	*Tied List Price*	*Discount Per BB Available*
Carling	£294.51	£476.14	£181.63
Strongbow	£225.79	£443.75	£217.96
Stella Artois	£323.96	£546.48	£222.51

This table illustrates that the discount now available to free of tie tenants ranges from £180–£220 per BB. It should also be noted that the free of tie were supplied by an independent wholesaler without any negotiation. It would be reasonable to assume that if agreement to purchase a certain number of barrels was made further discounts would be available.

6. The impact of the loss of discount to us is reflected in the gross profit margin realistically achievable from selling tied products. While Pubcos would argue they do not set the retail price, clearly we must attempt to remain competitive with other retailers including free of tie and managed outlets. As the next table demonstrates the loss of discount severely affects GP%. The table also shows that we are now paying at least 60% than available in the free trade.

(ii)

				Selling Price to Achieve GP%:					
Product	*FOT*	*Tied*	*Wholesale Difference*	*40%*		*45%*		*50%*	
Carling	91.49	145.69	59%	£2.08	£3.31	£2.27	£3.61	£2.50	£3.97
Strongbow	77.49	134.18	73%	£1.76	£3.08	£1.92	£3.36	£1.88	£2.11
Stella Artois	93.49	151.08	62%	£2.25	£3.78	£2.45	£4.12	£2.70	£4.53

(Prices shown are for 11 gallon kegs. Independent Wholesaler Price List v Enterprise Inns Retail Price List)

This table illustrates that a free of tie operator can charge significantly less for a product and is still able to produce a much higher gross profit margin.

7. To put this table into perspective, this year the BBPA released statistics claiming that the average price of a pint in the UK is now £3.06. Using Carling as an example of a standard UK pint, in order for us to produce a gross profit of just 40% we would have to charge 23p over the national average. This would do further harm to our business driving more customers away to find cheaper alternatives such as free trade and managed competitors.

Wet Rent + Dry Rent = Open Market Rent

8. It has been argued by the Pubcos that they offer lower rents in exchange for higher beer prices that combined equal the open market rent for a particular business. This is simply not true.

Roger Whiteside has admitted that a genuine free of tie option would place their business model in "serious jeopardy". How can this be the case if the combination of income from tenants is equal to the open market rent? Surely if a tenant were free of tie then the Pubcos should be no worse off.

9. The fact is that the total income from each pub is far in excess of the open market level and Pubcos are protecting bondholders and shareholders at the expense of their own tenants.

Take an example of a typical wet led community pub such as our own:

(iii)

	Tied	*FOT*
Turnover ex VAT	350,000.00	350,000.00
Overall GP % wet/dry split 77%/23% (ALMR report 2010)	50%	63%
Gross Profit £	175,000.900	220,000.00
Costs @ 43% *(ALMR report 2010)*	150,500.00	150,500.00
Operating Profit	24,500.00	69,500.00
Rental Bid @50%	12,250.00	34,750.00
Potential Profit For Tenant	£12,500.00	£34,750.00
Tied Tenant Worse off by	**£22,500.00**	

This table shows a direct comparison of the same pub being let on both a tied and free of tie basis.

10. The table above illustrates that a tied tenant although seemingly paying a lower rent, the operating profit is much lower due to the overall gross margin being reduced by the cost of the tie. The effect of the loss of discount impacts the gross profit by around £45k (225BBx£200). Therefore the total income for the Pubcos is approximately £69k (wet rent + dry rent) it is understood the Pubcos are achieving a barrelage discount of around £250. This is £34k more than an open market rent. This examples shows that not only the Pubco extracting double the open market rent from the business, the tied tenant's potential earnings are around £10k, at least 22k less than would be expected in a free of tie business. This is clearly not an equitable business relationship, nor is it a fair reward for a tenant running a successful business.

Availability of Products

11. Enterprise Inns boast an extensive Brand Portfolio although the reality is much of the market is foreclosed as many brewers cannot get their products listed. We have access to 74 cask ales currently on the Enterprise Inns price list with 67 SIBA delivered products a total of 141 products. A present there are over 3,000 cask beers being brewed in the UK which means we have access to less than 5% of the total cask ale market. The tied price list only has a very limited choice from any brewer. For example Wales's biggest brewer is Brains and we only have access to three of their products although in total, 14 ales are brewed throughout the year. This is a pattern that is seen consistently across the sector among brewers, severally limiting our opportunity to trial new products especially seasonal beers.

Brulines

12. Our experiences of the Brulines system and the procedures Enterprise Inns employ to police their pubs are totally unacceptable. We have found the system to be inaccurate on numerous occasions showing "phantom" data ie dispensing when the pub is closed. There is data showing before the system was in operation which was subsequently altered by a Brulines auditor although some dispense data still remains. There are many instances where line cleaning is not accounted for on cask ale lines and even line cleaning attributed to incorrect keg products. The Brulines system at our pub began to show a substantial positive variance of over 500gallons which was then eroded over five weeks where dispense data showed an average of 300 pints per day almost consistently for three weeks that then showed a negative variance of circa 500 gallons. We have requested an explanation of these 'anomalies' however we have yet to receive a response. The data has only ever been used accompanied with threats of fines and at the very worse forfeiture proceedings. There is no contractual mechanism in our lease nor in most, if in any at all that would provide the pub company with the ability to levy such "fines".

13. We have received is a separate damages claim from Enterprise Inns in which they have accused us purchasing tied products from an unauthorised source. Enterprise has used Brulines data over a period of 34

weeks in an attempt to identify a variance between tied products purchased and dispensed. The total damages claimed was for 1.92 brewers barrels @ £200 = £384.00 with an administration charge of £300+VAT. It should be noted that Enterprise Inns have increased the damages rate from £150 to £200 per brewer's barrel. When an Enterprise Inns BDM visited he told us to sign the damages claim form to accept the fine. We refused as we know the data to be wholly inaccurate as we have not purchased any tied products from an unauthorised source.

14. Notwithstanding our refusal to accept the fine Enterprise raised an invoice for the damages and added the amount to our rent account. Had we had a Direct Debit in place for our rent that amount would have been debited without our authorisation and in the absence any primary evidence to support their claim, contrary to the committee being assured by Bridget Simmonds in her oral evidence on behalf of the BBPA and its members that this would cease immediately.

15. Since the conclusion of the NMO report commissioned by Brulines the company released an article entitled; "FACT OR FICTION—DEBUNKING THE MYTHS ON BRULINES**"** the article claimed:

> 19. Brulines take the data in the report and apply a "fine" to the tenant for buying outside the tie. Incorrect, Where Brulines Volume Recovery Service is contracted, each variance is thoroughly investigated with additional evidence of buying out being sought. Brulines do not assess "fines" or "levies".

16. Recently Enterprise Inns sent "undercover agents" into our pub on a Friday night in an attempt to establish whether we are breach of our lease (buying out of tie). Although we are not in breach of our lease, it did prompt a visit from our BDM with further accusations that we were dispensing beer form a cask ale line that was not registered by the Brulines system. He told us he had "physical" evidence that we were doing such and were in breach of our lease. He was asked to supply the evidence and we invited him to bring an engineer to the pub to inspect the lines to ensure that Brulines meters are working correctly. We have not yet had these allegations made in writing. We can only assume this is an example of the "bullying" tactics used by Pubco employees that have been highlighted many times in other evidence.

17. These actions clearly demonstrate that Enterprise Inns do not wish to work with us and we can assume we are not the only pub that undergoes covert visits that result in allegations and threats from Pubco employees. It demonstrates they are continuing to issue fines to tenants relying solely on the data supplied by Brulines in the absence of any primary evidence. It also indicates that Brulines may be issuing statements for the purpose of misleading a Parliamentary Select Committee. It is also concerning that the timing of the allegations being made by Enterprise Inns coincides with our lease renewal this year. It would seem that these allegations are becoming more frequent in an attempt to build a case to block our renewal that we are entitled to apply for under the Landlord and Tenant Act 1954.

Business Development Mangers

18. Since my parents took on the business in 2006, I've yet to be convinced the any countervailing benefits actually exist. Two successive Business Development Mangers have added no value to our business in fact they have been a particular burden on relationship and our ability to trade. Neither has shown any understanding the local demographics of the business and many local Enterprise Inns outlets have failed under their "management".

Summary

19. The Pubcos have had seven years in which to change their business model to redress the concerns of three Parliamentary Select Committees. The industry is in desperate need of fundamental change if we wish to see the continuation real pubs being able to serve the communities in which they are located.

20. This committee must now recommend to the Government that since the Pubcos will not commit to voluntary change and they must act to ensure that small businesses are able to compete in a free and fair market. Many thousands of people have lost their businesses, homes; many families have been broken apart and most tragically of all people have lost their lives due to this continuation of an archaic and restrictive business model.

21. As I have already stated at the very least this committee should recommend the implementation of a Statutory Industry Code of Practice enshrined in each lease that gives every tenant the option of a genuinely free of tie option accompanied by an open market rent review. I would go further to hope that this committee would recommend that the issue of Pub Companies and the tied business model be referred to the Competition Commission for a full inquiry in the practices of these companies ultimately resulting in the removal of the supply-tie from our industry completely.

22. This current state of our industry could never have been the intention of the Conservative Government with the introduction of the Beer Orders Act 1989. It is time to look at the principles of that Act and consider the introduction of a New Beer Orders to ensure a free, competitive market for pubs and brewers alike. It is the very essence the Competition Act to prevent companies engaging in practices that distort, restrict or prevent competition.

Written evidence submitted by Justice for Licensees (JFL)

Background

Justice for Licensees (JFL) is a campaign group, initially borne out of the need to discover whether the questionable practices of the pubcos were prevalent across the companies and the country. JFL, through its campaigning, has four hundred and twenty five thousand, six hundred and twenty six (425,626) members and supporters, these consist of tied licensees, free of tie licensees, managers, ex licensees, employees of the industry and consumers. We are very proud to be one of the founding members of the Independent Pub Confederation (IPC) and also work closely with Unite the Union. JFL fully supports the findings and recommendations made in the Business and Enterprise Committee 7th report—Pubcos 2008–09 and the Business, Innovation and Skills Committee report of 2009–10.

Summary

There appears to be systemic failure by the pubcos to comply with the most basic of requirements, the pubcos have proven, once again, that they are incapable of meaningful reform. They have consistently failed to deliver on the recommendations of three inquiries, it is clearly evident that self regulation and self policing have not worked and are not working. There is still a distinct lack of honesty, transparency and fairness, the relationship between landlord and tenant remains inequitable. Legislation is the only answer, there must be a mandatory, statutory COP which addresses the core issues of the imbalance of power between landlord and tenant and also the prime concern of the huge imbalance in gain and reward for input into the business. It is imperative that a mandatory, statutory code now be introduced with all due haste. The mandatory, statutory code must include:

- A genuine free of tie option with an open market rent review in accordance with RICS guidance.
- Compliance with RICS rental valuation guidance.
- A guest ale right for those who choose to remain tied.
- Removal of the AWP machine tie.

1. *Surveys*

- 1.1 In January of this year JFL ran two surveys of pubcos tenants, one for past tenants (1) and one for present tenants (2), copies of which, with the findings and comments, are attached. We decided to run two surveys as we were painfully aware of the level of "churn" since the gathering of evidence by BEC in 2008–09.
- 1.2 Of the current tenants surveyed 78% did not believe that their rent charges are fair, maintainable and sustainable, 40% are paying over 19% of turnover in rent. Of previous tenants 91.1% did not believe that the rent they were charged was fair, maintainable or sustainable and 65.8% were paying over 18% of turnover in rent.
- 1.3 78% of current tenants surveyed draw less than £10,001 income from the business, the results for the previous tenants are even more shocking with 83.6% drawing less than £10,001. Considering the hours worked, which are out of kilter with time directives, the majority of those surveyed earn much less than the national minimum wage. Tenants are having to seek second jobs, which with the hours worked for the pub is not good for the health or benefits, which are a drain on the national economy.
- 1.4 An astounding 83% of current tenants and 94.9% of previous tenants believe that the tie led their business into being unable to effectively compete in their market place.
- 1.5 82.3% of previous tenants and 79% of current tenants do not believe that the BII will be able to effectively police the industry. 78% of current tenants do not believe that their Code of Practice will help their business.
- 1.6 95% of current tenants and 97.5% of previous tenants believe that there should be a complete and full investigation of every aspect of the pubco model by a totally independent body.

Conclusion

There still remains a huge imbalance in power between landlord and tenant, with the tenant having little in the way of redress and the pubco still taking the lion's share with little work or support to warrant the take. This impacts on the general well being of the pub sector with closures and churn still abundantly apparent, it also impacts on the general economy with a cost to the government of benefits, a rise in unemployment figures and social housing. There is no excuse for the tax payers of this land to support irresponsible, incompetent and greedy companies.

2. *Codes of Practice (COP)*

— 2.1 Whilst we agree that the Codes of Practice are a step in the right direction, we are concerned that it is a very small step that fails to address many of the serious issues in the imbalance of power between landlord and tenant. We were also concerned to learn that some of our members were not advised to seek legal advice before signing for the COP's, we feel that this is far from satisfactory, the pubcos have already made it clear that breaches of COP's can and will be used in a court of law if they deem it necessary. We are also very concerned that some pubcos appear to have used this opportunity to place further onerous conditions on their lessees, surely a Code of Practice is an undertaking by a company or organisation on how they should act, not how they customers/clients are to act, it should be the lease which dictates how the tenant is to act and not a COP.

— 2.2 JFL has found that the number of potential COP breaches and questionable practices outside of the COP's are escalating rather than decreasing. We are also concerned that the mechanisms in place to bring the pubcos to heel on disputes are not hard hitting enough and do little to encourage the pubcos to behave themselves.

— 2.3 The British Beer and Pub Association (BBPA) in conjunction with the IPC carried out a survey into the new COP's (3), we believe that this was not designed to be a comprehensive survey of tenant satisfaction and therefore should not be taken as such. It is indicative of some failure by the pubcos, that 23% of existing tenants were not aware of COP's, nearly one third of existing tenants did not receive COP's and that 8% of new tenants did not know about COP's. 56% of existing tenants and 56% of new tenants were unaware of PIRRS and 22% of new entrants did not take PEAT. 17% of new entrants did not receive trading history and 10% felt that FMT had not been explained properly. 44% are still tied for AWP and of that 44% 54% of those had not had the machine income removed from the divisible balance and 15% of new entrants said machine income had not been removed from the divisible balance, this in despite of the BBPA's assurances to the committee that AWP income had been removed from the divisible balance, either the BBPA are misinformed and therefore incompetent for not finding out the truth of the matter or they are as complicit as the pubcos in being economical with the truth.77% had not been offered a FOT agreement and 74% had not received any discounts or rent reduction. Considering that the pubcos are still under scrutiny this does not bode well for the future when scrutiny is removed.

— 2.4 In the BISC 5th report the committee concluded **"The new Framework Code of Practice appears to be a modest step in the right direction. Of necessity it provides a framework for companies of all sizes. We expect the major pub companies to treat it as an absolute de-minimus requirement and to significantly build on it with their own Codes. Only by doing so will pub companies be able to demonstrate that they are committed to reform."**

— 2.5 We are concerned that many pubcos have not significantly built on the absolute de-minimus requirement.

CONCLUSION

The COP's are not the answer to the woes of this sector of the industry. There appears to be systemic failure to comply with the most basic of requirements, the pubcos have proven once again that they are incapable of meaningful reform. The COP's fail to deliver a balance of power between landlord and tenant and fail to address in any way the huge imbalance in gain and reward for input into the business.

3. *Pre Entry Awareness Training (PEAT)*

— 3.1 JFL advised on PEAT. We consistently made the steering group aware that we did not feel that PEAT went far enough. Some points made were taken on board, however when it came to the crux of the issues these were ignored. We are disappointed that 22% of new entrants did not take PEAT.

CONCLUSION

Peat is another very small step in the right direction, it requires further honesty and transparency and more of a will to ensure that new entrants are not only made aware but also have to take the training.

