While it would be good to have PICAS available quickly that will depend on identifying suitable professionals who are competent and willing to act as independent arbitrators/mediators. We will need to establish the processes before we can approach potential candidates. We will obviously do our best to deliver as quickly as we can.

Best Regards,

Martin Rawlings

---

Dear Martin,

Many thanks for this, I will discuss it with our lawyers here and get back to you.

I'm glad to hear that you're fully exploring the guest beer issue as well.

On PICAS, good to know that the BII and FLVA are being prioritised: as discussed, it's important to us to have clarity on this by the end of next week. Obviously if there's some indication of agreement from others such as ALMR then all the better. Please do let us know if you hear anything from them that makes you less sure that they will ultimately come onside. Finally on timings - when you refer to the 'processes and protocols' being in place by the end of the year, does this mean that PICAS will accessible to tenants/lessees from the start of the New Year?

Regards,

---

Dear

Please find below the response we have received from Robert Howe QC in respect of the questions raised on the legally binding nature of the Industry Framework Code.
Robert's response appears to unequivocal on the points raised but should you need to communicate directly with him I am sure that he would be happy to talk to you. I can forward contact details should you decide to do so.

You will see that we have sought further opinion on the competition issues raised by guest beer provisions albeit that the TISC Report, sent to you previously, confirms the advice we have received over these questions. We should receive something on this shortly.

Further to our conversation on PICAS I am looking to complete the discussion with the BII and the FLVA to ensure that they agree in principle to take this forward to completion asap and in event to have the processes and protocols in place by the end of the year.

Best Regards,

Dr Martin Rawlings
(Director Pub & Leisure)

From: Robert Howe QC [RobertHowe@blackstonechambers.com]
Sent: 28 October 2011 08:38
To: Martin Rawlings; Jonathan Smith
Subject: RE: TRIM: Report for the Minister

Dear Martin and Jonathan,

Derek has passed these emails on to me. I understand that you have found someone to deal with the competition issues.

On the legality issues, I think that, in the light of my previous analysis, and our discussion at the conference, the position is fairly straightforward:

1. I do not think that I have seen the “note from BBPA” referred to in para 1 of the Legal Annex. However, they are correct that I draw a distinction between new L/Ts and existing L/Ts:
   a. With new L/Ts, the Code would be incorporated by reference into the L/Ts. It would therefore form part of a single agreement between the PubCo and the L/T, which contained the terms of the Code. There would be no collateral or additional contract relating to the Code.
   b. With existing L/Ts, the agreement to apply the terms of the Code would not form part of the existing L/T. It would be a separate agreement, distinct from the L/T.

2. They have raised a query about whether, with existing L/Ts, an agreement to apply the Code would properly be called a collateral contract or a supplementary contract. This is a question of terminology rather than substance. I doubt that it matters much what label is applied. However, strictly speaking, in some contexts, a collateral contract can mean a related contract which derives its consideration from the fact that the parties have agreed to the main contract. I concur that this is not the position with an agreement to apply the Code between a PubCo and an existing lessee/tenant, as the parties have already entered into the L/T. So, if
matters, I agree that the best label to be applied to the contract to apply the Code in those circumstances would be a "supplementary contract", rather than a "collateral contract".

3. As for the consideration to support such a contract, we discussed this in conference. The Code imposes obligations not only on the PubCo, but also on the lessee/tenant (particularly in relation to assignment of L/Ts). Accordingly, if a lessee/tenant accepts the PubCo's standing offer to apply the Code, either expressly or by conduct (see my previous note), then there is consideration to support that agreement, contained in the terms of the Code itself.

4. Accordingly, as to para 4 of the Legal Annex, I can confirm my view that:

a. With new L/Ts, the Code can (with appropriate drafting) be incorporated by reference into the L/T. The consideration provided by the lessee/tenant for that will be the payment of the rent, and the assumption of all the other obligations on the lessee/tenant provided for under the L/T.

b. With existing L/Ts, the consideration provided by the lessee/tenant to support the agreement to abide by the terms of the Code is the obligations imposed on the lessee/tenant contained in the Code itself.

Kind regards,

Robert.
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From: [Name]  
Sent: 28 October 2011 14:21  
To: Martin Rawlings  
Cc: Brigid Simmonds  
Subject: TRIM: RE: Report for the Minister  

Dear Martin,

Many thanks for this, I will discuss it with our lawyers here and get back to you.

I'm glad to hear that you're fully exploring the guest beer issue as well.

On PICAS, good to know that the BI and FLVA are being prioritised; as discussed, it's important to us to have clarity on this by the end of next week. Obviously if there's some indication of agreement from others such as ALMR then all the better. Please do let us know if you hear anything from them that makes you less sure that they will ultimately come on side. Finally on timings - when you refer to the 'processes and protocols' being in place by the end of the year, does this mean that PICAS will accessible to tenants/lessors from the start of the New Year?

Regards,

From: Martin Rawlings  
Sent: 26 October 2011 14:03  
To: Brigid Simmonds  
Subject: Report for the Minister  

Dear [Name],

Please find below the response we have received from Robert Howe QC in respect of the questions raised on the legally binding nature of the Industry Framework Code.

Robert's response appears to unequivocal on the points raised but should you need to communicate directly with him I am sure that he would be happy to talk to you. I can forward contact details should you decide to do so.

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Further to our conversation on PICAS I am looking to complete the discussion with the BI and the FLVA to ensure that they agree in principle to take this forward to completion map and in event to have the processes and protocols in place by the end of the year.

Best Regards,

Dr Martin Rawlings  
(Director Pub & Leisure)  

From: Robert Howe QC  
Sent: 28 October 2011 08:36  
To: Martin Rawlings; Jonathan Smith  
Subject: RE: TRIM: Report for the Minister  

Dear Martin and Jonathan,

Derek has passed these emails on to me. I understand that you have found someone to deal with the competition issues.
On the legality issues, I think that, in the light of my previous analysis, and our discussion at the conference, the position is fairly straightforward:

1. I do not think that I have seen the “note from BBPA” referred to in para 1 of the Legal Annex. However, they are correct that I draw a distinction between new L/Ts and existing L/Ts:
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   b. With existing L/Ts, the agreement to apply the terms of the Code would not form part of the existing L/T; it would be a separate agreement, distinct from the L/T.

2. They have raised a query about whether, with existing L/Ts, an agreement to apply the Code would properly be called a collateral contract or a supplementary contract. This is a question of terminology rather than substance. I doubt that it matters much what label is applied. However, strictly speaking, in some contexts, a collateral contract can mean a related contract which derives its consideration from the fact that the parties have agreed to the main contract. I concur that this is not the position with an agreement to apply the Code between a PubCo and an existing lessee/tenant, as the parties have already entered into the L/T. So, if it matters, I agree that the best label to be applied to the contract to apply the Code in those circumstances would be a “supplementary contract”, rather than a “collateral contract”.

3. As for the consideration to support such a contract, we discussed this in conference. The Code imposes obligations not only on the PubCo, but also on the lessee/tenant (particularly in relation to assignment of L/Ts). Accordingly, if a lessee/tenant accepts the PubCo’s standing offer to apply the Code, either expressly or by conduct (see my previous note), then there is consideration to support that agreement, contained in the terms of the Code itself.

4. Accordingly, as to para 4 of the Legal Annex, I can confirm my view that:
   a. With new L/Ts, the Code can (with appropriate drafting) be incorporated by reference into the L/T. The consideration provided by the lessee/tenant for that will be the payment of the rent, and the assumption of all the other obligations on the lessee/tenant provided for under the L/T.
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Kind regards,

Robert,

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06/12/2011
Dear

Neil has come back to me with the following statement

"The (BII) welcomes the intention to institute a formalized process for mediation and arbitration which has the potential to advance the initiatives taken by the BII and are encapsulated by the proposal to set up the Pub Independent Conciliation and Arbitration Service (PICAS). The BII supports the proposal in principle and will work with other partners to formulate and agree the processes necessary to commence the service as soon as possible as a matter of high priority for the industry".

I trust this is sufficient for your purposes. Neil And I will discuss with the FLVA early next week.

Best Regards,

Dr Martin Rawlings
(Director Pub & Leisure)

Dear

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Further to our conversation earlier I have forwarded your contact details to Brigid and to Martin Rawlings, our Director of Pubs. Martin is in Copenhagen but will call you around midday UK time if that is OK.

Regards

BBPA

British Beer & Pub Association

www.beerandpub.com

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From: 'Brigid Simmonds'

To:  'Brigid Simmonds'

Subject: RE: Free-of-tie

Brigid,

Thank you; helpful to know.

Innovation and Skills |

The Department for Business, Innovation & Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy.

BIS: Working together for growth

---

From: Brigid Simmonds <bsimmonds@beerandpub.com>
Sent: 26 October 2011 20:03
To: 
Subject: Fwd: Free-of-tie

This contribution might add to your knowledge on this subject!

Best wishes. Brigid

Brigid Simmonds
Chief Executive
British Beer and Pub Association
0207 627 9162
07710 485119

Begin forwarded message:

From: Andrew Tighe <ATighe@beerandpub.com>
Date: 26 October 2011 02:34:38 PM CEST
To: David Wilson <dwilson@beerandpub.com>, Brigid Simmonds <bsimmonds@beerandpub.com>, Martin Rawlings <MRawlings@beerandpub.com>
Cc: Katie Blower <KBlower@hanovercomms.com>
Subject: Free-of-tie

All,

I don’t know if we run the argument at all regarding the pressure to offer free-of-tie options but because of the structure and generosity of the PBD regime (worth £60 per barrel to brewers producing up to 5000 hectolitres), family Brewers will generally not be able to compete with prices offered by these companies in the free trade and even in terms of sales to pub cos. This is demonstrated by the fact that since PBD was introduced the number of micro-brewers has more than doubled from around 340 in 2002 to 770 in 2010 and.

06/12/2011
volumes have grown steadily year-on-year according to SIBA whilst the overall market has fallen. Clearly market access is not a particular issue! Having to offer free of tie would be a killer to many family brewers...

Kind regards

Andy

Andy Tighe

Director, Brewing

British Beer & Pub Association

t: 020 7627 9135

m: 07843 050871

www.backthepub.com

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06/12/2011
This contribution might add to your knowledge on this subject!

Best wishes, Brigid.

Brigid Simmonds
Chief Executive
British Beer and Pub Association
020 7627 9162
07710 485119

Begin forwarded message:

From: Andrew Tighe <ATighe@beerandpub.com>
Date: 26 October 2011 02:34:38 PM CEST
To: David Wilson <dwilson@beerandpub.com>, Brigid Simmonds <b_simmonds@beerandpub.com>, Martin Rawlings <M_Rawlings@beerandpub.com>
Cc: Katie Blower <K.Blower@hancorppr.com>
Subject: Free-of-tie

All,

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Kind regards

Andy

Andy Tighe
Director, Brewing

06/12/2011
British Beer & Pub Association

t: 020 7627 9135
m: 07843 050871
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06/12/2011
From:  
Sent: 26 October 2011 16:06  
To: [mailto:bsimmonds@beersandpub.co.uk]
Cc: Martin Rawlings; Simon Townsend; Roger Whiteside
Subject: TRIM: Report for the Minister

Brigid,

Great. I will come back to you on PICAS etc.

Best wishes. Brigid

Brigid Simmonds
Chief Executive
British Beer and Pub Association
020 7627 9162
07710 483119

On 26 Oct 2011, at 02:48 PM, 

wrote:

Brigid,

This is extremely helpful and I am sure will help to meet the Minister's concerns. Please thank Simon and Roger for me.

On another matter, I wonder if I could press you on timescales for each of the elements of the self-regulatory package? You have provided dates for some, but not for all.

- On legally binding code, you have said end of 2011.
- On the short improvements for the Code, you said 'agreement by November 2011' and I think we agreed in place by close 2011?
- Reaccreditation will begin in 2013.

However, when will PICAS and the PAS be established by?

Many thanks.

Department for Business, Innovation and Skills

The Department for Business, Innovation & Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy.

BIS: Working together for growth
Here is part two from Punch. As we discussed yesterday I think Punch and Enterprise are already doing a great deal for smaller brewers and there is quite a lot here for the Minister if she wishes to use it.

Let me know if you need more.

Best wishes. Brigid

Brigid Simmonds
Chief Executive
British Beer and Pub Association
020 7627 9162
07710 485119

Begin forwarded message:

From: Roger Whiteside <roger.whiteside@punchtaverns.com>
Date: 26 October 2011 10:15:53 AM CEST
To: Brigid Simmonds <brigid.simmonds@beerandpub.com>
Subject: RE: TRIM: Report for the Minister

Brigid

As you say the TRIM report deals with the main points head on. As far as Punch is concerned we have ramped up the flexibility that current and new lessees have to access a greater choice of Ales both tied and free of tie.