4. *Pubs Independent Rent Review Scheme (PIRRS)*

— 4.1 We feel that PIRRS is another step in the right direction and it should be welcomed that there is a cheaper entry route into rent review disputes, that said there are some areas of concern.

— 4.2 Should a tenant decide to go to arbitration through RICS details of the arbitrator's calculations are supplied and there is the possibility of a right of appeal, PIRRS arbitrators supply a brief summary and there is no right of appeal. Arbitrators are only human and therefore it is not beyond the realms of possibility that mistakes can be made, if the arbitrators calculations are not made clear and there is no right of appeal this leaves the tenant and landlord in a less favourable position.

— 4.3 With a PIRRS determination there is a Deed of Variation (DoV), with RICS there is not, we were particularly perturbed to learn that the DoV contains a forfeiture clause.

— 4.4 A PIRRS resolution contains a None Disclosure Agreement (NDA) or confidentiality clause, "The confidentiality clause is in place to protect the private information declared by both parties via their submissions to avoid sensitive information from being used detrimentally".

CONCLUSION

PIRRS is another step in the right direction however it requires further examination and strengthening to ensure that honesty transparency and fairness are the order of the day. We believe that it would be favourable if both the arbitrator's calculation and the right of appeal clauses were re-examined by the PIRRS board. Forfeiture of lease clauses should not, under any circumstances, be included in the rent review process, the pubcos have the lease to rely on should they need to forfeit the lease. With reference to the NDA we would have to question detrimental to whom? Surely if it is the correct rent, set at the FMT and following RICS new guidance how could this information possibly be detrimental, unless of course the pubco are trying to enshrine rental reductions in secrecy and to prevent them being used as comparables in other rent reviews.

5. *Dispute Resolution Service*

— 5.1 JFL maintains that there is a need and requirement for a dispute resolution service for this sector of the industry. We believe that it has been clearly shown there are some practices which fall outside of the limited COP's and rental disputes resolution services.

— 5.2 The majority of tenants cannot afford lengthy and costly court cases.

— 5.3 We are aware that the BII have implemented a mediation service.

CONCLUSION

There is a dire need for a resolution service which covers areas other than COP breaches or rental disputes. This must be quick, efficient and not costly to the tenant. We are unsure whether the BII have the authority to effectively deal with the pubcos.

6. *Free of Tie Option*

— 6.1 The pubcos have been quite vocal that they have FOT options, however in reality these are little more that FOT pricing with either increases in rent or other sizeable payments to secure the pricing. The pubcos have failed to offer a genuine FOT option, that is the ability to purchase products from wherever the tenant chooses without fear of breaching the contract, accompanied by an open market rent review following RICS new guidance.

— 6.2 There is a systemic failure to offer a guest ale provision.

— 6.3 At the Save the Pub debate in the House of Commons the pubcos finally admitted, despite all the spin to the contrary, that they do not offer a genuine FOT option with an open market rent review following RICS guidance.

CONCLUSION

Government must legislate to include the above, obviously the pubcos are not going to do this willingly. There is an urgent need for a mandatory, statutory code to include a genuine FOT option accompanied by an open market rent review in compliance with RICS guidelines and a guest ale provision for those who choose to remain tied.

7. *Rents and AWP machines*

— 7.1 Rental levels appear to remain high and seem to fail to take account of the fact that a tied tenant should be in no worse of a financial position than a FOT tenant, despite the encouraging new guidance from RICS.

— 7.2 Pubcos are circumventing rent reviews with shorter leases of less than five years which fall outside of the Landlords and Tenants Act and contain RPI index linked rents, in other words a yearly rent rise, without taking into account the fall in beer sales and the hardships faced by the hospitality sector. This ensures that rental levels are an ever upward cycle and fail to take into account FMT.

— 7.3 Both the BBPA and the pubcos have assured the committee that AWP income now falls below the divisible balance for rental negotiations and indeed it is included in the BBPA's Framework COP. However the reality is that the pubcos still take AWP machine income into account when putting forward rental bids, in other words they are still taking two bites of the cherry by taking a percentage of the machines profits and then rentalising the tenants incomes from AWP machine agreements. This is abundantly apparent from the findings of the BBPA/IPC survey, also Simon Townsend admitted in the trade press that machine income was taken into account when rental bids are made and the following is an excerpt from a BDM's email concerning a rent review **"as the divisible balance and machine income are considered together for the purposes of the rent review as machine performance is part of the pubs income and logically must have some bearing on rental bids."**

CONCLUSION

We believe that it is imperative that there is a mandatory, statutory code which includes compliance with RICS rental valuation guidance in order to prevent circumnavigation and abuse by the pubcos. There is a need for the removal of the AWP machine tie. The pubcos have proven conclusively that they are incapable of operating the AWP tie fairly therefore the only course of action left open is to remove the AWP tie.

8. *Competition*

— 8.1 Many of our members believe that the alleged counter veiling benefits for the privilege of the tie to do not equate to the cost of the tie and would prefer to be FOT and not have the alleged counterveiling benefits. They believe that they are restricted in their product choice and that they cannot compete effectively in their market place whilst under the onerous restrictions of the tie.

CONCLUSION

JFL is of the opinion that the tie, as it is currently being operated, is anti competitive and restrictive, that the pubcos operate in a cartel like manner and would question whether there has been foreclosure and price fixing in this sector of the market.

9. *British Institute of Innkeeping (BII)*

— 9.1 There are a large percentage of our tied members who do not believe that the BII are best placed to serve this industry as policemen of the industry, they believe that the BII are ineffective. The reasoning for this covers views such as they have failed previously and have been complicit in the current status quo, there are conflicts of interest as the BII have revenue streams from the pubcos, that the BII are bullied and dictated to by the pubcos, that the BII are weak and ineffective and simply do not have the tools or authority to deal with the pubcos, this is just a sample of the more popular views.

— 9.2 JFL has passed on some complaints to the BII from tenants who feel that they have been bullied, intimidated, lied to and generally not treated how they would expect a respectable company to treat their so called business partners, in some cases the BII have managed to achieve some results, but never a fair balance, in other words the pubcos were getting off the hook somewhat, in these cases we felt somewhat sorry for the BII as they more than tried their best but did not seem to have the authority to bring about a fairer resolution. In some cases JFL has been extremely disappointed by the BII's response.

— 9.3 We are exceedingly disappointed that 56% of current tenants and the same for new tenants are not aware of PIIRS, we would question whether the same is true of the new mediation scheme, or if the figure are even worse due to the fact that it is much newer than the PIRRS scheme.

CONCLUSION

JFL maintain that the BII are best placed to serve this industry as the policemen due to the fact that the system and set up is already in place however we carry some severe reservations over their effectiveness and ability to fulfil that task.

10. *Beer Monitoring Equipment*

— 10.1 JFL is aware that tenants are still being fined for buying out solely off the data from the beer monitoring systems. We are also aware that the pubcos are still using the threat of costly court action to ensure that tenants sign agreements that they have bought out.

— 10.2 Tenants are reporting that calibration is either not happening or is laughable. JFL is receiving no reports of outside verification unless the tenants themselves are requesting verification from Trading Standards.

— 10.3 We are aware that data collected is manually adjusted.

CONCLUSION

The efficiency and reliability of beer monitoring systems remains very questionable. It is not acceptable that tenants are fined off the findings of equipment that has been found to be unreliable. It is now clear that the Weights and Measures Act of 1985 must be amended to include beer monitoring equipment.

11. *Pubco arguments*

— 11.1 The pubcos have argued that it is not their fault, that it is due to incompetent tenants, however it is the pubcos that have allowed these tenants to run pubs, are they saying that they have been totally irresponsible in allowing incompetent tenants to run pubs? The pubcos should and must have adequate procedures in place to ensure that only competent tenants are allowed to run pubs. Considering the extent of the problems across the whole tied estates JFL does not believe that this is the case at all and that the pubcos have to admit the level of incompetence and irresponsibility on their own part.

— 11.2 The pubcos have argued that the majority of their estates are happy with the tie and relationship and that the problems are restricted to a vocal minority. As there has never been a full market study of this sector of the industry, in the last twenty plus years that we are aware of, we could not categorically state whether this is the case or not. However from our own research from our extensive membership we would be content to believe that it is not the case at all and that there are sufficient numbers of tenants who are unhappy with the tie and relationship to warrant government intervention and legislation.

— 11.3 The latest argument from the pubcos is that if they were forced to offer a genuine FOT option with an open market rent review that it would put their business in jeopardy. If the pubcos first two arguments hold any water then this is a mute argument as they would not be allowing incompetent tenants to run their pubs and if the majority are indeed happy then they would not opt for this option and therefore their (Pubcos) business would not be in jeopardy. Does this argument in itself not show the pubco model to be what it truly is? If their tied agreements were indeed comparable to FOT agreements then why would their business be in jeopardy?

— 11.4 They have also argued that a genuine FOT option with an open market rent review would wreak havoc on pubs and increase failure, but how can this be? Rents would be set in accordance with RICS guidelines and so would be set on the Fair Maintainable Trade that could be expected of a reasonably efficient operator, not outstanding but reasonably efficient. Is that not how it should be? Is that not how the pubcos currently set their rents? Therefore where is the problem? The tenants would be able to choose which products they decided to stock and would be able to cater for their customers preferences, without being restricted to a product list and they would be able to negotiate the best price so enabling them to become more competitive. This could also enable them to increase their profits and turnover, so enabling them the luxury of being able to re-invest back into their businesses and buildings and so improving the quality of the estates. Also as this is only an option and considering the pubcos other arguments, the majority are happy with the tie and therefore would not choose this option. This argument is the most self serving and ridiculous nonsense that we have heard to date.

FINAL CONCLUSION

There appears to be systemic failure by the pubcos to comply with the most basic of requirements, the pubcos have proven, once again, that they are incapable of meaningful reform. They have consistently failed to deliver on the recommendations of three inquiries, self regulation and self policing have not worked and are not working to address the huge imbalances in power between landlord and tenant. There is still a distinct lack of honesty, transparency and fairness, the relationship between landlord and tenant remains inequitable. Legislation is the only answer, there must be a mandatory, statutory COP which addresses the core issues of the imbalance of power between landlord and tenant and also the prime concern of the huge imbalance between gain and reward for input into the business. That legislation must include a genuine FOT option (that is the ability to purchase products from wherever the tenant chooses without fear of breaching the contract) with an open market rent review in accordance with RICS guidelines, compliance with RICS rental valuation guidance, with a guest ale right for those who choose to remain tied. The pubcos have proven that they are incapable of behaving fairly with the AWP tie therefore the privilege should be removed. There is a dire need for an independent dispute resolution service to address and rectify problems that may arise.

RECOMMENDATIONS

Mandatory, statutory code to include but not be restricted to:

— **A genuine free of tie option with an open market rent review in accordance with RICS guidance.** This would ensure that the industry does indeed self regulate and police itself. It would help prevent abuse and exploitation of the tied agreements, for the simple reason that should the pubcos abuse or exploit the tie then the tenants would have the ability to enforce the FOT option. There should be a de minimis rule for brewers with less than 500 pubs in order to protect the small and family brewers.

— **Compliance with RICS rental valuation guidance.** To prevent circumnavigation and abuse by the pubcos.

— **A guest ale right for those who choose to remain tied**. To help the small and microbrewers and to aid competition.

— **Removal of the AWP machine tie.**

FURTHER RECOMMENDATIONS

An independent dispute resolution service to address disputes between landlord and tenant, this service should not be restricted to rental or COP disputes.

The Weights and Measurements Act 1985 requires amendment to include beer monitoring equipment.

The removal of UORR clauses from all contracts to prevent abuse.

The industry to examine, improve and strengthen PIRRS and PEAT.

The industry must ensure that it agrees on and delivers guidelines on the average costs of running a pub.

The industry must ensure that it delivers a nationwide register on rent reviews and rental levels, to ensure honesty and transparency.

20 June 2011

Written evidence submitted by Pete Leary

The Loggerheads Pub was the last remaining Public House and Inn in what was known as Narrowmarsh, (now called Cliff Road) an area immediately South of the Lacemarket in Nottingham's City Centre. It was said to be the 4th oldest surviving pub in Nottingham and dated back to around 1640. For centuries, this was a notorious area and historically dates back to the 9th century. The pub itself was once at the heart of Narrow Marsh and was frequented by Dick Turpin in 18th century. Today, although not a pub, the building is the only surviving remnant from the area and its fascinating but unmasked past. This history is close to extinction but should and still could play a major role in education, tourism, entertainment and economic growth for Nottingham and the wider community.

In December 2005, I signed a lease assignment with Enterprise Inns and paid £40,000 for the remaining six and a half years of a 10 year lease on The Loggerheads Pub. Prior to this, Enterprise arranged for me to have only one meeting with a regional manager in order to establish what my intentions were and to agree the monthly rent. When I questioned why the rent was going to be higher than advertised on the sales particulars, I was told that VAT had been applied, so I checked the calculation and signed an "agreement in principal". Only when I had signed for the lease and taken keys for the property did I receive an invoice for the initial rent payment which showed that the rate agreed, was in fact exclusive of VAT. This was to be the start of a great "partnership"! I believe that was the word that the regional manager used.

Within months of me taking on the lease, a major redevelopment commenced on my doorstep; the building of the Nottingham Contemporary Art Gallery, which completely cut off about 80% of my passing trade due to the closure of a pedestrian Right of Way between the City Centre and our location. On approaching Enterprise for some help in dealing with the City of Nottingham Council, the Planning Department, the Highways Authority etc. my area Manager didn't even want to hear about it, said it was my problem; some partnership!!!. The closure of this Right of Way lasted for two years and when I approached the Council I was told that compensation was "out of the Question".

The whole ludicrous fiasco cost me, my friends and family £150,000, wasted years of my life, left me homeless, unemployed and penniless. It also meant the loss of one full time and 2/3 part-time jobs for local people in the community.

So, to get to the point about pubcos and the tied agreement, here are the basic terms:

— Pay a premium to take full responsibility of a building belonging to a pubco.

— Pay for all maintenance and repairs other than structural (ie boiler replacements, central heating replacement, rewiring, PAT testing, fire alarm systems, emergency lighting systems, external lighting, fire doors, fire closers, re-glazing, re-roofing, tree pruning, garden maintenance, drain clearing, etc), but if they are structural, expect the pubco to send a surveyor out to argue that the structural fault has occurred as a result of poor maintenance on the leaseholder's behalf. The so called "partnership" suddenly becomes a "Buyer Beware Partnership". I lost the use of two out of five letting bedrooms because Enterprise refused to fix the leaking roof.

— Pay rent without a fair platform to negotiate. (ie not related to any other open market contracts with product ties).

— Pay an annual increase in rent regardless of sales. (Initially undisclosed at the start of the agreement).

— Pay for all upgrades to the property with regards to local and National authority regulations. (Fire, electrics, gas, licensing, environmental health, noise prevention/double glazing, public liability, disabled access, police).

— Pay for redecoration of the property both internally and externally every three years.

— Pay for insurance of the building at an extortionate rate through pubco.

— Pay for separate building insurance independent from above (as part of the agreement).

— Pay for cellar maintenance.

— Pay for additional security surrounding the premises.

— Pay for products from pubco at extortionate prices under the terms of the agreement.

— Pay extra for these products as they increase with little warning and without relation to any other pricing.

— Pay for private delivery services if products are not delivered. Enterprise will not deliver unless you have paid up front—"Partnership".

— Pay extortionate prices for the use of gaming machines within the premises.

— Pay for damaged sound equipment due to water ingress from a structural issue and suffer the loss of revenue from music nights for three months waiting for Enterprise to carry out the repair, only to then have to fix it myself due to the total incompetence of their contractors.

— Pay for fines incurred when accused of buying out.

— Pay for bailiffs fees when threatened with non-payment of invoices because you have no passing trade and you can't let your bedrooms.

— Pay for interests and repayments due as a result of borrowing money.

— Pay for solicitors to avoid prosecution or legal proceedings and.....