Existing Leases
- Access through our Finest Cask scheme to over 150 Ales with range changing constantly on rotation (over 1000 of our pubs are members of Finest Cask)
- Access to Local Ales delivered direct to Pub via SIBA subject to a minimum barrowing to safeguard
drinking quality
- Option at rent review or renewal to convert to our new Leases which allow us access to multiple free of tie
- Guest Local Ales on a buy one from us get one free of tie basis (buy 2 get 2 Free of tie, Buy 3 get 3 etc)

New Leases
- All of the above as standard plus we are open to negotiation for those wishing to specialise in Craft Ale to go completely free of tie for this category such as a Microbrewer.

Hope this helps - let me know if you need more.

Regards
Roger

---

55. Tenants, consumers, small brewers and their representatives suggested the perceived problems for small brewers could be mitigated by reintroducing the 'guest beer provision' of the Beer Orders. The Beer Orders allowed for premises, which remained tied to the six national brewers to sell a brand of draught cask-conditioned beer and a brand of bottled-conditioned beer from another supplier. The Director General of Fair Trading (DGFT) found in 2000 that only 1,700 of the national brewers' remaining public houses had guest beer rights. Whitbread's sale of its tenanted public house estates in 2001 meant virtually no national brewers' tenants still had guest beer rights. In light of this, the Government took the decision that the guest beer provision should be revoked with the rest of the Beer Orders in 2003.

56. We asked our witnesses what they thought about reintroducing a guest beer provision. Mr Thorley, Chief Executive of Punch, told us Punch still had around 500 public houses which retained a guest beer right in their agreements as a legacy of their former ownership by a brewer. However, in a survey of these tenants they found 'only 17 percent take advantage of that guest beer right [...] and 68 percent buy brands which we sell
57. This showed one of the most curious effects of the guest beer provision although it was included in the Beer Orders to aid small brewers it did not restrict national brewers, who were the tied suppliers to a public house, from selling beer independently and separately to that public house. This was due to the Beer Orders specifying a tied tenant could purchase from "whomsoever he may choose at least one brand of draught case-conditioned beer selected by him". This did not specifically preclude tenants from purchasing their guest beer from their brewer-landlord or another national brewer.

58. Mr Bott, Chairman of the Council for SIBA, told us that this 'loop hole' meant small brewers were no better off because of the Beer Orders: tenants simply substituted their tied national brewers' brands for another national brand "an awful lot of those licensees realised that instead of buying their John Smith's from the owning brewery they could buy Tetley's at the same price so they just switched". We were left out of that loop. We did not gain the opportunities to sell beer that we thought we would. Finally, a comment from imagine you are members are already doing this, so I feel this could be resolved by making the guest beer provision. It could (I know we have already discussed this), I wonder if it could perhaps be reworded to "Evolution of the AWP tie, including exploring a mechanism whereby tied machine Income might be removed from the calculation calculations."

3. In the 'Further Issues' section, the report no longer existed, it would not be legally possible simply to re-iterate the original guest beer provision. Nor would it be possible to extend it to pubcos as the Beer Orders were specifically directed at the six named national brewers. Further, introducing new legislation requiring the pubcos to offer tenants the choice of a guest beer could run counter to general EU competition policy by "effectively creating a market distortion. Regulatory intervention does not appear necessary, given that the market power of the large brewers is now more balanced with the purchasing power exerted by pubcos."

60. The DTI continued, "there is nothing to stop potential tenants, whether of pubcos or breweries, from making their detailed contract negotiations to secure rights to offer guest beers or rights to directly source some or all of their beer supplies, although this is likely to influence other terms of the deal. Likewise it is open for a pubco to adopt a policy of allowing their tenants to offer guest beers, possibly as a means of attracting suitable tenants; however these are essentially matters for commercial negotiation." 61. We concur in the DTI's conclusion: a statutory requirement on pubcos to allow all tied tenants the option of offering a guest beer for a particular type, for example, local, national and regional or national specialties, would run contrary to EU competition law and could lead to the UK Government being challenged in the European Courts.

However, the ability of public houses to offer a broader range of products, for example to satisfy demand for local products, is important in the interests of extending consumer choice. In the absence of the legislative option we recommend that pubcos allow the tenants more flexibility in their choice of the products they sell. The early adoption of such practices should afford more opportunity for small brewers to participate in the market.
us, as previously planned, by next Monday?
I will be around from 2.00pm till 6.00pm if you would like to discuss any of this.
Regards,

Legal Annex
1. The note from the BBPA doesn’t appear to reflect Robert Howe’s advice. Mr Howe draws a distinction between new leases and tenancies where he quite rightly points to the fact that the IFC could be incorporated by reference, and existing ones where there would be a need for a “collateral contract”. The BBPA paper appears to confuse the two, suggesting a collateral contract in both cases.
2. If, for a new lease, the IFC was incorporated by reference, the consideration (ie generally the money paid or other promise given in return for a benefit, which is an essential element of a binding contract), would be the payment of the rent.
3. Turning to the existing agreements, both the BBPA paper and Mr Howe’s advice refer to giving effect to the IFC through a collateral contract. It’s not clear to me why an agreement to abide by the IFC would be a collateral contract as opposed to a stand alone supplementary contract between the parties. More significantly, we cannot see what the consideration would be for this additional contract - we do not understand what it means to say the consideration is being provided by the IFC itself. As mentioned, consideration is an essential element of a binding contract.
4. I would therefore be grateful if you could explicitly confirm, following consultation with legal advisors, that:
- the IFC would be incorporated into a new agreement, by reference, and that the consideration will be the payment of the rent;
- that, in relation to existing agreements, whether or not a future decision by both parties to adhere to the IFC would amount to a collateral contract, there needs to be some identifiable consideration in that case and if so, what that is (particularly if it is not intended to be rent).
5. We would suggest that some explicit description of this be also included in the draft press notice, for example in a Notes to Editors Annex.

The Department for Business, Innovation & Skills (BIS) is making a difference by supporting sustainable growth and higher skills across the economy.

806: Working together for growth

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From: Brigid Simmonds [mailto:bsimmonds@beerandpub.com]
Sent: 21 October 2011 14:37
To: 
Subject: TRIM: Report for the Minister
Dear,
Thank you very much for your helpful suggestions this morning.
Please find attached a covering letter to the Minister and the Report. I think I have included everything you suggested – there were a number of other amendments today which are mainly about typing and grammar to make it clearer. I have also included a commitment to look further at rationalisation of WMP machines.
I would be grateful if you would consider our advice. I will be sending a copy to ALMR, SIBA and BII (we are seeing Neil Robertson at 4pm).
I look forward to having some initial feedback from the Minister early next week.
Have a good weekend.
Best wishes. Brigid
Brigid Simmonds
Chief Executive
British Beer & Pub Association
Market Towers
1 Nine Elms Lane
London SW8 5NQ
Telephone: 020 7027 9163
Fax: 020 7627 9179
Mobile: 07710 485119
bsimmonds@beerandpub.com
www.beerandpub.com
<image001.jpg>
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06/12/2011
From: I
Sent: 26 October 2011 13:48
To: Brigid Simmonds
Subject: RE: TRIM: Report for the Minister
Brigid,
This is extremely helpful and I am sure will help to meet the Minister's concerns. Please thank Simon and Roger for me.

On another matter, I wonder if I could press you on timescales for each of the elements of the self-regulatory package? You have provided dates for some, but not for all.

- On legally binding code, you have said end of 2011.
- On the short improvements for the Code, you said 'agreement by November 2011' and I think we agreed in place by close 2011?
- Reaccreditation will begin in 2013.

However, when will PICAS and the PAS be established by?

Many thanks,

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The Department for Business, Innovation & Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy.

BIS: Working together for growth.

---

From: Brigid Simmonds [mailto:bsimmonds@beerandpub.com]
Sent: 26 October 2011 12:57
To: 
Subject: FWd: TRIM: Report for the Minister

Here is part two from Punch. As we discussed yesterday I think Punch and Enterprise are already doing a great deal for smaller brewer and there is quite a lot here for the Minister if he wishes to use it.

Let me know if you need more.

Best wishes. Brigid

Brigid Simmonds
Chief Executive
British Beer and Pub Association
020 7627 9162
07710 485119

Begin forwarded message:

From: Roger Whiteside <Roger.Whiteside@punchtaverns.com>
Date: 26 October 2011 10:15:35 AM CEST
To: Brigid Simmonds <bsimmonds@beerandpub.com>
Subject: RE: TRIM: Report for the Minister

Brigid
As you say the TISC report deals with the point head on. As far as Punch is concerned we have ramped up the flexibility that current and new lessees have to access a greater choice of Ales both tied and free of tie.

Existing Lessees

06/12/2011
- Access through our Finest Cask scheme to over 150 Ales with range changing constantly on rotation (over 1000 of which are members of Finest Cask).
- Access to Local Ales delivered direct to Pub via SIBA subject to a minimum bar rainfall throughputs to safeguard drinking quality.
- Option at rent review or renewal to convert to our new Lassie which allows them access to multiple free of tie Guest Local Ales on a buy one from us get one free of tie basis (ie buy 2 Free of Tie, Buy 3 get 3 etc).

New Leases

- All of the above as standard plus we are open to negotiation for those wishing to specialise in Cask Ales to go completely free of tie for this category such as a Micobrewer.

Hope that helps – let me know if you need more.

Regards,

Roger

From: Brigid Simmonds [mailto:simmonds@beerandpub.com]
Sent: 25 October 2011 14:49
To: Brigid Simmonds; Simon Townsend; Roger Whiteside; 'Stephen Gould'; 'Alastair Darby'; 'Jonathan Paveley'
Cc: 'Ralph Findlay'; 'Neil Weisfeld@wellandyeomans.co.uk'; Martin Rawlings; David Wilson
Subject: RE: TRIM: Report for the Minister

Thank you for your telephone calls. I have now spoken to... and said the following.

1. Martin has sent our QC these comments and if necessary will talk to the lawyers at BIS. It is essential that this is resolved and I believe we can do this within the time frame... is happy with this approach.

2. I have made it clear to... that we could not offer anything more than we have already i.e. “Evolution of the Tie, including exploring a mechanism whereby the issue of machine income rentalisation might be resolved”. I said that to go further would require a discussion with all our members that I could not have before next week. We both agreed to need to keep our report to the Minister tight and therefore he accepted my advice that I had not sent the report to all my members as yet. One for further discussion.

3. I have sent... a copy of the 2004 TISC report (see extract below) which says it all! I also explained why this was counter intuitive in that Punch and Enterprise both offer a huge choice, but that brewers only offered their own products. He accepted this, but asked if he could have details of what Punch and Enterprise offer and how possibly the Minister might drop into conversations that they might offer more...to new leassess for example! Any details what you do now Simon and Roger to me before the end of the week would be hugely helpful!

4. I am sure we can deal with Neil Robertson and if I need help with this, I will shout! was happy with my explanation.

Best wishes. Brigid

Guest beer rights

55. Tenants, consumers, small brewers and their representatives suggested the perceived problems for small brewers could be mitigated by reintroducing the ‘guest beer provision’ of the Beer Orders. The Beer Orders allowed for premises, which remained tied to the six national brewers to sell a brand of draught cask-conditioned beer and a brand of bottled-conditioned beer from another supplier. The Director General of Fair Trading (DGFT) found in 2000 that only 1,700 of the national brewers’ remaining public houses had guest beer rights. Whitbread’s sale of its tenantable public house estate in 2001 meant virtually no national brewers’ tenants still had guest beer rights. In light of this, the Government took the decision that the guest beer provision should be revoked with the rest of the Beer Orders in 2003.

56. We asked our witnesses what they thought about reintroducing a guest beer provision. Mr Thorley, Chief Executive of Punch, told us Punch still had around 500 public houses which retained a guest beer right in their agreements as a legacy of their former ownership by a brewer. However, in a survey of these tenants they found “only 17 percent take advantage of that guest beer right [...] and 68 percent buy brands which we sell already from the brewer even though it is already on our price list.”

57. This showed one of the most curious effects of the guest beer provision although it was included in the Beer Orders to aid small brewers it did not restrict national brewers, who were the tied suppliers to a public house, from selling beer independently and separately to that public house. This was due to the Beer Orders specifying a tied tenant could purchase from “whomever he may choose at least one brand of draught cask-conditioned beer selected by him.” This did not specifically preclude tenants from purchasing their guest beer from their brewer-landlord or another national brewer.