If you're not bankrupt and have not emptied the pockets of all of your family by this point to avoid legal proceedings, then:

— Pay for the remaining term of the lease (including fees, interests, taxes and expenses).

Although my story is my side of one encounter with a pubco, I wish to express my concern for the problem for pubs in general.

In the Licensing Act 2003, four licensing objectives were set out:

1. the prevention of crime and disorder,
2. public safety,
3. prevention of public nuisance, and
4. the protection of children from harm.

Since then, the responsibility of fulfilling these licensing objectives has been put solely on to licensees and it is extremely difficult to achieve this with so many outgoings from a small business.

If the government want to see pubs succeed whilst adhering to the objectives then they need to make small businesses more aware of the costs involved in the mandatory requirements of local authorities.

More so, they need to abolish the tie so that there is a clear understanding of the rent and rates. The tie model has catastrophically failed and is no longer sustainable or redeemable.

In conclusion, I feel that I was mislead from the start with Enterprise and mistreated throughout! In particular, they did not adhere to their own contractual obligations with regard to the structure of the building and ignorantly continued to threaten and charge me regardless. For this reason, I previously wished to make a claim against them but can not afford to do so. I hope that in the future there will be more support for individuals and small businesses who are bullied by the likes of Enterprise.

Pubcos should have a built-in understanding of their industry and should be able to adapt and support their employees and tenants as they all play a vital role in the cultural and social content of Great Britain. Real Estate Investment Trusts who aim to clear debt by bankrupting small businesses and families need to be a thing of the past.

Make way for the pub revolution, let the new pubcos support the industry and local production and help discourage the supermarket's anti-social hangover.

Make way for the pub revolution!

Ban the tie! Ban the tie! Ban the tie!

Written evidence submitted by Philip Liddell

EXECUTIVE SUMMARY

(1) Examining the IFFB's justification for the Tie and their perceived clean cut image.

(2) Punch Tavern's desperation for tenants and their misleading profit projections.

(3) Punch Tavern's What's Brewing advert promoting an imaginary Free of Tie option.

(4) Countervailing Benefits that don't justify the Beer Tie.

(5) Deeds of Variation—a simple means of addressing the legalities of change.

(6) Codes of Practice—Documents of substance and change or a false dawn.

1. The Independent Federation of Family Brewers has recently produced a brochure circulated amongst MPs to persuade you that "family brewers" are more trustworthy than the big Pub Cos, and that Breweries with less than 500 pubs should retain the right to the beer tie. This body is fairly insignificant in the sector, though it does contain some high volume cask brewers. There are only 29 brewer members, but investigation will reveal that all is not as it looks. Their website is rather misleading—Youngs and Charles Wells are listed as separate family brewers—they actually amalgamated in 2006, Youngs own 222 pubs, Wells 250, so only just under the 500 threshold. Brakspear beers are now brewed by Wychwood (Refresh), who are actually owned by Marstons along with Ringwood, Jennings, Bank's etc. Brakspear branded pubs exist as a separate company. So all is not transparent in the fold of the IFFB:

1.1 Will members of the IFFB, or BBPA or any other organization for that matter, split their estates and operate as separate companies to conform to a limit on tied houses? Will fudged legislation spawn another raft of independent Pub Cos and subsidiary companies, still tied to nominated suppliers or Breweries exactly as the Beer orders 1988 did—I would bet my life on it. There should be no "get out clause" when finally sorting out the draconian Beer tie.

1.2 If the members of the IFFB practice what they preach, they should allow their tenants to go free of tie. By their own statement, if their support is worth £8,040 in the first year, any of their tenants would be stupid to go elsewhere. If their figures are somewhat inflated, they are trying to pull the wool over the eyes of the Committee. Should the Committee allow free of tie, then the open market place will dictate whether IFFB members and any other Pub Co or Brewery offer value for money in their tenancy terms. Also quoted in the leaflet "57% of pub failures in 'recent months' have been free-of-tie sites"—were they sold as "free of tie" or did they operate as "free of tie", and what relevance does that bear on the IFFB case? The leaflet should be seen as a clumsy attempt to muddy the waters and cajole the Committee into a less radical shake up of the Tie, by playing on the "Family Brewers" tag. Not all members are family owned, not all are brewers. I won't disagree that some of the smaller Brewers operate the tie as it was originally intended, and that they do offer true support to their tenants, but beware of the wolves in sheep's clothing.

Q1. *I implore the Committee to challenge the IFFB to quantify their countervailing benefit figure and provide the source of their data and criteria for their FOT pub closure figures*

2. I recently received a glossy brochure advertising three pubs locally which Punch were desperate to install new lessees into. I knew of two out of three pubs, the Royal Oak and the Beeston Castle. Both had a checkered recent history with numerous lessees, tenants and management companies. What is striking in the brochures is the promise of a "potential earnings" of £31,000 for the Royal Oak, and £240,000 for the Beeston Castle. This forecast is totally misleading, indeed it is grossly miss-selling. Please examine Appendix 1 to substantiate these figures. Also note RV figures compared to proposed rent.[27]

Punch need to be asked,

Q2. *How is that figure generated—the projected P & L should be examined and trading hours / shift patterns / staff dispersal / duty hours of lessee and whether a spouse is included in the earnings potential. Is this figure realizable in the first year, or any year thereafter*

3. Further instances of Pub Companies cajoling and misleading their potential business partners into taking tenancies and leases manifests itself in the wording of adverts such as the one included in the CAMRA publication What's Brewing February 2011, see Appendix 2.[28] Punch's advert directly targets the Real Ale sector with its emphasis on Free of Tie agreements. Let us be clear, none of the major players have a true FOT option available in their leases or tenancies. Their claims are gravely misleading. They offer FOT "pricing" which reinforces the fact that tied prices are inflated well above FOT prices, but they do not allow the tenant to purchase freely from where he wishes to. The fact that many microbreweries refuse to join the SIBA DDS scheme, due to high fees and low returns, (see previous submissions), excludes many of the "local" breweries that the CAMRA member would wish to buy from.

[27] Ev not printed
[28] Ev not printed

Q3. *Directly question each Company as to whether they have a true FOT option available in their lease and tenancy agreements*

4. The whole "Beer tie" debate is based on the declarations by the Pub Cos that the high prices paid by tenants for tied products (please refer to previous submissions detailing price comparisons between tied and free of tie suppliers), is justified by the countervailing benefits granted by the Pub Co.

4.1 One of the so called benefits has been the "support" of a BDM. However, it has generally been admitted that training of BDM's is substandard. Although my business is doing well at present, partly due to a re-alignment of my customer offer and partly due to the closure of a local pub, I was looking to the future and consolidation of current success, and e-mailed my new BDM in April 2011. I am still waiting for a response. Indeed, in the time it takes for these monoliths of modern business to act, a pub can go out of business. Furthermore, a 20 year lease on a RPI rent arrangement cannot react effectively to a downturn in business and extraordinary set of circumstances that has affected business in general and pubs especially. A local award winning pub, The Bull at Shocklach, will close it's doors as the Committee sits, because the BDM and Admiral Taverns are too pig headed to listen to reason. The lessees are handing in their keys and this recently renovated, very successful gastro-pub is to be boarded up. There are many similar examples across the Country. The overriding advice from all the BDMs I have been involved with, is make sure you provide food and increase your prices (to compensate for depleted G.P. margins on tied products).

4.2 Other countervailing benefits touted by the Pub Cos include training, provision of a sales and office team. Training is generally paid for by the tenant, a sales team is available at any wholesaler or brewery at no charge. The office team are very good at providing phone numbers for the tenant to ring themselves, however if the problem occurs at the busiest trading times—weekends or evenings, there is no support what so ever as the office is closed. There is also a monthly magazine, AGENDA, with various deals and ideas for trade enhancement. Incidentally there are no discounts offered on tied beers, Ironically, Agenda highlights the deals that the Company could offer their "partners" permanently and underlines what a rip off their standard prices are.

4.3 Unhelpful trading terms and conditions such as cash paid two days before delivery, ullage replacement paid for before recompense, high insurance premiums, greatly inflated tied prices, do not compensate for the so-called benefits received. Marketing and promotional benefits to the Peal O'Bells would average out at about £50 per annum. This contrasts rather sharply with the £8,000 claims of the IFB.

4.4 However, the benefit of the tie to Admiral, in my case, calculating on average barrelage per annum and a very conservative mark up per brewers barrel of £100, would add up to £14,500. Realistically, with Admiral demanding substantial discounts from their suppliers, this figure would be double. Yet open market rent is realistically similar to the actual figure of £15,000 (current RV 1200) yet we are effectively paying wet plus dry rent of £30,000. Hardly a case of tied tenants should be no worse off then if free of tie!

Q4. *I request that the Committee explore the validity of these "benefits" and demand that the various Pub Cos put a value on each and every benefit on an individual basis*

5. Despite a recent thawing of relations with my Pub Company Admiral Taverns, I am still very dubious as to their long term intentions. I received a very welcome freezing of the RPI (Upward only rent review clause). This has been completed in a deed of variation to my Lease. I think it is worth noting that this amendment was completed with one brief paragraph, and added as a single page to the lease documents. I suggest that any amendments to leases as directed by this Committee, ie suspension of tied agreements, could be completed with a similar simple documentation amendment.

6. The COPs are little more than a paper exercise, however, I shall leave the arguments as to the relevance of these documents to others, but suffice to say, they flatter to deceive. As I have found out to my detriment, even within a legal document such as my lease, there are many ways in which the Landlord can extort money from me, just by having the power to interpret the lease as it seems fit. What is said and what is done are two entirely different matters.

Summary and Measures to be Taken

There has been a lot of activity from the Pub Cos and their various trade representatives, (BBPA etc), and much "spin" put about via brochures and documents—such as the COPs, but much of the contents of such documents are extremely vague and can be interpreted in many ways. I am sure the Committee will also discover that the crux of the recommendations listed last year have not been addressed fully or totally ignored in the COPs. Examples would be provision of a true free of tie option for leases, removal of the machine tie, and removal of upward only rents. I would like to add that I haven't found all negativity on the behalf of my Landlord, but fear any concessions given to me and others may be window dressing to placate your investigations. Most importantly, legislation must be instigated immediately. Whilst the Committee have been deliberating, thousands more pubs have been closed forever, and thousands more will continue to struggle and close in the time recommendations become legislation. Punch have committed themselves to their shareholders

to ditch a third of their pubs—they don't care for the community pub, they don't care if it's the last pub in the village, it is now clear their true vocation was as property developers, but that lucrative market is now beyond their finances, so the properties have to be disposed of. The major Pub Cos and Breweries are beholden to the City, are in the pockets of the Banks, yet the British Taxpayer has bailed out these same banks. The British public needs to be informed that these Companies are not fit to run half of the Nations pubs—it is their pubs, their community hub which will be lost for ever. As a pub lover and a proud owner of a traditional British pub, I beg that the Committee make the following decisions:

(1) The Beer tie must go. There should be no exemptions on size of Company. FOT options must be applied to existing leases and tenancies as well as new agreements.

(2) The machine tie must go on all agreements.

(3) There must be an open market rent review imposed with immediate effect, at minimal cost to the tenant, and with guidelines agreed with the various trade bodies and the RICS.

(4) Provision for alternative Insurance policies should be allowed.

(5) Immediate notice to be given to the Pub Cos and Breweries to instigate these measures and six months (max) to put these measures in place voluntarily by deed of variation, otherwise all tied agreements should be suspended until legislation is passed.

(6) Fines instigated via unreliable flowmeter measurements used as evidence in "buying out" disagreements should be refunded.

Written evidence submitted by David Morgan

REPORT TO BUSINESS INNOVATION & SKILLS SELECT COMMITTEE
PUB RENT REVIEWS—PROGRESS 2008–11

1.0 Introduction

1.1 I was called to give evidence to the Business and Enterprise Committee on 18 November 2008 in support of my written evidence to the Committee as recorded in the Committee Report, pages EV 243–EV284 dated 13 May 2009.

1.2 In the intervening two and a half years I have continued to have an active and detailed involvement in the processes of rent review throughout the pub industry on a national basis as a result of client referral and instruction. At any one time, I have between 60–70 active cases with the cases being resolved being regularly replaced on a weekly basis. The majority of the referrals are acting for Tenants against Pubcos which include Enterprise Inns, Punch, Wellington, Admiral and S & N.

1.3 Although the initial processes of rent review have been better structured through the Codes of Practice (COP), there is no uniformity of compliance with these initial processes and an alarming number appear not to follow the lead-in time scales. The imbalance in negotiating relationship still remains as before. Only a very small number of Tenants are themselves aware of the "rules of engagement" or are in the position of seeking professional help in their use and implementation. The superficial and paternalistic attitude of the Pubco representative still remains in that the Pubco is portrayed as "knowing best" and is in the guise of being a business partner in the assistance of the promotion and well being of the profitability of the site in question.

1.4 Disputed rent reviews have not changed either in substance or content in the following of the newly formulated COPs in the creation of a level (or policed) playing field. The same inequalities are being followed as two and a half years ago in that:

— The new objectives of the COP are never properly explained to the Tenant;

— the RICS regulations (see under) are not adhered to either in principle or in detail, the Tenants having even less awareness;

— the mantra that the Pubco "knows best" is all-pervading; and

— Pubco representatives' "opinion evidence" is paramount.

1.5 It is understood there have been a considerable number of complaints as to breaches of the COPs accredited by the Bll (see under). No details have been released of the nature and number of complaints. This lack of transparency gives no reassurance in the intended policing of the implementation of the COPs.

1.6 The Content of this Submission to the Committee concerns the extended world of rent review. The expense of rent and that of staff are the two largest cost items of any public house. Staffing cost to a degree, can be reined in. However, rent, if linked to annual increases in the Retail Prices Index (see under) will inexorably rise and have no relationship to on site profitability. Each example case hereunder is cross referenced to a specific property and lessee, the details of which are contained in **Appendix A**[29] to this Report. The names and identities of the properties, together with the lessees, are supplied for the confidential information of the Committee and must not be the subject of publication, due to the very real possibility of reprisals against the individuals concerned. (Example 1, South Wales).

[29] Not printed

2.0 Point of Negotiation

2.1 As in 2008, the point of contact between Pubco and Tenant is the Business Relationship Manager (BRM). If matters become difficult or protracted, the next level of management is involved which is either the Area Retail Manager, or Regional Manager. None of these individuals are Chartered Surveyors or have property based qualifications, yet are the only point of contact with the Tenant for a property based negotiation of considerable magnitude, ie the rent.

2.2 The rent review process is now generally instigated well in advance of the rent review date, although there are still a disturbing number that are left very much to the last minute with the inference that there is an obligation to have to urgently settle prior to the rent review date. (Example 2, Surrey). A large number of cases significantly pass the rent review date with little urgency being expressed by the Pubco. In almost every one of these cases, this is where it is in the interests of the Pubco to maintain a high rent for as long as possible if a significant rent reduction is thought likely. (Example 3, South Devon). There is then no incentive to hurry a big rent reduction through the system as a result of its commensurate effect on book value of the subject premises.

2.3 Real open negotiation per se did not and still does not, exist. The BRM will arrive with a given script, commonly known as a Rent Assessment Form, with the understanding that for the BRM, only minimal deviation from that form is tolerated. (Example 4, Midlands). Accounts are always requested whether or not it is a lease stipulation that this information should be divulged. "Bad" accounts results are generally ignored (Examples 5 and 6 Sheffield) and "good" accounts are often adapted into the assessment of fair maintainable trade (FMT) (Example 7, North Devon). With very minor and rare exceptions, goodwill (as a standard lease disregard) is ignored. The new RICS Pub Rent Guidance Notes (see under) are totally ignored by BRMs, either deliberately or through ignorance. The assessment of a living wage, or the impact of annual rent rises through indexation, is almost always ignored.