58. Mr Bott, Chairman of the Council for SIBA, told us that this ‘loophole’ meant small brewers were no better off because of the Beer Orders: tenants simply substituted their tied national brewers’ brands for another national brand “an awful lot of those licensees realised that instead of buying their John Smith’s from the owning brewery they could buy Tetley’s at the same sort of price that the brewery was producing John Smith’s. We were left out of that loop. We did not gain the opportunities to sell beer that we thought we would.”

59. We asked the DTI about the possibility of the Government reintroducing the guest beer provision. They told us that as the adverse competition effects identified in the MMC report no longer existed, it would not be legally possible simply to re-instate the original guest beer provision. Nor would it be possible to extend it to pubs as the Beer Orders.
were specifically directed at the six named national brewers. Further, introducing new legislation requiring the pubcos to offer tenants the choice of a guest beer could run counter to general EU competition policy by "effectively creating a market distortion. Regulatory intervention does not appear necessary, given that the market power of the large brewers is now more balanced with the purchasing power exerted by pubcos".  

60. The DTI continued, "there is nothing to stop potential tenants, whether of pubcos or brewers' premises, seeking in their detailed contract negotiations to secure rights to offer guest beers or rights to directly source some or all of their beer supplies, although this is likely to influence other terms of the deal. Likewise it is open for a pubco to adopt a policy of allowing their tenants to offer guest beers, possibly as a means of attracting suitable tenants; however these are essentially matters for commercial negotiation."

61. We concur in the DTI's conclusion: a statutory requirement on pubcos to allow all tied tenants the option of offering a guest beer of a particular type, for example cask ales and regional or national specialties, would run contrary to EU competition law and could lead to the UK Government being challenged in the European Courts. However, the ability of public houses to offer a broader range of products, for example to satisfy demand for local products, is important in the interests of extending consumer choice. In the absence of the legislative option we recommend that pubcos allow their tenants more flexibility in their choice of the products they sell. The early adoption of such practices should afford more opportunity for small brewers to participate in the market.

From: Brigid Simmonds
Sent: 25 October 2011 12:29
To: Simon Townsend; 'Roger Whiteside'; 'Stephen Gould'; 'Allister Darby'; 'Jonathan Paveley
Cc: 'Ralph Andlay'; 'Martin Rawlings'; 'David Wilson
Subject: FW: TrM: Report for the Minister

I have just received this from you at BIS. I would welcome your thoughts. I am in the office if you would like to call.

Best wishes, Brigid

From: : 
Sent: 25 October 2011 12:20
To: Brigid Simmonds
Cc: 
Subject: RE: TrM: Report for the Minister

Dear Brigid,

Following our conversations last week, I have now heard back from the Minister on the letter you put forward. He recognised that this was a good step forward in terms of the self-regulatory regime and appreciated the work you and the pubcos had done in delivering it in such a short time.

He did come back with three points, however, none of them I hope would be major:
1. Our legal advisers raised a number of questions about the legal certainty of the method proposed of making the codes indisputably legally binding. I have outlined this in more detail below; however, the Minister has emphasised that these issues must be resolved as the issue of making the codes be indisputably legally binding is a non-negotiable one.
2. In the 'Further issues to be discussed' section, he didn't feel the AWP tie statement went as far as it could (I know we also discussed this). I wonder if it could perhaps be reworded to: "Evolution of the AWP tie, including exploring a mechanism whereby tied machine income might be removed from rentalisation calculations."
3. In the 'Proposals that should be defined and agreed quickly for FRI leases' he has suggested that one additional thing that could be included there would be - for FRI Leases only - a commitment to offer lessees a tied option that allows them to purchase a guest beer direct from a small brewery to be purchased outside the tie. This could perhaps be done by amending the section in the IFC under 'Terms of Business 1: Price List'. Given that he is otherwise not addressing the matter of the tie, he feels this could be a very helpful sign of how the Government - and the industry - is supporting British beer and may be very helpful in convincing MPs what has been done. I understand the majority of your members are already doing this, so I hope it would be possible.

Finally, a comment from me, but I had a conversation with Neil R today who indicated he had a couple of issues that needed to be resolved on governance of PICAS, before he could fully endorse them. I imagine you are already planning to speak to him about this, but it would be excellent if this could also be resolved by the end of the week, given BII's role as a neutral broker.

Do you think it will be possible to address these issues and produce a press notice to be shared with us, as previously planned, by next Monday?

I will be around from 2:00pm till 8:00pm if you would like to discuss any of this.

Regards,

Legal Annex
1. The note from the BBPA doesn't appear to reflect Robert Howe's advice. Mr Howe draws a distinction between new leases/tenancies where he quite rightly points to the fact that the IFC could be incorporated by reference, and existing ones where there would be a need for a "collateral contract". The BBPA paper appears to confuse the two, suggesting a collateral contract in both cases.
2. If, for a new lease, the IFC was incorporated by reference, the consideration (ie generally the money paid or
other promises given in return for a benefit, which is an essential element of a binding contract, would be the payment of the rent.

3. Turning to the existing agreements, both the BIBPA paper and Mr Howe's advice refer to giving effect to the IFC through a collateral contract. It's not clear to me why an agreement to a side by the IFC would be a collateral contract as opposed to a stand-alone contract between the parties. More significantly, we cannot see what the consideration would be for this additional contract - we do not understand what it means to say the consideration is being provided by the IFC itself. As mentioned, consideration is an essential element of a binding contract.

4. I would therefore be grateful if you could explicitly confirm, following consultation with legal advisors, that:
   - the IFC would be incorporated into a new agreement, by reference, and that the consideration will be the payment of the rent.
   - that, in relation to existing agreements, whether or not a future decision by both parties to adhere to the IFC would amount to a collateral contract, there needs to be some identifiable consideration in that case and if so, what that is (particularly if it is not intended to be rent).

5. We would suggest that some explicit description of this be also included in the draft press notice, for example in a Note to Editors Annex.

---

From: Brigid Simmonds [mailto:bsimmonds@beerandpub.com]
Date: 21 October 2011 13:27
To: 
Subject: AWR: Report for the Minister

Dear [Name],

Thank you very much for your helpful suggestions this morning. Please find attached a covering letter to the Minister and the Report. I think I have included everything you suggested - there were a number of other amendments today which are mainly about typing and grammar to make it clearer. I have also included a commitment to look further at rectification of AWP machines.

I would be grateful if you would acknowledge safe receipt. I will be sending a copy to ALMP, SIBA and BIB (we are seeing Neil Robertson at 4pm).

I look forward to having some initial feedback from the Minister early next week.

Have a good weekend.

Best wishes.