3.0 Upwards Only Rent Reviews

3.1 The COPs of the various Pubcos have been accredited by the British Institute of lnnkeeping (BII). Enterprise Inns' COP does not apply to those leases in its estate that are free of tie and Wellington Pub Co. have not sought BIIBAC approval for any form of COP as they operate a free of tie estate. All new Pubco leases and an alarming number of brewery leases, now contain annual increases in accordance with the Retail Prices Index. Save for one month in 2009 when the Index fell by 0.5%, all monthly movement in the Index is upwards only. Currently the RPI is at a level of a monthly increase of 5.5% which, compounded over five years (the normal standard rent review cycle), equates to a fixed uplift of c.30%. This is plainly an upwards only annual rent increase, albeit to a "look again" after five years.

3.2 It would appear that the damage being inflicted by annual rent rises linked to RPI had been recognised by some of the Pubcos such as Punch (for some of its new lease agreements) by suggesting a link to the Consumer Price Index. This has seen a slightly lower rate of annual rise than the Retail Prices Index and thus a "softer blow". However, as at the date of this Submission (May 2011) the CPI has increased to 4.5% in April 2011 from 4.0% in March 2011. The impact on rent is virtually the same as RPI.

3.3 It has to be considered that the COP obligation of the setting aside of upwards only rent reviews, has been compromised by the insistence of rent increases in accordance with RPI or CPI.

3.4 In cases of lease renewal where a previous lease did not contain the provision of such annual indexation, Pubcos are routinely attempting to infuse such indexation into the new lease terms on the pretext of harmonising the documents within their leasehold estate (Example 8, Hertfordshire). Conversely, Wellington Pub Co. are insisting on upwards only rent reviews remaining in leases that are the subject of renewal. (Example 9, Bath).

4.0 Basis of Rent Review

4.1 The nationally accepted method is that of the profits test which if implemented correctly, produces a balance of income and resultant gross profit, less expenses, to produce a divisible balance (DB) from which rent and Tenant's remuneration is derived. The DB in 2008 used to be automatically split 50/50 between Landlord and Tenant until clarification was obtained in September 2009 in the case of *Brooker -v- Unique Pub Properties Ltd*, Claim No. 7BS11690, 7 September 2009. That case involved a fully supply tied, non assignable, five year lease which as such is not often replicated within standard Pubco leases. However, the Judge found that the DB should only attract a Tenant's bid of 35%. The underlying principles have subsequently been confirmed in RICS Guidance Note 67/2010, paragraph 6.13 which affirmed that the Tenant's bid could range between 35% and 65%, RICS GN 67/2010, paragraph 6.9. Pubco Rent Assessment Forms almost always still show a 50% DB with the Brooker case and RICS Guidance Notes recommendations being completely ignored.

4.2 Excessive reliance is placed on comparable properties (Example 10, South London) and information to that effect is shared between Pubcos to produce a cherry picked schedule of properties within a given area to produce a desired "tone" of rent settlements. Such rent reductions that may exist in a given area, are hidden or not acknowledged and are never offered in the rent negotiation process (Example 7).

5.0 Comparable Evidence

5.1 The main disadvantages exist as in 2008 in that the Pubco has all the detail of the comparable evidence and the Tenant has access to none. The COPs make great play about transparency which is not observed in the issue of comparability. The profits test has at its heart the assessment of FMT. As is regularly the case, the assumed FMT for rent review purposes is over-estimated by up to 30%. No direct comparables are offered. (Example 4). Accountancy information related to comparable properties is either compromised by the Data Protection Act or only available in rare instances through agents' particulars of sale. Indeed previous RICS Guidance Notes stated in **GN.7.2.13** (August 2002):

5.2 *A secondary basis of comparison may be on physical factors. However, when resorting to such a method it is essential that any comparable is very closely relevant, as regards style, location and trading circumstances. The accounting information on which other transactions were based is likely to have been strictly confidential and, unless all the factors are known, any comparison of physical aspects alone can be* ***misleading and unreliable***. (Emphasis added)

5.3 Stiff resistance is constantly noted in an application for a blanket revelation of comparables within a given and restricted radius of the subject premises, on the basis that the applicant is on a "fishing trip". Transparency is not observed.

5.4 Usually the only information supplied is the level of rent settlement and occasionally the associated barrelage. This then builds up a picture of cherry picked rent settlements in the justification of the assumed rental on the Rent Assessment Form. Again, full transparency is not observed.

6.0 RICS Regulations

6.1 By invitation I sat on the RICS Committee known as the RICS Pub Forum, between April and September 2010 in the formulation of the RICS Guidance Note 67/2010 that was issued in mid December 2010. Although at Committee stage I pressed for fuller and more plain English explanations of the content of the Guidance Note, it was deemed that the document was for use by specialist Chartered Surveyors involved in licensed / leisure property, rather than a general text book for non RICS members.

6.2 The new Guidance Notes have a wide ranging effect in the clarification of rent review assumptions and procedures and have produced, through extensive negotiation at Committee stage including Pubco representatives, a reasonably level playing field which is certainly a significant advance on those RIGS regulations that existed in 2008.

6.3 It is a noted feature of all COPs registered with the BII, that full adherence to the new RICS Guidance Notes is openly expressed. In addition, the British Beer & Pub Association (BBPA), has confirmed that all of their members should adhere to the new RIGS regulations. A minor number of Pubcos are not members of the BBPA.

6.4 In reality, the first line of negotiation (see above) which is the Pubco BRMs, still totally ignore the detail and content of the RIGS Guidance Notes. This is particularly noticeable in the lack of acknowledgement of the status of the Reasonably Efficient Operator, (Example 11, South London), the calculation offsets in the profits test of the obligation of the assumption of vacant possession (Example 12, Midlands) and the disregard of structural works undertaken by the Tenant at the Tenant's expense (Example 13, South London).

6.5 *Reasonably Efficient Operator*

6.5.1 My understanding of this definition is:

The keyword is "reasonable". Referring to the Collins Concise Dictionary 21st Century, the word "reasonable" is defined as: "*having modest or moderate expectations*". The Concise Oxford Dictionary defines the word as "*fair and sensible as much is appropriate, moderate*".

6.5.2 The Pubcos are in denial that this definition exists and are not quantifying how the existing lessee either equals or exceeds the above definition. (Example 4). As earlier mentioned, Tenantable goodwill is almost always completely forgotten.

6.6 *Vacant Possession*

6.6.1 Every lease makes the assumption of vacant possession on rent review or lease renewal. This requires that the hypothetical Tenant has to acquire the inventory at in situ value, all wet and dry stock and consumables and have available working capital. The assessment of the three input factors is rarely if ever satisfactorily calculated, as is the finance associated with the provision of the capital monies concerned. (Example 14, South Wales).

6.7 *Structural Works*

6.7.1 A large number of leases require that structural works undertaken by the Tenant at the Tenant's expense, have to have formal Landlord's authorisation and approval. In a similarly large number of situations, the finality of formal approval is often overlooked when the works are undertaken and in almost every case, the Pubco does not remind the Tenant that such a document is required. (Examples 13 and 15, Central London).

6.7.2 This leads into the regular occurrence that extensive structural works are then rentalised to the detriment of the Tenant. This situation is covered in RICS Guidance Note 67/2010, paragraphs 6.20–6.25. The opportunity does exist for an application for retrospective consent which is almost always granted. For example, a multi award winning lessee in South London (Example 13) lavished some £300,000 on his Pubco owned premises, whose current rent is £32,000 p.a. The Pubco is now seeking a rental of £70,000 upon rent review, on the basis that formal consent for structural works was never ratified, notwithstanding that all of the company representatives knew that the work was being undertaken, the relevant consents and permissions had been given and that the entire cost was financed by the Tenant. That particular case is currently being resolved by arbitration.

7.0 Machine Income

7.1 Notwithstanding the recommendations of the Parliamentary Hearings in 2004, new lease agreements are constantly being entered into that require a 50/50 share of **net** proceeds of machines being split between Pubco and Tenant. There is thus little incentive for promoting machine income save for pool tables which have a higher net return than AWP machines. Machine income is regularly over-estimated by Pubcos in the assessment of total sales in the profits test calculation.

8.0 Third Party Referral

8.1 All leases contain the opportunity for disputed rentals to be settled by third party. Almost always this process is of arbitration. There has, however, been an innovative move being made by the Bll in the creation of the PIRRS system of dispute resolution. The administration of the PIRRS system through the Bll is wholly funded by the BBPA by mandatory annual levy on its members. A full factual critique of the differences between PIRRS and Arbitration was prepared by agreement with the leading licensed trade publication The Morning Advertiser last November (which has yet to be published) and is enclosed in **Appendix B**.

9.0 Conclusion

9.1 The general imbalance that existed in 2008 between Landlord and Tenant, still continues in 2011. The root cause is the disparity between the financial strengths of the parties and the lack of common ground in information sharing as to the processes that should be reasonably followed in the negotiation of a rental upon either review or lease renewal. The following factors continue to exist:

- Deliberate over stating of FMT and gross profit margins and the under stating of expenses on the Rent Assessment Form;
- disregard of RICS Guidance Note 67/2010 published in December 2010;
- denial of the implications of the Brooker case and associated RICS GN 67/2010 paragraphs 6.9 and 6.13;
- requirement of annual rent increases in accordance with the RPI or CPI;
- inclusion of structural works undertaken at the Tenant's expense with Landlord's verbal but not formal authorisation in the assessment of FMT;
- absence of any form of property based qualifications in the first or second line of Pubco / Tenant negotiations;
- lack of recognition of the ability of the Tenant to obtain a "living wage" or of the continued impact of the reduction in leisure spend (with the exception of Central and parts of suburban London); and
- new leases continuing to require that machine income be shared between Landlord and Tenant.

19 May 2011

APPENDIX B

PIRRS AND ARBITRATION

Who Controls the Two Systems?

The President of the RICS and the RICS Dispute Resolution Service (DRS) control the appointment of either arbitrators or experts.

Under PIRRS, the Tenant begins the proceedings by completing the PIRRS application form and selecting their preferred independent valuer from the regional list of recommended experts. Although the Tenant's selection of valuer is final, the opportunity exists for the brewer / Pubco to object to any particular appointment.

Who Pays for the Appointments?

The applicant (this could be either the Landlord or the Tenant) for an RICS appointed arbitrator or expert, currently pays £361 (inclusive of VAT) application fee for the appointment. The applicant has no control over the President of the RICS or the DRS. The opportunity *does* exist for challenge. The RICS Dispute Resolution

Service is funded by the general membership of the RICS through individual RICS members' annual subscriptions.

There is no application fee for a PIRRS appointment. The PIRRS system is funded by the British Beer & Pub Association (BBPA) through a mandatory levy of £2.50 per unit of pub ownership for every BBPA member.

Who are the Experts and who appoints them?

The RICS has a nationwide pool of arbitrators which also includes some of those experts registered in PIRRS. Re-examination of the RICS panel members occurs on a regular basis.

PIRRS experts are appointed by the PIRRS board on the understanding that each of the individuals has to hold a qualification (not specified) and professional indemnity insurance and have to have at least five years experience of conducting and being involved in pub rent reviews. PIRRS currently has 14 experts appointed by the PIRRS board, representing nine different surveying practices. The experts are split into ten different regions with a number of the experts serving in a large number of different regions.

Can the Tenant represent himself?

Yes. Both the RICS and PIRRS allow for the Tenant to represent themselves.

Costs

On the understanding of Tenant self representation, the RICS appointed arbitrator will initially confirm an hourly rate fee charge, but will not be specific in respect of ultimate fee costs for the whole arbitration. Associated fees can vary between regions with Central London based arbitrators being the most expensive with some hourly rates exceeding £350 plus VAT. Regional arbitrators' fees generally start at £175 an hour plus VAT. The ultimate fee charge, which can vary between £3,000–£8,000 plus VAT as a rough guide, is initially split evenly between parties.

The PIRRS system has a fixed fee charge for the services of the independent expert which fall into two categories—those with rents under £25,000 and those with rents over £25,000 p.a. Under £25,000 the Landlord pays a fixed fee between £2,000–£2,500 and the Tenant pays a fixed fee between £1,000–£1,500. Over £25,000 p.a. rent, the Landlord and the Tenant pay fixed fees between £1,500 and £2,000.

Can the Tenant recover costs and fees?

Under the Arbitration Act 1996, the opportunity exists for the recovery of all costs and fees after the issuance of a successful Calderbank offer (easily Googled for further and more detailed explanation).

PIRRS has no system for the recovering of costs and each party bears all of their own costs including the initial fixed expert's fees.

Do I need a Deed of Variation?

Not required at Arbitration. Existing Tenancies / Leases identify the binding nature of any dispute resolution system. No threat of lease forfeiture is implied in the system of arbitration referral.

PIRRS requires a Deed of Variation for the PIRRS appointed expert's determination to be binding on both parties. The Tenant will need legal advice in the preparation of the Deed of Variation which is an extra cost which will have to be borne by the Tenant. Any subsequent deviation from the agreed Deed of Variation carries the threat of Lease forfeiture.

Reasons

An arbitration award has to be fully reasoned and must include the detail of the arbitrator's calculations.

The PIRRS expert gives no reasoning, calculations or explanations.

Can I Appeal the ultimate Judgement?

Under the Arbitration Act 1996, there are strictly governed opportunities for appealing the arbitration award.

The final PIRRS independent valuation cannot be appealed under any circumstance.

Extent of Evidence

An arbitration has no restrictions or constraints on the type or length of evidence that can be submitted.

The PIRRS scheme limits the Statements of Case.

Points of Law

Under the Arbitration Act either party to an arbitration can raise points of law and have them determined either by the arbitrator, or an independent legal assessor that is appointed by the arbitrator with the agreement of the parties.

PIRRS does not allow any dispute of interpretation in law to be resolved by the PIRRS independent expert.

Time Scales

Similar. PIRRS on average takes six months.

Confidentiality

Arbitration awards as to rent calculations, valuation methodology etc are widely used in the assistance of setting other rentals and can be of interest in establishing comparable properties as evidence. The prior approval of the parties to the arbitration should be obtained.

In the Terms & Conditions, PIRRS requires that all details of any PIRRS case and the independent expert's workings on any particular case, are strictly confidential.

Written evidence submitted by Steven Rigby

My Name is Steven Rigby of Rigby's Market Deeping and I would like to give evidence to the committee based on mine and my family's experiences of the past three years.

I have 30 years experience in the licensed trade both from my days at Grand Metropolitan, Watney, Mann & Truman Brewers, the launch of Fosters Lager, Design and Build of multiple trading group, a firsthand witness of the creation of the Entrepreneur Lease & owning and designing numerous successful Pub Restaurants of my own.

In September 1998 my then Landlord sold the Gastropub, Rigby's, to Scottish & Newcastle Pub Enterprises (now Scottish & Newcastle Pub Company SNPC) with the agreement that my daughter could lease it back and continue running it as it always had been. It was agreed all the range of draught Belgian Beers would remain and be supplied by the new Landlord's supply Company, but if for any reason they could not then they could be bought elsewhere.

A substantial deposit of £25,000 was paid and an additional advance rent premium based on three months of the £70,000.00 pa rent was also paid. The brewery, although having agreed to buy the Trade Fixtures and Fittings renegued on the day of Completion, I have since learnt this is a common occurrence.

Within a month the problems began, the credit control department put the beer deliveries on stop because they had not received the advanced rent payment from their own solicitors. Payment for beer were therefore made three days in advance before the alleged delivery which was on a Friday afternoon. Numerous times this delivery did not turn up or was delivered on a Monday. This meant beer had to bought at urgent notice from a 3rd party supplier to cover the weekends. This was done with the agreement of the SNPC Area Manager, but within a month penalty notices were arriving from Bruline beer monitoring company at the rate of circa £6,000 per month. My daughter's rent payments were being appropriated as buying out payments, this was despite paying for beer which was not being delivered and paying all her rent. The trade account was in a large credit and rent account showed nil payments despite, a £25,000 advance and also further monthly payments on time.

My daughter was then instructed to immediately remove nine out of eighteen draught products despite previous written agreements these beers would remain. The Bruline invoices were getting bigger so we called in an independent monitoring company who discovered our system was such a sophisticated beer raising system in comparison to the normal brewery pub ie the system flushed lines between kegs and this was counted as beer, the cask conditioned beers were on a different bore to normal and were therefore reading at 2.5 times the true flow, the line were put in salt wash at night which counted as beer, the system recycled all lines at the beginning of every session, which counted as beer. The figures Bruline produced for our system were simply not correct or even close and huge bills were based on these figures verbatim.

A meeting came six months into the Lease which had been scheduled from the onset. During this meeting various promises were made by directors of SNPC to remedy the situation and apologies were flowing like the Thames. I also raised the issue that SNPC owed me personally £130,000 for work my development company had carried out on another one of their properties. Despite being a completely separate Company and remote from my daughters company S & N et al have flatly refuse to pay me any money despite these being non-contentious bills. At this meeting it was agreed we would draw a line in the sand so long as I paid a sum of £23,000 over on my daughter's Companies behalf, which I did pay just to smooth the way and show good will to the Credit Control Department. I was also assured my bills to SNPC would be paid, to date they have not.

My payment was a complete waste of time within two months it all started again the bullying letters and visits from bailiffs claiming rent on behalf of the Landlord which has been paid but appropriated without any

formal statement to say it had. The first knowledge of this is when the team of the thugs walk through the door and sit along the bar and start being aggressive to customers. Even when shown that payment has been made they refuse to leave. On one occasion a Bailiff arrived unannounced stating he was here to levy distress and picked up my daughters watch which she had been bought by her Grandparents for her graduation and said he would start with this. She eventually got the watch back but the upset leaves deep scars. This was as a direct result of a Pubco, SNPC instructing the bailiff to attend despite the bills being paid. These Companies are becoming laws unto themselves and their enforcement teams are losing site of what is correct procedure as a result.

In 8 January 2010 a 146 notice of Forfeiture was served under the Properties Act on my Daughter's Company for non payment of rent. It was also served on me as Guarantor. On the same day three rent payment cheques were returned stating they could not be accepted. An audit showed that my daughter's Company was actually in front with her rent by two months and the forfeiture notice was withdrawn. SNPC admitted they had lost 13 payments within their system. However, the instruction to credit control to stop accepting rent payments was not. The National Director of SNPC explained that whilst they were not accepting rent they were at liberty to deliver beer to Rigby's and had reinstated our account. This, in his words "was better for everyone, as we can now offer you the Olive Branch without Credit Control on our backs." One of the main issues we had with SNPC and S & N UK was that they issued for the first nine months of the Lease all invoices in my personal name and not in my daughter's Company's name. Why, it is a total mystery even the credit control department can not explain it. The VAT office would not accept these nor would the auditor. There was endless communication with the Landlord regarding this issue but SNPC flatly refused to re-issue the invoices in the correct name. This eventually resulted in my Daughter's Company being struck off the Company Register because she could not file a signed-off set of accounts which was acceptable by HMCR.

As a result I took over the running of Rigby's in June 2010. A further forfeiture notice and possession order was served as a result of the Company being struck off the register and SNPC kept sending the rent cheques back, 57 of them. Even if I transferred money to them they sent it back. The Possession hearing was heard in May this year and possession was granted to Scottish and Newcastle Property Company SN(P)C not to be confused with Scottish and Newcastle Pub Company SNPC. The Judge was not fooled by their legal team and placed some onerous responsibilities on the Pubco. He separated the pub from the area of land at the rear and deemed it a ransom strip as the fire escapes run over it and I own it. That's the only reason we are still here. But its difficult as now the Landlord has had the Gas meter taken out despite people living on the premises. I think the Landlords probably attended theVan Hoogstaten School of Landlordship. Or did he attend theirs?

In three years our lives have been turned upside down. Rigby's was previously recognised as the best pub restaurant venue for miles around, with a turn over circa £1m per year. By having a Pubco as a Landlord, the business has been systematically destroyed and our name along with it, not to mention what it has done to our health. The draconian powers these Pubcos wield within the lives of their hard working tenants is unjust and not even within the terms of their agreements and Leases. The governments since 1989 have stood back and allowed this to happen. The Block Exemption of the section 84/85 of the Treaty of Rome has not achieved what it set out to achieve. The Pubcos have been allowed to run ragged by hyping values through "securitisation funding and borrowing" it has gone completely unchecked. It's no different to what's happened in the banking sector. How can you justify a Landlord (in my case the Landlord is an international Brewery) producing a pint of beer which is sold retail in Tesco Supermarkets at 69p per pint including VAT and then wants sell exactly the same pint of beer to me for £1.31 plus VAT. This is baring in mind I am probably going to have to manage the person I am selling this pint to, at 10pm, them already having consumed five pints of Tesco supplied beer.

The Block Exemption was driven originally by fairness to all and largely to protect our small breweries who still acted like respectable and to a great extent fair Landlords. Their tenants paying an acceptable reduced rent in comparison to a Free House Mortgage because they were tied to that particular breweries beers. Now that Pubcos, as do breweries, charge Open Market rents what is the need for the Block exemption? Please tell me someone.

Lord Young had the opportunity to put things right in 1989, he messed up with a capital M. Please do not confuse this issue as one of Competition, it certainly is not. This is an issue of oppression on a National scale, the very heart and centres of our communities are being eaten away by the actions of Pubcos and International Breweries. This is the most single important opportunity for the last 40 years to get this right and change things for the better. Please do not mess it up. Rein in the Pubco, allow freedom of tie, allow the market to become free and it will stabilise within three to five years.

20 June 2011

Written evidence submitted by Carol Ross

I enclose two letters dated 2004 and 2005 which was I think the start of the problems with the large Pub Companies. They became a property company. This I believe is evidence which highlights the bullying of licensees, to change over to leases in their favour, which led to the demise of many pubs, with their high rents and unfair tie. I asked them for help not a new lease. They told me my old vanguard lease was no longer available. They could see a different way to charge more rent and earn even more from the tie. They became very greedy. They let a lot of licensees down.

When the Inquiry gave recommendations in March 2010 to let the Pub Companies get their houses in order, this only resulted in more pubs closing.

Punch Taverns have given out Codes of Practice but they are not adhering to them; for instance:

> My lease was up for rent review on 13 February 2011. Talks only commenced at the end of last year (their Code states they will commence talks 12 month prior to review). I provided them with six monthly figures in September for the BAM Report to be completed, they did not use this format (they used another format without my expenditure. My rent review should have been sorted out by now but they are refusing to put my figures in the format set out in their Code of Practice. I gave them all my figures for end of year 2010 mid-January to enable our review to be sorted by 13 February, the due date. I have continually asked for these figures but they refuse to put them on the format outlined in their Codes of Practice. I keep asking my BRM how he arrived at the rent figure without my expenditure—he says Fair Maintainable Trade.
>
> I informed them that we could not survive at the current rent and beer tie. I asked for rent reduction which they gave me £7,000 but with index linked RPI and all tied beers, bottles and guest beers. I informed them that there was not enough money in the pub for the high rent and beer tie. I also asked them for free of tie, they refused point blank and said this was not an option.
>
> Punch Taverns have given landlords more choices of ales, which was only due to the pressure they were receiving from the press. This does not take away the fact that, the invoice from DDS goes direct to Punch Taverns, for them to add their margin onto the invoice from suppliers before it is sent on to ourselves. We cannot get the beers at market value. This is no different we are getting a little more choice—that's all, at their over-inflated prices. We have to pay more for our beer than a free house. In some pubs Punch are making more money from tied beer sales than on rent. We are worse off than a free house.

I also enclose a letter sent to Roger Whiteside recently.

I have also offered to purchase my pub as I would be paying less mortgage and also be free to buy my beer. They refuse to sell as they are making a lot of money from my pub. Therefore I hope the BISS Committee will find in the favour of the hard working licensees out there and bring the Great British Pub back to life before we lose them for good.

21 June 2011

Letter from Carol Ross to Punch Taverns Ltd (Dated 25 October 2004)

Thank you for your letter dated 20 October 2004, the contents of which I note.

I will adopt the same numbering as your letter and would comment as follows:

1. I do not believe The Roscoe Head would benefit from this Growth Lease on the following grounds:
   (a) Discounts you allow on my Tetley's would not benefit me in the future as my Tetleys' sales are diminishing, and, due to my customer comments, my customers would like different guest beers, on which you allow minimum growth discounts.
   (b) Although all information and figures remains constant for the last 12 months, I believe when we have a refurbishment my customers would be looking for a varied choice, as my competitors provide. I believe that if we do not offer this, the Roscoe Head would be way behind its competitors, and will not grow trade.
2. If I remain on the current Vanguard lease I would comment as follows:
   (a) No different.
   (b) I think this is still too high, but would consider with provisos.
   (c) I believe this interest free loan is very fair indeed.
   (d) I believe I should be offered a new 10 year lease.
   (e) I believe this would be detrimental to my business as my customer survey reveals they want ever changing guest beers, which the company cannot provide on that scale.
   (f) Would consider.
   (g) I would consider this to be very fair due to my cash flow problem.
   (h) Noted.

3. I believe this to be of no benefit to either party.

However I would consider option 2 above providing I could still have guest beers (in the form of perhaps two beer festivals per year), with the company providing all guest beers, and all guest beers to be calculated within my Vanguard Incentive Scheme. Also the scheme commencing as soon as possible.

At the time of writing this letter the Pub is already leaking in water, from the back walls and I am afraid that if we do not act soon, we may have to close off the back room, therefore a spend is vital to the pub.

I note from your second paragraph that you value my commitment to the Roscoe Head, if that is so, I would ask Punch to think about a new 10 year lease being signed, as it would take me more than three years to see any return on my investment into The Roscoe Head also.

I too am looking to be able to agree terms of investment and also ask that you consider my proposals.

As can be seen from my P & L accounts, I am in a no win situation and have asked Punch for help to grow my business. I am sure Punch would not like to see me go bankrupt six months down the line.

Hoping we can bring this matter to a speedy recovery.

Kind regards

Carol A Ross
Lessee/Licensee

Letter from Carol Ross to Punch Taverns Ltd (Dated 16 August 2005)

I refer to my letter dated 5 October 2004 and your reply dated 26 October 2004.

I wish to bring to up to date on matters regarding the Roscoe Head as according to your letter, you are of the understanding that the meeting I had with Jonathan Walters was very positive. I am sorry but I did not feel the meeting was positive at all. I was given three options one of which I took (option 2) but still nothing has been sorted out. I felt as if I was still being bullied into going for the growth lease, this would not benefit the Roscoe Head.

I feel that the Company are penalising the Roscoe Head because of its success over the years. There are very few small pubs left, the Roscoe is very lucky to still be trading, due to the onslaught of the big themed pubs that have opened in Liverpool. The success of the Roscoe is due to the sheer hard work from myself also my family in the past and the amount of regulars that we have kept over the years, people who come from afar for the good beer at the Roscoe. My customers and myself have become very upset at the bully boy tactics used by Punch management in their efforts to gain premium rents as well as unfair ties, in that there is no effort on behalf of the company to help the licensees who have been loyal to the company for many years. My customers are a big part of my pub and they know everything there is to know about it. They feel that Punch are trying to push to get me out as they have already informed me that the pub is worth nothing, but the land is worth more.

Two years ago my rent was up for renewal and I knew I could not afford a rent increase, I informed my area manager and requested a rent reduction (see 8th paragraph in my letter to you dated 5 October 2004), as The Roscoe Head was struggling and I needed some help. Andy Wilkinson informed me that the company did not consider rent reductions, however the company could help me with possibly a refurbishment, with my rent staying the same or at worse maybe a little increase in rent. I was very shocked when they came back with £12,000 rent increase. The Roscoe Head is far too small to merit this increase and not gaining any more space but losing two seats. I have only been the licensee here for three years and it is due to the lack of money spent in the past that the dilapidations were not met.

The Company has never spent any money on the Roscoe Head for over 20 years and over this period my family and I could have bought the Roscoe Head many times with the amount of rent and tied beer sales which the Roscoe has paid to the Punch.

Two years ago when I come up with a business plan for the Roscoe Head I put down my fears as to what would happen with the new competition opening up around us (ie Okell's in direct competition with myself). Unfortunately those fears are now a reality and I am struggling ie cash flow difficulties and no money for dilapidations, some of which dilapidations were the responsibility of yourselves from eight years ago when the company promised to do the roof and outside of the building when the lease was an old tenanted lease where the Company were responsible for the outside.

At our last meeting the Estates Department informed me that the amount of money that needs to be spent on the pub would have to push the rent up even further than £12,000. As this is not feasible I believe we have reached a stale mate.

I am in the process of trying to refurbish the inside of the pub myself as it is two years since we started talks on refurbishing the pub, the inside is looking very tired and I refuse to let my pub go down without a fight, which brings me to my rent review two years ago which I refused to sign as I was hoping for a rent reduction. As talks have broken down, I would like to take this opportunity of seeking independent advice on a fair rent for the Roscoe Head and would be grateful if Punch could arrange this for me.

I have been in touch with CAMRA who have allocated monies for small pubs in difficulty, I have explained my situation to them and I am awaiting a reply from their Head Office but they do not hold out much hope as the Roscoe head is owned by a big company such as Punch.

As the new flats in Roscoe Street open in November of this year I feel as I must do something to the inside at least to attract new customers and to make them feel comfortable. To enable me to do this I am asking Punch to consider reducing my rent for the future.

I am asking the company for help as we have seen far too many small traditional pubs close down in the past. I hope the company will look favorable in this matter.

Kind regards

Carol A Ross
Lessee/Licensee

Letter from Carol Ross to Punch Partnerships (Dated 22 June 2011)

I refer to your comments in the Morning Advertiser on page 17 under the heading Enterprise: MP's comments "irresponsible".

Mr. Whiteside with all due respect I don't see or hear anything that Punch or Enterprise are giving to the licensees who are holding the Pub Co's up. I understand what you are trying to do, you are trying to get people to see Punch Taverns in a different light I.e. Referring to us as "partners" and spending the money on pubs (well some pubs). May I say that this is a little too late for some. The majority of people do not trust Pub companies any more, there are people out there who have lost their jobs, homes and life savings. There are people out there who blame the Big Pub Companies for the demise of the Great British Pub through their own greed at achieving "fundamentally flawed" rents and if that is not bad enough they are still earning from the "very much talked about 'unfair tie'".

I appreciate what you are trying to do, there is no value for Punch if a pub is closed so it must be open to have a value for its estate. But you seem to be overlooking the people who have been successful and who have worked hard to keep their pubs open. We seem to be victims of our success here. When will we get help, "when we close our doors" because with my rent and tied beer it is not very far away, I work for the minimum wage, and I believe it is time for me to work for somebody else as, gone are the days when we expect 50% gross profit. I think this is what the gross profit percentage is to work for yourself and to earn approx. £20,000/£25,000 a year as a fair salary, otherwise there is no point working for yourself. But to Punch we have to work for minimum wage and also according to your BDM's we should not expect 50% GP. Therein comes the prices we have to pay for our beer.

I am a licensee who has asked for help since 2008, two years down the line I have still not received any help I am one of the pubs just surviving but earning the minimum wage. My pub is on the market for sale but I cannot sell. Yet nobody from Punch has helped me. Punch seem to be helping the pubs which are closing down or already closed.

I enclose a letter I sent to Punch Taverns Mr. Hodgson on 4 June, forwarded to the right Mr. Hodgson on 7 June but nobody has even the decency to reply.

Mr. Whiteside I see you joined the pub trade fresh so I invite you and Greg Mulholland to my pub in Liverpool to show you where my pub is, I am stuck in a back street where nobody knows I am here, I have to work twice as hard to keep my pub trading. I think it is damn harder to keep a back street pub trading than a pub on the main road. I will take you through my 30 years of working for the managed house side and then the tenanted side. Those days managed house top people demanded 60% GP wet and 75% GP on food. How things have changed when we (your partners) are expected to work for the minimum wage and achieve less than 50% GP. I am afraid to say some of your BDMs need to be retrained as these figures don't add up, if there is one thing I learned from having my own business it was the minimum GP I had to achieve to make it worthwhile running my own business. Some of your BDMs do not understand these mathematics. They think the answer is to put our prices down to compete with the Supermarkets.