Brigid Simmonds
Chief Executive
British Beer & Pub Association
Market Towers
1 Nine Elms Lane
London SW8 5NQ
Telephone: 020 7627 9022
Fax: 020 7627 9178
Mobile: 07710 495119
bsimmonds@beerandpub.com
www.beerandpub.com

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06/12/2011.
From: Brigid Simmonds <brigid.simmonds@beerandpub.com>
Sent: 26 October 2011 12:07
To:
Subject: Fwd: TRIM: Report for the Minister

Here is part two from Punch. As we discussed yesterday I think Punch and Enterprise are already doing a great deal for smaller brewers and there is quite a lot here for the Minister if he wishes to use it.

Let me know if you need more.

Best wishes, Brigid

Brigid Simmonds
Chief Executive
British Beer and Pub Association
020 7527 9152
07710 685119

Begin forwarded message:

From: Roger Whiteside <Roger.Whiteside@oppositelowers.com>
Date: 26 October 2011 10:15:35 AM CEST
To: Brigid Simmonds <brigid.simmonds@beerandpub.com>
Subject: RE: TRIM: Report for the Minister

Brigid
As you say the TISC report deals with the point head on. As far as Punch is concerned we have ramped up the flexibility that current and new lessees have to access a greater choice of Ales both full and half pint.

Existing Leases
Access through our Festive Cask scheme to over 150 Ales with range changing, constantly on rotation (over 1500 of our pubs are members of Festive Cask)
Access to Local Ales delivered direct to Pub via SIBA subject to a minimum
lease/throughout subject to safeguard drinking quality
Option at rent review or renewal to convert to our new Lease which allows them access to multiple free of tie Guest Local Ales on a Buy one from us get one free of the basis i.e buy 2 get 1 free of tie. Buy 3 get 2 free of tie

New Leases
All of the above as standards plus we are open to negotiation for those wishing to specialise in Cask Ale to go completely free of tie for this category such as a Microbrewery.

Hope that helps — let me know if you need more.
Regards
Roger

From: Brigid Simmonds <brigid.simmonds@beerandpub.com>
Sent: 25 October 2011 14:49
To: Brigid Simmonds; Simon Townsend; Roger Whiteside; Stephen Gould; Walter Darby; Jonathan Penley;
Cc: Ralph Finlay; keith.west@blackhawnpubgroup.co.uk; Martin Railings; David Wilson
Subject: RE: TRIM: Report for the Minister

Thank you for your telephone call. I have now spoken to and said the following:

1. Martin has sent our QC these comments and if necessary will talk to the lawyers at BIS. It is essential that this is resolved and I believe we can do this within the time frame is happy with this approach.

2. I have made it clear to that we could not offer anything more than we have already i.e. "Evolution of the Tie, including exploring a mechanism whereby the issue of minimum income retaliation might be resolved". I said that to go further would require a discussion with

06/12/2011
all our members that I could not have before next week. We both agreed to need to keep our report to the Minister tight and therefore he accepted my advice that I had not sent the report to all my members as yet. One for further discussion.

3. I have sent a copy of the 2004 TISC report (see extract below) which says it all! I also explained why this was counter intuitive in that Punch and Enterprise both offer a huge choice, but that brewers only offered their own products. He accepted this, but asked if he could have details of what Punch and Enterprise offer and how possibly the Minister might drop into conversations that they might offer more... to new lessees for example! Any details you do now Simon and Roger to me before the end of the week would be hugely helpful!

4. I am sure we can deal with Neil Robertson and if I need help with this, I will shout! happy with my explanation.

Best wishes. Brigid

Guest beer rights

55. Tenants, consumers, small brewers and their representatives suggested the perceived problems for small brewers could be mitigated by reintroducing the ‘guest beer provision’ of the Beer Orders. The Beer Orders allowed for premises, which remained tied to the six national brewers to sell a brand of draught, cask-conditioned beer and a brand of bottle-conditioned beer from another supplier. The Director General of Fair Trading (DGFT) found in 2000 that only 1,700 of the national brewers’ remaining public houses had guest beer rights. Whitbread’s sale of its tenanted public house estate in 2001 meant virtually no national brewers’ tenants still had guest beer rights. In light of this, the Government took the decision that the guest beer provision should be revoked with the rest of the Beer Orders in 2003.

56. We asked our witnesses what they thought about reintroducing a guest beer provision. Mr Thorley, Chief Executive of Punch, told us Punch still had around 500 public houses which retained a guest beer right in their agreements as a legacy of their former ownership by a brewer. However, in a survey of these tenants they found “only 17 per cent take advantage of that guest beer right [...] and 68 per cent buy brands which we sell already from the brewer even though it is already on our price list”.

57. This showed one of the most curious effects of the guest beer provision: although it was included in the Beer Orders to aid small brewers it did not restrict national brewers, who were the tied suppliers to a public house, from selling beer independently and separately to that public house. This was due to the Beer Orders specifying a tied tenant could purchase from “whomsoever he may choose at least one brand of draught, cask-conditioned beer selected by him”. This did not specifically preclude tenants from purchasing their guest beer from their brewer-landlord or another national brewer.

58. Mr Bott, Chairman of the Council for SIBA, told us that this ‘loophole’ meant small brewers were no better off because of the Beer Orders: tenants simply substituted their tied national brewers’ brands for another national brand “an awful lot of those licensees realised that instead of buying their John Smith’s from the owning brewery they could buy Tetley’s at the same sort of price that the brewery was producing John Smith’s. We were left out of that loop. We did not gain the opportunities to sell beer that we thought we would.”

59. We asked the DTI about the possibility of the Government reintroducing the guest beer provision. They told us that as the adverse competition effects identified in the MMC report no longer existed, it would not be legally possible simply to re-instate the original guest beer provision. Nor would it be possible to extend it to pubcos as the Beer Orders were specifically directed at the six named national brewers. Further, introducing new legislation requiring the pubcos to offer tenants the choice of a guest beer could run counter to general EU competition policy by “effectively creating a market distortion. Regulatory intervention does not appear necessary, given that the market power of the large brewers is now more balanced with the purchasing power exerted by pubcos”.