Also on your visit I will take you through the last five years correspondence with Punch leading up to my dissatisfaction and the lack of help I have received from the Company. My family have won many awards for this pub over the years. I am afraid they do not deserve the good licensees out there.

I apologise if this letter seems to you a little bullish but, I am afraid this is the same way I as a licensee have been treated over the last five years, with a very bullish attitude and also I have nothing else to lose as you will note from my attached letter to Mr. Hodgson.

The reason I am still at the Roscoe Head is this is also my home.

Carol A Ross
Lessee/Licensee

Supplementary written evidence submitted by Carol Ross

My rent review was due on 13 February 2011.

According to the Code of Practice they are supposed to commence discussions 12 months before this date. I provided my audited figures as stipulated as soon as practicably reasonable, my end of year 2010 figures were given to my BDM on 10 January 2011. (I paid my accountants to hurry them along for Rent Review purposes). Punch Taverns refused to put my audited figures (ie outgoings into their BAM format as set out in the Code of Practice.) I am no further on with my rent review considering this was supposed to be finalised by 13 February of this year. Discussions only commenced in December 2010, because I requested it.

I have written to Roger Whiteside with a copy of my letters of concern and I have just received another letter (not from Mr. Whiteside but a Mr. Pawson) informing me that they will be in contact:

This reads:

> "We will endeavour to reply within fifteen working days having taken the opportunity to discuss the matter with our operations team.
>
> Should the matter take longer than this, we will inform you of the new time scale".

This was dated 15 July 2011.

I do believe Punch Taverns are waiting for the outcome of the BISC before they reply.

I wish to have this noted on record that unless changes are made to the big Pub Companys' grossly unfair tactics, the demise of the Great British Pub will carry on.

I would like to point out that my pub is one of the Magnificent Seven which has been in the Good Beer Guide since first published in 1974. It has been in my family for 30 years, over the last 6 years, I have seen the high rents and unfair tie of beers close many local pubs. I have seen some of the best licensees go bust and lose their life savings. I have seen good licensees have breakdowns. This has got to change otherwise, we might as well close our doors too.

The only reason I am still in the pub is down to my customers who are lovely people, also this is my home. Pubs are not just pubs they are part of the community, or they used to be before Punch Taverns and Enterprise Inns became very greedy property companies.

I am sorry to have to write to the Committee direct but I do not think things will change unless we have statutory codes with fair market rents and free of tie on beers, at least then we may have some chance of keeping the pubs open and maybe even see others reopen as part of the community. I have put my case to everyone as an experienced licensee of 30 years—nobody listens. I have nothing else to lose.

Carol A Ross

Written evidence submitted by Scottish and Newcastle Pub Company

INTRODUCTION

Scottish & Newcastle Pub Company (SNPC) is an operating company of Heineken UK. SNPC operates approximately 1,300 pubs in the UK. All SNPC pubs are free from tie for wines and spirits. Around 55% of SNPC are tied for beer, cider, RTDs and soft drinks. A further 40% are tied for beer, cider and RTDs but have no mineral tie. Finally, around 5% of the estate is free from all tie.

To inform the Business, Innovation and Skills Committee of the efforts of the industry to introduce and deliver the code, we have shared information with the BBPA. This has been used to produce the BBPA response to this enquiry which we fully endorse. The purpose of this note is to outline the specific action that SNPC has taken since the 2009 Business, Innovation and Skills Select Committee enquiry.

INDUSTRY FRAMEWORK CODE IMPLEMENTATION

Following the 2009 Business, Innovation and Skills Select Committee enquiry, we acknowledged the need for change. The prime vehicle for achieving that change has been the "Industry Framework Code" which was agreed between the BBPA and the British Institute of Innkeeping in January 2010.

Scottish and Newcastle Pub Company consulted with its lessees prior to the writing its Code of Practice. Road-shows were held in various locations around the country and all lessees were invited to attend the event closest to their outlet along with representatives from the BII.

The code was presented to the BII Benchmarking and Accreditation Service committee on 16 of June 2010. Formal accreditation was received in July and the committee agreed that SNPC would make the necessary systems changes to deliver the commitments contained in the code by the end of 2010. We introduced elements of the code incrementally in the second half of 2010, as changes to our systems allowed, and the code of practice was published and fully implemented from 1 January 2011.

The company invested £100,000 on designing, printing, implementing and sharing the code with lessees. There is a further ongoing cost associated with each new let for SNPC. The Code of Practice must be printed and Management time taken to explain the code to new lessees.

Further Support to SNPC Lessees

The Business, Innovation and Skills Committee have also asked for individual companies to provide evidence on whether pub companies have built upon the minimum requirements of the code. We would like to draw your attention to a number of areas where SNPC have gone further than the requirements of the code.

SNPC is committed to supporting its lessees. During 2010, SNPC invested over £1 million on promotional and marketing support for tenants on areas such as food development, promotion of the 2010 world cup and on the advertisement of sport in live premises.

In addition to the activity across the estate at a local level, the company's Business Development Managers have a budget to support local pub specific activity and approximately £900,000 was invested by the company during 2010 in the form of promotional credits to rent accounts.

During 2010, SNPC launched the industry leading "Bar Boosters" initiative, a programme to help lessees develop alternative/ complementary income streams. SNPC set up competitive deals with suppliers and wholesalers to offer lessees the opportunity to profit from activities as diverse as selling groceries, acting as Dry Cleaning agents, installing electronic bill payment terminals for consumes, organising in-pub home shopping events and offering daytime coffee and wireless internet access. These schemes were designed to broaden the income streams within each site and to cement our pubs' position within their respective communities. Over 25% of the estate signed up for at least one activity in 2010.

SNPC is committed to training its lessees prior to taking a lease with the company. Our British Institute of Innkeeping (BII) accredited course "Inside Knowledge" is a five day residential course which provides a foundation in the skills needed to operate a profitable business in the licensed trade. There were 385 attendees during 2010.

20 June 2011

Written evidence submitted by Shepherd Neame Ltd

1. Shepherd Neame Ltd, which is Britain's oldest brewery, dating back to the 16th Century, is an integrated independent family controlled brewery, based in Faversham, Kent. Shepherd Neame operates 359 No pubs, of which 44 No are managed, 15 No are leased and 300 No run as traditional tenancies. The Shepherd Neame estate is located within one hundred miles of the Brewery, predominantly in Kent, Sussex, Surrey, Essex and London.

2. Following accreditation by the BII, Shepherd Neame formally implemented its Code of Practice in January 2011.

3. We believe that the Code of Practice has engendered greater rigour, especially within the context of appointing new licensees. We consider this to have been beneficial for all parties, with potential new licensees obtaining better advice before taking on a public house, and a higher standard of professionalism being required before appointments are made.

4. The Code of Practice has ensured that greater focus is given to following correct processes in all dealings with existing and potential licensees. We have resolved two potential disputes with licensees within the framework of the Code of Practice.

5. Shepherd Neame maintains a close relationship with licensees and this is illustrated by the absence of referrals to PIRRS. In the event of disputes, licensees have full access to members of the Board. We hold regular social events to recognise outstanding performance and to celebrate long service.

6. In the light of our experience to date, and additional benefits being provided for licensees, we will be redrafting our Code of Practice over the coming months.

7. Shepherd Neame operates traditional tenancies, which have full protection of the Landlord and Tenant Act. The traditional tenancy provides a low cost and low risk business opportunity for potential entrants to the

licensed trade. Both cost and risk are significantly lower for traditional tenants than for lessees operating FRI leases or owning freehold property.

8. The cost is low because new tenants only have to purchase the trade inventory at ingoing, together with stock and the provision of a refundable trading deposit. Typically, the cost of taking on a tenancy is between £15,000 and £40,000 for a business, with a turnover of between £200,000 and £600,000, with some houses achieving a turnover in excess of £1 million. Typically, licensees make a profit of between £20,000 and £40,000, but this can rise to £100,000.

9. Shepherd Neame retains and maintains the majority of the fixtures, eg water/gas piping, whilst the tenant provides the fittings, eg furniture/kitchen equipment.

10. The risk is low because a tenant can issue six months notice at any time, without penalty. Shepherd Neame guarantees to take the house back and purchase the inventory if a new tenant has not been appointed during the notice period.

11. The risk is low because Shepherd Neame maintains the structure of the pub, decorates and signs the exterior, provides building insurance and maintains fixtures.

12. Shepherd Neame provides discounts and incentives (from 27 June 2011) for tied goods, but advises all licensees that the prices charged for tied goods are higher than would be obtained by a free trade customer. This represents the wet rent for the premises.

13. The wet rent is reflective of trading conditions, effectively reducing when trading conditions are difficult. The benefits provided for tenants, eg insurance, repair, operational support, licensing, rating, purchasing benefits and Web site, equate to a value of £150 per composite barrel, ensuring that tied tenants have advantageous operational terms as well as the benefit of the low risk and entry cost for the business.

14. Over the forthcoming year, we will be making additional investment in digital marketing, training and capital improvements to our tenanted houses. We have put in place a range of purchasing agreements, whereby individual tenants can purchase on similar terms to our managed house division.

15. We believe that there is no market and consequently no market evidence for free of tie public houses, where the landlord repairs, maintains and insures the property, with these costs not being passed onto the tenant. Free of tie leases are all let on FRI terms, ie with the tenant exposed to the cost of structural repair and maintenance works and with building insurance charged back to the tenant.

16. We believe that there would not be a realistic division of economic benefit, if traditional tenancies were operated on a free of tie basis. This would eliminate the availability of this low cost/low risk business opportunity.

17. Within our estate, AWP income is of reducing importance, but we believe that the current system of income sharing is fair and transparent. If AWPs were operated on a "free of tie" basis, then such income would need to be added back to the divisible balance. This might increase overall costs for licensees and, given the length of rental agreements, would be less responsive to market conditions.

18. We believe that estate wide provision of AWPs leads to higher quality and more frequent replacement of machines to the benefit of licensees.

19. We believe that there could be considerable risk for illegal machines if AWPs were to be made free of tie.

20. Shepherd Neame offers a wide range of cask conditioned ales to its licensees, together with seasonal/special event beers and output of our pilot brewery. We also provide a range of "foreign" cask ales on a regular basis.

21. Cask ale is at the heart of our brewery and the tied estate is essential to retain viability within a highly competitive market.

22. The provision of "guest beer rights" for cask ale could reduce cask volumes by 50% and would undoubtedly have an adverse impact on the viability of the brewery as a whole.

23. The provision of guest beer rights would distort the wet rent/dry rent balance, resulting in the loss of the low cost/low risk business opportunity provided by the traditional tenancy agreement.

24. We do not currently operate flow monitoring equipment within our traditional tenancies.

25. We consider that to be effective, an industry benchmarking survey would need to take into account the different forms of tenure available.

26. We believe that the provision of traditional tenancies ensures the survival of smaller houses, which would otherwise cease to trade.

27. Shepherd Neame is committed to maintaining an open and transparent relationship with licensees. We regularly survey licensees to monitor the effectiveness of services we provide and our Business Development Managers achieve an approval rating of 80% plus.

17 June 2011

Written evidence submitted by Russell Stone

EXECUTIVE SUMMARY

1.Highlighting the rent review process from ETI was totally unacceptable.

2.Rental-increase proposal totally unacceptable on all five occasions of rent determination from ETI.

3.Alleged bullying from ETI towards Leaseholder and their own 'Independent Valuer' to achieve an unfair and unjust rental increase.

INTRODUCTION

I have spent over 30 years in the Restaurant business; my last roles were as a Director with well-known High Street brands.

In July 2006, I became a Leaseholder (30-year lease) of the George Pub, to run with my family.

The Lease is with Enterprise Inns (ETI)—Partial tie with a rent of £30 thousand per annum, to be reviewed every five years.

The last rent review was September 27 2005, which saw the rent increase from 28 thousand to 30 thousand.

My first rent review was to be September 27 2010.

FACTUAL INFORMATION

All information that follows is backed up by a "Audit trail" of events from 23 March 2010 until 13th April 2011.[30]

Relevant letters and emails to ensure no question of any doubt surrounding the facts in this matter back up all "audit trail" events.

1.*Highlighting the rent review process from ETI was totally unacceptable*

1.After chasing the Regional Business manager for several months to start the rent review proceedings, I receive a letter dated 30th June 2010 (around 11 weeks before rent determination date) to move my rent by 170%.

2.Second rental figure of 100% increase is given to me on July 15 2010.

3.I get the "proper" detail of the 'working out' of this 100% increase from the rent controller of ETI on August 4 2010 (seven weeks before the rent determination date).

4.I start the PIRRS action on October 11 2010—pay my fee on December 23 2010—ETI eventually pay their fee around 22 January, further delaying the process of PIRRS.

The timescales of this process are unacceptable—which were driven by ETI

The fairness of the rent bid is unacceptable—which were driven by ETI

2.*Rental increase proposal totally unacceptable on all 5 occasions of rent determination*

1.Initial rent proposal of 80 thousand (170% increase)—June 30 2010

2.Second rent proposal of 60 thousand (100% increase)—July 15 2010

3.Third rent proposal of 51 thousand (70% increase via calderbank offer)—August 31 2010

4.Verbal offer of 46 thousand from rent controller (53% increase)—September 16 2010.

5.ETI "Independent Valuer" bid of 52.5 thousand (75% increase)—March 9 2011

The outcome of the PIRRS rent determination was around 29% increase—considerably lower than any of the five rental offers from ETI. (April 13 2011)

---

[30] Ev not printed

3.*Alleged bullying from ETI towards Leaseholder & their own 'Independent Valuer' to achieve an unfair & unjust rental increase*.

1.Four of the five outrageous rent proposals from ETI over a period of three months would, in my opinion, appear to constitute bullying.

2.The divisional director of ETI wrote to me stating that the rent controller of ETI concurred with the Regional manager's assessment of rent, which was not true. (July 23 2010)

3.The independent valuer for ETI, stated that his work was being questioned by ETI during the PIRRS process.

RECOMMENDATIONS FOR ACTION

1.Employees for Pub Companies should not be involved in rental determinations without Independent input.

2.Code of practice for Pub Companies in relation to rent review timescales and transparency must be improved further.

3.Independant valuers cannot fulfil their roles if they rely on the business from Pub Companies and allow themselves to be undermined by the Pub Companies—This needs to be addressed by maybe:

Benchmarking within the Pub Industry to simplify workings of FMT.

Further work of sales per square footage of Pubs.

PIRRS to move forward to execute all rental determinations at a lower cost and a speedier timeframe.

COMMENT

As a "newcomer" to the Pub Industry as a leaseholder trying to run a small business, my experience over the last year has been nothing short of appalling.

My business and the business relationship with ETI has been put at risk and has left me "battered and bruised"—which was totally avoidable if the Pub Company had done its job right.

Unfortunately, as I have found out since this whole experience began, I am not alone in this kind of situation.

It must be noted that the Chief Operating Officer of ETI did visit me near the end of this saga to apologise, but still did not see what a fair rent was at my small village Pub.

In my opinion and through this experience, the real reasons for Pub closures (and I accept some had to close) are far too high rents and inflated beer prices through the Pub Companies.

Pubs are not just a potential small business opportunity for individuals or families, they are not just profit generators for Pub Companies, potentially at others expense, they are also "hubs of the communities" and an English tradition that can serve more good than any harm.

We need to understand the difference between what a traditional Pubs' role is versus the High Street liquor venue.—In my opinion we need to manage them totally differently.

Written evidence from licensees Unite the Union

With reference to the Business, Innovation and Skills Committee's call for evidence, we are pleased to be able to submit the following:

BACKGROUND

Unite is the largest trade union in Britain and Ireland with 1.5 million members, it is a union which stands up for equality and fairness for all. We are concerned over the total lack of equality and fairness operated within the pubco model, it is not acceptable and should not be tolerated in a modern society, it appears archaic and dictatorial. Unite is proud to be a part of the steering group for the Independent Pub Confederation and fully supports the recommendations and findings of the Business and Enterprise Committee report of 2008–09 and the Business, Innovation and Skills Committee report of 2009–10.