60. The DTI continued, “there is nothing to stop potential tenants, whether of pubcos or brewers’ premises, seeking in their detailed contract negotiations to secure rights to offer guest beers or rights to directly source some or all of their beer supplies, although this is likely to influence other terms of the deal. Likewise it is open for a pubco to adopt a policy of allowing their tenants to offer guest beers, possibly as a means of attracting suitable
tenants; however these are essentially matters for commercial negotiation.29

6. We concur in the DTI's conclusion: a statutory requirement on pubcos to allow all tied tenants the option of offering a guest beer of a particular type, for example cask ales and regional or national specialities, would run contrary to EU competition law and could lead to the UK Government being challenged in the European Courts. However, the ability of public houses to offer a broader range of products, for example to satisfy demand for local products, is important in the interests of extending consumer choice. In the absence of the legislative option we recommend that pubcos allow their tenants more flexibility in their choice of the products they sell. The early adoption of such practices should afford more opportunity for small brewers to participate in the market.

From: Brigid Simmonds
Sent: 25 October 2011 12:29
To: 'Simon Townsend'; 'Roger Whiteside'; 'Stephen Gould'; 'Alistair Darby'; 'Jonathan Paveley'
Cc: 'Ralph Findlay'; 'joel.wells@wellisandyoung.co.uk'; Martin Rawlings; David Wilson
Subject: FW: TRIM: Report for the Minister

I have just received this from at BIS. I would welcome your thoughts. I am in the office if you would like to call.

Best wishes. Brigid

From: 
Sent: 25 October 2011 12:20
To: Brigid Simmonds
Cc: 
Subject: RE: TRIM: Report for the Minister

Dear Brigid,

Following our conversations last week, I have now heard back from the Minister on the letter you put forward. He recognised that this was a good step forward in terms of the self-regulatory regime and appreciated the work you and the pubcos had done in delivering it in such a short time.

He did come back with three points, however, none of them I hope would be major:

1. Our legal advisers raised a number of questions about the legal certainty of the method proposed of making the codes indisputably legally binding. I have outlined this in more detail below; however, the Minister has emphasised that these issues must be resolved as the issue of making the codes be indisputably legally binding is a non-negotiable one.

2. In the 'Further issues to be discussed' section, he didn't feel the AWP tie statement went as far as it could (I know we also discussed this). I wonder if it could perhaps be reworded to: "Evolution of the AWP tie, including exploring a mechanism whereby tied machine income might be removed from rentalisation calculations."

3. In the 'Proposals that should be defined and agreed quickly for FRI leases' he has suggested that one additional thing that could be included there would be - for FRI Leases only - a commitment to offer lessees a tied option that allows them to purchase a guest beer direct from a small brewery to be purchased outside the tie. This could perhaps be done by amending the section in the IFC under 'Terms of Business': 'Price List'. Given that he is otherwise not addressing the matter of the tie, he feels this could be a very helpful sign of how the Government - and the industry - is supporting British beer and may be very helpful in convincing MPs what has been done. I understand the majority of your members are already doing this, so I hope it would be possible.

Finally, a comment from me, but I had a conversation with Neil R today who indicated he had a couple of issues that needed to be resolved on governance of PICAS, before he could fully endorse them. I imagine you are already planning to speak to him about this, but it would be excellent if this could also be resolved by the end of the week, given BII's role as a neutral broker.

Do you think it will be possible to address these issues and produce a press notice to be shared with us, as previously planned, by next Monday?
I will be around from 2.00pm to 3.00pm if you would like to discuss any of this.

Regards,

Legal Annex

1. The note from the BBPA doesn't appear to reflect Robert Howe's advice. Mr. Howe draws a distinction between new leases/tenancies where he quite rightly points to the fact that the IFC could be incorporated by reference, and existing ones where there would be a need for a "collateral contract". The BBPA paper appears to confuse the two, suggesting a collateral contract in both cases.

2. If, for a new lease, the IFC was incorporated by reference, the consideration (as generally the money paid or other promise given in return for a benefit, which is an essential element of a binding contract) would be the payment of the rent.

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4. I would therefore be grateful if you could explicitly confirm, following consultation with legal advisors, that:
   - the IFC would be incorporated into a new agreement, by reference, and that the consideration will be the payment of the rent;
   - that in relation to existing agreements, whether or not a future decision by both parties to adhere to the IFC would amount to a collateral contract, there needs to be some identifiable consideration in that case and if so, what that is (particularly if it is not intended to be rent).

5. We would suggest that some explicit description of this be also included in the draft press notice, for example in a Notes to Editors Annex.

[Department for Business, Innovation and Skills]

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BIS: Working together for growth

From: Bridget Simmonds [mailto:bsimmonds@beverlypub.com]
Sent: 21 October 2011 14:37
To: 
Subject: Nunes Report for the Minister

Dear [Name],

Thank you very much for your helpful suggestions this morning.

Please find attached a covering letter to the Minister and the Report. I think I have included everything you suggested — there were a number of other amendments today which are mainly about typing and grammar to make it clearer. I have also included a commitment to look further at rentalisation of AWP machines.

I would be grateful if you would acknowledge safe receipt. I will be sending a copy to ALRM, SIBA and BII (we are seeing Neil Robertson at 4pm).

I look forward to having some initial feedback from the Minister early next week.

Have a good weekend.

06/12/2011
Best wishes, Brigid

Brigid Simmonds  
Chief Executive  
British Beer & Pub Association  
Market Towers  
1 Nine Elms Lane  
London SW8 5NQ  

Telephone: 020 7627 9162  
Fax: 020 7627 9179  
Mobile: 07710 485119  

bsimmonds@beerandpub.com  
www.beerandpub.com

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Company number 1182734

06/12/2011
Here is a report from Enterprise on their arrangement with SIBA and other details on their guest beers. If you would like more details, please contact Simon Townsend to whom I am cc'ing this email.

Best wishes, Brigid

SIBA's cask ale offer from local SIBA brewers is as follows:

In the last 2 years, through our central distribution network of depots, we supplied 36 beers from 24 SIBA brewers to 3,213 pubs.

In the last 2 years, through the SIBA DDS scheme, where the SIBA brewer delivers directly to the pub, we supplied 1,346 beers from 363 brewers to 1,593 pubs.

This is all in addition to the large volumes of cask ale that we supply from all regional brewers and national brewers (although not many nationals have cask agreements).

Cask ale makes up over 15% of our total beer volumes (which I think is rather more than the national market share of cask ale).

In addition to the above retail volume sales, we have:

125 entirely free-of-charge pubs

Over 1,000 pubs with guest ale provisions already in their agreements.

Since July 2010 we have been offering the option of a guest ale clause in every new agreement. Only about 10% of new agreements have taken up the option, as they simply don't see it as necessary given the range we offer (as shown above).