SUMMARY

It is imperative that a mandatory, statutory code now be enforced on this industry. The pubcos have consistently failed to sufficiently address issues and recommendations. It is evident that self regulation and self policing are not working to the benefit of this industry. The mandatory, statutory code must include:

— A genuine free of tie option with an open market rent review, following RICS guidance.

— Compliance with RICS rental valuation guidance.

— A guest ale right for those who choose to remain tied.

— Removal of the AWP machine tie.

1. The pubcos were investigated in 2004 by the Trade and Industry Select Committee, they were not given a clean bill of health and were found to be wanting, recommendations were made by the Committee. In particular we note:

— there was a need for an inexpensive and efficient system of arbitration or alternative dispute resolution to resolve disputes without imposing legal costs on either side (21);

— pubcos should advise their tenants of the average discounts they receive when purchasing beer from the breweries, how this compares to the free market discounts available and how much of their discount they are passing on to their tenants (22);

— the AWP tie should be removed (23);

— there should be clear guidelines for the rental valuation process and tenants should be provided with a comprehensive breakdown of how their rent was calculated including detail of the profit assessment and how the specific requirements of the lease conditions had been interpreted by valuers (24);

— the profit assessment should form an addendum to leases, with any subsequent review, to ensure transparency (25);

— Upward Only Rent Review (UORR) clauses should be removed from leases (26);

— the industry should develop a nation-wide register of rent reviews (27); and

— pubcos should support their tenants in attending training courses (28).

The main recommendation for an updated Code of Practice (COP) was accepted by the industry. The BBPA drew up a revised Framework Code of Practice which was published towards the end of 2005.

CONCLUSIONS

21. PIRRS has been set up, albeit six years late, for rental arbitrations, however considering that according to the BBPA survey 56% of existing tenants and 56% of new tenants were not even aware of PIRRS, this can hardly be called a resounding success. BIIBAS is concerned with Code of Practice breaches, however the COP's are weak and ineffectual and do not cover the myriad of problems encountered by lessees, we are concerned that the BII do not have the authority or teeth to deal with the pubcos. There is no satisfactory or effective dispute resolution service for other disputes which fall outside of rental or COP disputes.

22. some pubcos may advise their tenants of the discounts they receive, however they have failed to advise of the differentials between tied pricing and FOT pricing and how much of their discount they pass onto their tenants. The pubcos have claimed this would breach commercial sensitivity, we do not agree with this and maintain that the difference between FOT and tied pricing and the discounts earned by the pubcos and the discounts received by the tenants remains one of the more important issues.

23. The AWP tie remains in place and remains abused by the pubcos with the machine income still being taken into account when rental bids are made, this is not an acceptable practice.

24. Tenants are still not receiving a comprehensive breakdown of rental calculations as highlighted in the BBPA survey.

25. Profit assessments and subsequent rent reviews do not form an addendum to leases.

26. UORR clauses still form part of leases, whilst they remain on the contract the pubcos can and will enforce them to the naive or uninformed.

27. There is still no nation-wide register of rent reviews and considering the NDA's in PIRRS rent reviews remain shrouded in secrecy.

28. Considering 22% of new entrants did not partake in PEAT shows a certain lack of willing on the training issues.

It is concerning that the BBPA drew up a revised Framework Code of Practice in 2005 and in 2009 were having to revisit and improve. The 2005 Framework Code of Practice clearly failed miserably in addressing the imbalance in power between landlord and tenant.

2. In 2008 the Business and Enterprise Committee re visited the 2004 TISC hearing, it is clear that they did not expect to have to examine the industry from first principles rather than a simple check on the implementation of the TISC recommendations.

— Transparency—The Committee found that it was unacceptable that tenants were not being shown a breakdown of how their rent was being calculated (Para 45), they also recommended that there should be industry guidelines on the average costs of running a pub (Para 47).

— Trading History—Pubcos entering a commercial relationship with a new lessee should be required to share all the information on a pub's trading history with them (Para 54).

— Comparables—A system must be put in place to allow lessees to assess whether their rent is fair and in line with similar businesses (Para 58).

— Rent reviews—If rental is linked to RPI it should be done in a way which enables reductions when appropriate (Para 75).

— The Beer Tie—If the interests of the pubcos operating a tied system and their lessees were truly aligned, one would expect that pubcos would want a system in which the combination of rental costs and beer costs enabled their lessees to supply beer at a price which was competitive with other pubs. This does not seem to be the case (Para 87).

— Enforcing the tie—However we believe that where a measurement device is used to police this, it should be properly calibrated and subject to external verification. If necessary the Weights and Measures Act 1985 should be amended to ensure this (Para 98).

— AWP Tie—In 2004 the TISC concluded that "in our opinion, pubcos do not add sufficient extra value from their deals to justify their claims to 50% of taking from AWP machines. We remain unconvinced that the benefits of the AWP machine tie outweigh the income the tenants forgo and we recommend that the AWP machine tie be removed". That conclusion remains valid (Para 103).

— Benefits of the pubco tied model—Moreover the attraction of low cost entry should not be overstated (Para 115).

— Business support—TISC found that "the performance of business development managers (BDM) varied across the industry from excellent to dire". That conclusion remains valid. Moreover, some of our evidence suggests that this culture is not limited to BDM's but can reach further up a company (Para 120).

The BBPA have re-written their Framework Code of Practice.

CONCLUSIONS

Para 45—It is clear that this has not been sufficiently addressed.

Para 47—There is still no industry guidelines acceptable to both parties.

Para 54—It is clear from the BBPA survey that the pubcos are still failing to supply trading information.

Para 58—There is no system in place.

Para 75—There is no system which allows for reductions in RPI rents.

Para 87—It is clear that the pubcos and their tenants remain unaligned.

Para 98—It remains clear that there is not sufficient or quantifiable proper calibration or external verification.

Para 103—the AWP tie remains in situ for a substantial number of tenants and remains abused by the pubcos with the AWP income being taken into account in rental bids.

Para 115—The attraction of low cost entry remains over stated.

Para 120—Bullying and intimidation remain rife and still is not restricted to just the BDM's and does reach further up the companies. Financial support is still not being offered to those who need it.

We maintain that the 2010 BBPA Framework Code of Practice does not address the core issues of contention between landlord and tenant and completely fails to address the imbalance in monetary gain for input. The Framework Code of Practice will not produce an equitable, fair and balanced relationship between landlord and tenant. It is imperative that a mandatory, statutory code now be enforced on this industry. The pubcos have consistently failed to sufficiently address issues and recommendations. It is evident that self regulation and self policing are not working to the benefit of this industry.

RECOMMENDATIONS:

Mandatory, statutory code to include but not be restricted to:

— A genuine free of tie option with an open market rent review, following RICS guidance. This would ensure that the industry does police itself.

— Compliance with RICS rental valuation guidance. To prevent circumnavigation by the pubcos.

— **A guest ale right for those who choose to remain tied**. To help the small and microbrewers and to aid competition.

— **Removal of the AWP machine tie.**

FURTHER RECOMMENDATIONS

An independent dispute resolution service to tackle disputes between landlord and tenant, these disputes should not be restricted to rental or COP disputes.

The Weights and Measurements Act 1985 requires amendment to include beer monitoring equipment.

The industry must ensure that it agrees on and delivers guidelines on the average costs of running a pub.

The industry must ensure that it delivers a nationwide register on rent reviews and rental levels, to ensure honesty and transparency.

The removal of UORR clauses to prevent abuse.

20 June 2011

Written evidence submitted by Nigel Wakefield

The RICS have, after considerable deliberations, produced a very workable set of Guidelines in respect of rental valuations.

I was invited to the RICS to discuss my views and thoughts over the failure of the last set of Guidelines to control the Industry.

It would now appear from my information that certain companies are trying to circumvent the latest Guidelines, which if successful, will encourage other companies to follow suit.

A number of us have always pushed for one Code of Practice enforceable by legislation and law, the BII were asked to Police the Industry and took the path of asking all companies to submit their individual COP's, leading to a hotchpotch of variations, the decent operators a single COP will not affect them, the ones that all the complaints are being made about will have problems.

These companies are now trying to avoid using the new RICS Guidelines because the loopholes that they used to continually ratchet rents higher to achieve enhanced estate valuations have been blocked in the main.

The points that I raised to the RICS are common sense business points in respect of Rental Valuation.

The use of FMT (Fair Maintainable Trade) has been consistently used as a reason for Pub Co's to raise rents on the basis that the lessee/tenant was underperforming, regardless of whether they were or not, the theoretical FMT demands have always been far in excess of the true economics of the available business.

Business is finite and the use of overestimated FMT assumes that business is infinite, the latest projections show that growth is minimal and in other sectors falling, if the total national over estimation was collectively added up we would find that the industry would require a considerable number of new breweries to satisfy the overall demand, a number of senior people in the industry agree with this thought.

Previously the RICS Guidelines ensured that a pubs existing business was factored in to the calculations for FMT, the existing business is its market share at that time and any growth is in the majority of cases, even more so in a recession, will be taken from a neighbouring business, no attempt is made to reduce the rent or rates when this occurs. The use of the details of the existing business was dropped some years ago supposedly under the RICS TRVG Chairmanship by Rob May (Chief Rent Negotiator for Enterprise Inns), he described himself on all paperwork as Pub Expert rather than a senior member of Enterprise Inns, causing an a large part to the problems that the industry has been forced to deal with.

The use of FMT without reference to existing business, does however, effectively ratchet rents and rates higher at every turn.

The use of Comparables does exactly the same, where so called similar pubs within a ten mile radius are quoted for their rental levels, normally cherry picked. If Comparables are used every leased pub, possibly up to a five mile radius should be factored into the equation, whether closed, open or under management, this will reflect the economic situation of the area.

Because of this massive over estimation of FMT by certain companies, not only are the rents unsustainable but there is no chance for the majority of licensees being able to achieve this fictitious level of business.

The RICS have reinstated the need for existing business to be factored into the equation.

Pretty well all leases and Codes of Practice are subject to using the RICS Guidelines, however certain companies would appear to be stepping back from using RICS members and are insisting that their BDM's and Area Managers conduct negotiations, relying on the naivety of the lessee to accept their findings rather that use the RICS Guidelines, in certain instances the BDM's had no knowledge of these Guidelines.

The BII have had many complaints about breaches of the COP's, one company is alleged to account for 70%, but because of so called confidentiality this information is not accessible, it would be very useful if the Committee asked a for details of all complaints regarding breaches of COP's from the BII before the Committee convene, whether correct or not, because a number of complaints do in fact fall outside the COP's, this would give a clear insight as to the extent of the problem, with the names of the companies involved and numbers of complaints.

When I met the Director of Valuations and his colleagues at the RICS, I suggested that rents should fall within the range of 6–8% of Turnover, at a recent Arbitration, after due consideration by the Arbitrator of all the facts the rent was set at 8% of T/O.

The Pub Co's supposedly work on a 50/50 Divisible Split on profits, sadly they do not include the discount that they receive from the suppliers/brewers within this divisible split, if this figure, less a 5% of the discount handling charge for the paperwork side, 95% of the brewers discount would bring many pubs back to solvency, the rent would then fall between my suggested figures.

Should the tie be removed, except for brewers selling their own beers within their tenanted outlets, rents should be at normal commercial levels within my suggested figures.

Unfortunately the Inland Revenue have benefitted by these excessive rents in many cases, again with scant consideration to viability, since rates are linked to rents.

I had an in depth discussion with a Senior Inland Revenue Rating Valuer, he agreed after consideration, that my points were totally correct.

The 70% of complaints to the BII are supposedly from Enterprise Inns, but this is unconfirmed, the BII should be able to clarify exactly and would assist the committee greatly in their discussions.

19 May 2011

Written evidence submitted by Paul Wigham

INTRODUCTION

We operate 32 pubs and bars in the South East of England. The business in various forms has traded since the mid-nineties with various forms of lease and tenancy agreements. The estate is entirely leasehold with agreements that are mainly tied for beer & cider supply. The sites, which are mainly suburban community or out-of-London high street, are wet led with food contributing less than 5% of income. The makeup of sites and their landlords, on a variety of different agreements, is as follows:

	Long Leases	*Shorthold*
Enterprise Inns Plc	14	2
Punch/Spirit Group	6	2
Scottish & Newcastle Pub Enterprises ("SNPE")	3	3
Free of Tie	2	0
Total	**25**	**7**

In addition we have operated 25–30 other leaseholds over the last 10 years that have been sold or disposed of. We have a broad picture of the landlords and agreements across the sector including free of tie, private rental market, and product pricing.

EXECUTIVE SUMMARY

ES1 We believe that all parties in the pub industry have started to make moves to bring changes to previous inequitable practices. We welcome in particular the RICS guidance which gives clarity to some rent valuation issues.

ES2 We remain disappointed on a number of matters. In particular:

(a) The pace of change remains slow. Pub companies naturally wish to protect their profits and are therefore reluctant to see dramatic movements that would impinge upon these.

(b) Whilst the concept of a code of practice framework is good, we believe that the codes do not extend far enough and we believe that BBPA is not the appropriate body to control the framework, given their interest conflicts.

(c) In spite of undertakings previously given, there is no free of tie option available tied lessees at open market valuation.

(d) The position regarding machine ties remains unacceptable. Pub companies still effectively rentalise machines and they still get a larger share of the takings than they admit.

(e) Pub companies are reluctant to follow RICS guidelines.

ES3 We have made recommendations at the end of each sector. The key items are:-

(a) BII takes over responsibility for the management and review of code framework.

(b) Tenants be offered a genuine free of tie option at open market rental valuation.

(c) The tie to machines be released but pub companies be allowed to include the income for the purposes of rent setting.

(d) Increased trading data disclosure for all rent P&L's including benchmark data.

SUBMISSION DETAIL

I have set out our submission in response to the topics raised in Announcement 61 on 8 June 2011.

1. *If the BBPA and IPC are now in dialogue and if so how this is progressing*

1.1 This is not a matter upon which we can comment, and I am sure it will be addressed in the submissions by BBPA and IPC.

2. *Whether the Pub Companies' individual Codes of Practice are robust enough and whether the major pub companies have built upon the de-minimis requirements of the BBPA's Framework Code*

2.1 It is our opinion that these codes are not the effective tool that people have been led to believe. In many instances, they are not effective for either party.

2.2 The framework was designed by the BBPA following unsuccessful mediation. The terms included in that were the minimum that the BBPA wanted to offer to placate BESC. The pub companies that we deal with have different forms of these but there are no recognisable additional obligations beyond the de-minimis requirements. We do not believe that BBPA are the correct organisation to maintain the framework.

2.3 These codes were never robust enough and we never expected them to be robust on the principle that "turkeys do not vote for Christmas." The issues that we see are:

(a) The issue of legal enforceability was never supported or addressed, leaving tenants exposed to successors in title.

(b) The codes do nothing to address the inequity of the share of the benefit from the property, which is the cornerstone of RICS valuation methods for pubs. The BBPA code states that landlords must tell tenants how much they are going to charge them for beer and wet products, which seems like a "given" that anyone would expect in a commercial agreement. There is no suggestion of comparative pricing and there are no options to move to a free-of-tie lease with an open market rental valuation.

(c) The code states that the pub companies will be clear on treatment of AWP. They are clear but it is of no financial benefit to the tenant that they are simply told what the landlord will take.

(d) The codes do nothing to address the position of current tenants. Many tenants entered into agreements based upon a division of profits that was inequitable and many of the rents set in 2006–08 are still current in spite of the altered economic climate. The codes make reference to talking to the landlord in times of difficulty, but there is no genuine process of change.

(e) These codes of practice are only beholden upon members of BBPA. Not all tied pub landlords are members of BBPA and membership is not mandatory. Therefore the adoption of an accredited code is effectively optional.

RECOMMENDATIONS

2(a) The ownership of the Framework Code passes to BII who are a more independent organisation capable of implementing a fairer and more effective framework.

2(b) BII carry out an immediate review of the terms, followed by triennial reviews of those terms.

2(c) The requirement for compliant codes to be extended to all pub companies and not just BBPA members.

2(d) The adoption of the codes be made legally binding upon successors in title.

2(e) The codes include an option for a tenant to move to a free-of-tie agreement at an open market rental valuation. This option be extended to existing tenants in a reasonably short time frame.

2(f) Pub companies be forced to declare their benefits under machine supply terms where tied.

2(g) Machine ties to be removed from all agreements in excess of 5 years but the income to be assessed and included in rent setting and review.

3. *If the Codes of Practice are being complied with*

3.1 We received the Enterprise and Punch codes in early Winter of 2010. We received the SNPE codes in Spring of 2011. It needs a period of time to see how they comply but the codes are not onerous so it ought to be simple. To date, we have had one code breach regarding rent review procedure with SNPE, which was addressed via BII. We have another code breach on another pub landlord but as yet we have not reported it.

4. *How the BII is policing the codes and whether this is effective*

4.1 BII will probably provide statistical evidence on policing. We note with concern that the fairness of the codes is not considered when reviewed. BII will only comment on compliance of individual pub company codes within the BBPA framework. The fact that the code may or may not be fit for purpose is not addressed.

4.2 We think BII have checked code compliance properly. The only matters that we note are the failure of the SNPE code to provide a complaints procedure regarding BDM's in line with clause 35 of the BBPA framework and clause 34 has not been addressed by any of the codes.

RECOMMENDATION

4(a) The responsibility for setting and reviewing codes of practice be passed to BII per Recommendation 2(a)

5. *The enforceability of the codes*

5.1 Our view is that basically, these are not enforceable in any meaningful legal sense.

5.2 There is no simple mechanism to ensure enforceability upon the landlord or his successor in title. It would seem relatively straightforward for the pub landlords to issue deeds of variation to agreements that cover the essential matters of the codes such as the removal of upward only rent review clauses and the procedures regarding rent setting in line with RICS guidance.

5.3 As the codes stand, they are capable of any amendment by the landlord at any time. The only safeguard is that they need to comply with the BBPA framework in order to comply with BII accreditation IF the landlord is a member of BBPA.

RECOMMENDATIONS

5(a) BII agree a "key clause" deed that can be used in conjunction with any pub company agreement.

5(b) Amendments to codes only implemented with the consent of BII as the arbiter authority.

6. *If AWP machines are now being treated more fairly and tenants are being given a genuinely free of tie option*

6.1 We believe that tenants are not being given a genuine free-of-tie option on AWP machines, nor are tenants being treated more fairly. This matter was addressed in 2004 by TISC but the pub companies have chosen to ignore the recommendations.

6.2 In the situation of new agreements and rent reviews, the landlords say that they have removed the income from the divisible balance of profit. That is *technically* true. However, they have then added it in again below the divisible balance and either rentalised it OR amended the divisible percentages to compensate for the loss of income.

6.3 There is one further issue in terms of fairness that we believe has been overlooked. The basic premise of a tied machine agreement is that the owner of the machine collects the cash, deducts his rent and collects duty, and the proceeds are shared (usually 50%) basis between tenant and landlord. The process is set out in lease agreements.

6.4 However, the common practice is that the pub companies ask machine owners to set an artificially high price and the owner then pays over further money to the pub company to increase the landlord profit. It is implied in the lease agreements that net income is shared on an open basis with the landlord, when in fact it is not. This would not happen in a genuinely free-of tie market and ought to be abolished as a practice.

6.5 Seventeen of our sites are free-of-tie for machines and the remainder tied. In the worst example of Punch, we are charged a weekly rent of £87.99 for machines for which we pay less than £45 per week in the free market. It is inconceivable that in our small estate of machines, we have negotiated rents that less than estates of thousands of pubs.

RECOMMENDATION

6(a) We refer you to Recommendations 2(f) and 2(g) above that address this issue. The release of machine income from ties will prevent malpractice.

7. *The treatment of flow monitoring equipment*

7.1 We do not feel qualified to comment on this topic.

8. *The advice being provided by BBPA to prospective publicans*

8.1 We know of no mechanism by which we would obtain advice from BBPA and we would be wary of the validity or objectivity of any advice given. In the course of agreements over years, no-one has ever mentioned advice available from BBPA.

9. *The effectiveness of the new RICS guidance on pub rental valuations and whether it provides clarity on the principle that a tied tenant should be no worse off than a free of tie tenant by defining what constitutes a countervailing benefit*

9.1 The new RICS guidance is by its nature "new" and we are yet to see it working in practice. We welcome the guidance and we believe that if it is followed by the pub companies, then many of the issues regarding the fairness of the share of the divisible balance from pub agreements would be addressed.

9.2 However, we have not seen this guidance followed or introduced in our dealings to date. We have 7 rent reviews with different landlords in various stages of process and hitherto no BRM or other pub company official has mentioned it. There may be a training or education gap here for the pub companies.

9.3 Enterprise and SNPE codes both refer to it and state that they will follow RICS guidance that is produced. Punch state that they will "adopt recognised valuation methods used in the open market." That does not bind them to the specific pub valuation guidance as they could use another method.

9.4 RICS guidance is clear on the statement that a tied tenant should be no worse off than a free of tie tenant. Where we are not clear is what a countervailing benefit is. We find no benefit from our ties in terms of service, guidance, facilities or purchasing opportunities from pub company deals. At no time in 20 years has a pub company been able to offer us free-of-tie wet product at a price preferable to our own open market sourcing. We can only assume that RICS see the tie value being reflected in rent but we know that to be patently untrue at the moment.

9.5 We have a clear example of the tied/free of tie disparity and therefore an assessment of what value those countervailing benefits must achieve. We operate two properties within three miles of each other in West London with similar demographics. The facets of the properties are:

- One is tied for beer and cider with a pub company, the other is free of all ties with a private landlord.
- The two sites have identical branding, are similar in fit out, and are the same size.
- Neither sells food although both have kitchens, albeit the tied kitchen is on the first floor which means that would cost more to run.
- The tied site has a barrelage of 444 barrels, the free-of-tie site 421.
- The tied site rent was last reviewed in 2010, the free-of-tie site in 2007 when values were stronger.
- The tied site receives a composite barrelage discount of £114 per barrel, whereas the free-of-tie site discounts are generally in the range of £180–£210 per barrel on key products.
- The rent on the tied site is £56,500, the free of tie site is £45,750 including the benefit of income from a private flat at £9,925 per year making the net rent £35,825.

Of the two sites, the costs of rent and draught beer & cider of the free-of-tie site are around £50,145 less than those of the tied site. That would therefore need to be the value of the countervailing benefit of dealing with the pub company. It seems inconceivable that we would see this value of benefit and at no time has any pub company attempted to tell us what the countervailing benefits or their values are.

RECOMMENDATIONS

9(a) Pub companies be forced to comply with RICS guidance and principles.

9(b) Pub companies should train their staff in the principles of rent setting guidance within the current guidance.

9(c) Pub companies provide evidence of their countervailing benefit such that the comparative value of the tied agreement may be assessed against a free-of-tie agreement on an open market rental valuation basis.

10. *The creation of an industry benchmarking survey*

10.1 We welcome industry benchmarking surveys because they enable the industry in general to make more informed decisions and allow measurement of pubs against the sector in general. The ALMR Benchmarking Survey is the main survey that we are aware of and the BBPA framework and RICS guidance refer to it. The data is in its fifth year of production and therefore holds high credibility. We are also aware that BBPA produces data for its own members with limited distribution. Some of this data includes valuable information on sector barrelage that reflect the movements in Fair Maintainable Trade.

10.2 Our conclusion is that the data is there to be seen if made available and it is good data. However, there are two issues:-

(a) It is not easily available to tenants or new entrants. Members of ALMR are entitled to the benchmarking reports and ALMR makes it available to the wider public, but a tenant would need to know how and where to find it. Similarly, the volume information released by BBPA is not widely available. In our opinion, it should be. Note that prima facie, we cannot find any reference to benchmarking surveys in any of the codes of Enterprise, Punch or SNPE.

(b) When the matter of benchmarking is raised with the pub companies in the course of a rent review or at the start of a new letting, the pub companies do not want to recognise the information. The issue is that there is a distinct reluctance to accept data that will reduce rents and impinge on profits.

10.3 Our own experience is that costs are understated by the pub companies. This is a result of production theoretical rent P&L's using a limited number of generalist cost categories that mask the true level of individual costs experienced by the business. In a recent rent negotiation, the landlord devoted 28 lines to sales and margin on wet products, but only 8 on the costs that can swallow up 80% of the margin on sales.

10.4 These are some examples of what we have seen recently:

— BBPA figures show that on-trade beer sales have declined by around 28% in the last five years, which therefore implies that the FMT barrelage has fallen by a similar amount. Yet in recent reviews, we have seen reluctance to accept that any trade fall could have occurred, which must be counter-intuitive.

— The ALMR Benchmarking survey shows that the average running costs for pubs in our profile are around 42–43% of turnover. This figure is consistent with the previous five years' data and we believe it is valid as it matches our own actual cost percentages. However, we have not seen any landlord rent P&L where costs are anywhere near that level. The average seen is around 34%.

— In one particular pub company rent model for a pub in the London Borough of Bromley, the cost percentage was 27%. With London staff costs and London rates, that is simply impossible.

— We received a rent model with Sky cost at £4,000 per annum. That is not even possible on the Sky rate card.

RECOMMENDATIONS

10(a) The pub companies extend their "shadow P&L" to include a higher level of cost detail. This could be set out in agreement with BII.

10(b) Shadow P&L's to include benchmarked cost percentages to show tenants or potential tenants market comparatives that will allow fairer assessment.

10(c) Pub companies provide direct access for tenants to ALMR Benchmarking and BBPA volume data.

11 *The availability and effectiveness of complaints procedures and an independent disputes mechanism*

11.1 We referred earlier to the complaints procedure on BRM's which are only covered in two of the three codes that we have seen. All of them have a statement saying that effectively, a tenant should talk to the company if you have a problem. That seems really weak.

11.2 We believe that the PIRRS system appears to be working although we are yet to use it ourselves. We have reported one code breach and that was addressed by BII effectively.

12. *The guidance from BII on the type of pub leases available and what the options mean in reality to prospective lessees. This includes free of tie, tied pricing and discounts as well as the business support countervailing benefits available*

12.1 We are aware that BII have published information on the type of leases available. However, it does not give detail of all leases in all sites, how to negotiate agreements, discount options, etc. and nor could it as the types of companies and agreements in the market are so wide and varied. The information is intended primarily to promote the industry and the training aspects of BII.

12.2 We note with concern that there are no obvious "health warnings" included in the BII guidance. It focuses more on what can go right than what can go wrong and we believe that tenants coming to the industry need to enter with eyes wide open.

RECOMMENDATIONS

12(a) BII set out more warnings about the financial pitfalls that may be ahead for new entrants.

12(b) The pro-forma or shadow P&L from pub companies include a pension-style example of financial result if projected FMT and turnovers fail to meet the level set by 5%, 10% and 20%.

15 June 2011

Written evidence submitted by Robert Wynne

I have experience of running both free of tie and tied pubs over the last 11 years and currently operate three pubs in Blackpool. Over the last 11 years I have operated up to six such venues. I also have a restaurant which we have owned and run successfully for 25 years.

I took on my first "part tied" pub in 2000. The tied pub model was flawed from the start, but did just about work when times were good, inflation was low and trade was growing. In the current market the model is completely broken and is causing hardship, family breakdown, bankruptcy and total despair for many of the tenants.

I have witnessed at first hand the miss selling of tied pubs to prospective tenants, which in recent years has grown worse not better. Approximately £25,000 will secure you a pub, which is just about what many people will have saved, be able to borrow on credit cards, or may have received as a redundancy or pension payout after a life-times hard work. In general the new tenant will probably manage to last around two to three years before losing the pub, usually owing money to many people and organizations. By this stage they will have lost everything.

During their two or three years they will gradually shed all the pubs staff as they try to make ends meet, they will end up working from early morning doing the cleaning until the last customer has left. They will have no time or energy left to market the venue and no money to maintain it to a good standard. Their costs will steadily ramp up as the rent rises with RPI and as their already inflated purchase prices go up above inflation. Their lives will fall apart under the strain. Other non tied venues will open nearby, or former tied venues will be sold off become free of tie and their customers will leave for cheaper beer.

I have been very lucky to have started in business elsewhere and still had resources to just about survive as the full horrors of the tied pub model enveloped me and my family. I now have two free of tie pubs and one tied pub, plus the restaurant. The tied pub is the first one I took on in 2000 and has various elements that have enabled that business to survive. There is no RPI increase in rent, there is no tie on the machines, there is no tie on soft drinks, wines or spirits. If there was this pub would now be closed.

In my free of tie venues my headline price for lager is £1.95 a pint; in my tied venue my headline lager price is £2.80. However because of the very different price that I can buy my products my GP (Gross Profit) at my free pub is 56% my GP at my tied pub is 52%. In a very price conscious market like Blackpool it is impossible to increase the cost of a pint to keep up anywhere near the increasing cost of the supplies from the Pubco.

I have colleagues in the pub trade locally who are right on the verge of disaster. Despite reducing profits their rents have risen consistently and recently risen dramatically in line with RPI. They ask for help and get nothing but patronising words telling them that they should run their businesses better. These are good operators, not necessarily brilliant, but people who are intelligent and hard working and who cannot make anything but an ever increasing loss.

Eventually the market will take care of the problem as tied pubs shut for good, but this will take another 10–15 years during which time many more lives will be wrecked and many historic and popular pubs will close forever. The Government could step back and say that the tenants should have known better, but believe me all of them have been miss sold their pubs.

I managed to extricate myself from several tied venues, but I watched as Pubco BDM's dramatically exaggerated business opportunities and glossed over costs and legal requirements to secure replacement tenants. These BDM's couldn't care less about the business ability of theses tenants, what experience they had, or what reserves they had to fall back on. As long as they could get the cash deposit and the first bit of rent they were happy. They would often set them up with a very low start up rent which would ramp up quickly, they would allow them to buy the fixtures and fittings over a couple of years, they would even defray the VAT element of the initial transaction for a month.

The new tenants were generally too excited about the prospect of owning a big pub to ask any questions.

In enticing new tenants, Pubcos show estimated takings figures which are often not too far from reality. However they show costs that are completely unrealistic, basing items like repairs and renewals on a percentage of the gross take, rather than the reality of the costs required to maintain large, old buildings and keep up with the ever increasing statutory requirements of building maintenance.

Estimates in all other areas are also kept artificially low, especially the potential cost of staff. Figures are produced showing that tenants will make around £50,000–£70,000 per year, when in reality they will be lucky to break even.

Because of the positive early cash flow in a pub, the problems for the new tenants do not become apparent for several months, from then on the tenants try to reduce their costs by cutting staff, entertainment, and maintenance. The pub enters a vicious circle of decline.

I have kept specific evidence relating to many of these matters, including what happened when I asked for help, the recent attempted miss selling of a pub and many other matters. All of this I would be happy to share.

Recently I bought a former tied pub back from a property developer, who had bought it from a Pubco at a bargain price. This Pub had existed since 1833 (before Blackpool was even a Borough) The Pubco had bought it from Bass in 2001 and between then and 2008 had had four failed tenants and numerous management companies filling in the gaps. Each of these tenants had lost all their money. The Pubco said this was a failed pub and sold it for development. I bought it and reopened it as a free of tie pub. It is set to make £35,000 profit this year and now employs six full time staff.

The company that I set up to operate this pub is called "The Unchained Pub Company".

I urge the Committee to attempt to free all tied pubs of their chains.

Printed in the United Kingdom by The Stationery Office Limited
10/2011 015057 19585