Brigid Simmonds
Chief Executive
British Beer and Pub Association
020 7627 9162
07710 485119

On 25/10/2011, at 12:20 PM, Brigid Simmonds wrote:

Dear Brigid,
Following our conversations last week, I have now heard back from the Minister on the letter you put forward. He recognised that this was a good step forward in terms of the self-regulatory regime and appreciated the work you and the pubcos had done in delivering it in such a short time.

He did come back with three points, however, none of them I hope would be major:

1. Our legal advisers raised a number of questions about the legal certainty of the method proposed of making the codes indisputably legally binding. I have outlined this in more detail below; however, the Minister has emphasised that these issues must be resolved as the issue of making them codes be indisputably legally binding is a non-negotiable one.

2. In the 'Further issues to be discussed' section, he didn't feel the AWP tie statement went as far as it could (I know we also discussed this). I wonder if it could perhaps be reworded to: "Evolution of the AWP tie, including exploring a mechanism whereby tied machine income might be removed from rentalisation calculations."

3. In the 'Proposals that should be defined and agreed quickly for FRI leases' he suggested that one additional thing that could be included there would be - for FRI Leases only - a commitment to offer lessees a tied option that allows them to purchase a guest beer direct from a small brewery to be purchased outside the tie. This could perhaps be done by amending the section in the IFC under 'Terms of Business 1: Price List'. Given that he is otherwise not addressing the matter of the tie, he feels this could be a very helpful sign of how the Government - and the industry - is supporting British beer and may be very helpful in convincing MPs what has been done. I understand the majority of your members are already doing this, so I hope it would be possible.

Finally, a comment from me, but I had a conversation with Neil R today who indicated he had a couple of issues that needed to be resolved on governance of PICAS, before he could fully endorse them. I imagine you are already planning to speak to him about this, but it would be excellent if this could also be resolved by the end of the week, given Bill's role as a neutral broker.

Do you think it will be possible to address these issues and produce a press notice to be shared with us, as previously planned, by next Monday?

I will be around from 2:00pm till 6:00pm if you would like to discuss any of this.

Regards,

Legal Annex

1. The note from the BBPA doesn't appear to reflect Robert Howe's advice. Mr Howe draws a distinction between new leases/tenancies where he quite rightly points to the fact that the IFC could be incorporated by reference, and existing ones where there would be a need for a "collateral contract". The BBPA paper appears to confuse the two, suggesting a collateral contract in both cases.

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4. I would therefore be grateful if you could explicitly confirm, following consultation with legal advisers, that:
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   - that, in relation to existing agreements, whether or not a future decision by both parties to adhere to the IFC would amount to a collateral contract, there needs to be some identifiable consideration in that case and if so, what that is (particularly if it is not intended to be rent).

5. We would suggest that some explicit description of this be also included in the draft press notice, for example in a Notes to Editors Annex.

06/12/2011
From: Brigid Simmonds  
Date: 27 October 2011 11:37  
To:  
Subject: [INM] Report for the Minister  

Dear [Name],

Thank you very much for your helpful suggestions this morning.

Please find attached a covering letter to the Minister and the Report. I think I have included everything you suggested—there were a number of other amendments today which are mainly about typing and grammar to make it clearer. I have also included a commitment to look further at rentalisation of AVP machines.

I would be grateful if you would acknowledge safe receipt. I will be sending a copy to ALMR, SIBA and BI (we are seeing Neil Robertson at 4pm).

I look forward to having some initial feedback from the Minister early next week.

Have a good weekend.

Best wishes, Brigid

Brigid Simmonds  
Chief Executive  
British Beer & Pub Association  
Market Towers  
1 Nine Elms Lane  
London SW8 5NQ  

Telephone: 020 7627 9162  
Fax: 020 7627 9179  

06/12/2011
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06/12/2011
Dear Brigid,

Just to follow up on the PICAS point, it would be very helpful if, when you come back to me at the end of the week, you could copy me an explicit email confirmation from a representative of each of the five members who would oversee PICAS, i.e., BBPA, BII, FLVA, GMV and ALMR, that they are backing the PICAS part of the proposal. I appreciate these discussions are ongoing.

Apologies for the caution, I am just being very careful about what we advise the Minister to publicly commit to.

Many thanks,

Brigid Simmonds
Chief Executive
British Beer and Pub Association
020 7627 9162
07710 485119

On 25 Oct 2011, at 06:22 PM, wrote:

Dear Brigid,

Many thanks for this and for providing a reply so quickly. I will work on all of this and come back to you.

Just a quick response on Neil Robertson. He had not seen the report when we met him on Friday and is today having lunch with Martin Rawlings to discuss the details of PICAS. We will resolve this by the end of the week.

Many thanks,

Brigid Simmonds
Chief Executive
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07710 485119
Dear Brigid,

Following our conversations last week, I have now heard back from the Minister on the letter you put forward. He recognised that this was a good step forward in terms of the self-regulatory regime and appreciated the work you and the pubs had done in delivering it in such a short time.

He did come back with these points, however, none of them I hope would be major:

1. Our legal advisors raised a number of questions about the legal certainty of the method proposed of making the codes indisputably legally binding. I have outlined this in more detail below, however, the Minister has emphasised that these issues must be resolved as the issue of making the codes be indisputably legally binding is a non-negotiable one.

2. In the ‘Further issues to be discussed’ section, he didn’t feel the AWP fee statement went as far as it could (I know we also discussed this), I wonder if it could perhaps be reworded to “Evolution of the AWP Fee, including exploring a mechanism whereby tied machine income might be removed from rentabilisation calculations.”

3. In the ‘Proposals that should be defined and agreed quickly for FRI leases’ he has suggested that one additional thing that could be included there would be - for FRI Leases only - a commitment to offer lessees a tied option that allows them to purchase a guest beer direct from a small brewery to be purchased outside the tie. This could perhaps be done by amending the section in the IFC under ‘Terms of Business 1: Price List’. Given that he is otherwise not addressing the matter of the tie, he feels this could be a very helpful sign of how the Government - and the industry - is supporting British beer and may be very helpful in convincing MPs what has been done. I understand the majority of your members are already doing this, so I hope it would be possible.

Finally, a comment from me, but I had a conversation with Neil R today who indicated he had a couple of issues that needed to be resolved on governance of PICAS, before he could fully endorse them. I imagine you are already planning to speak to him about this, but it would be excellent if this could also be resolved by the end of the week, given Gill’s role as a neutral broker.

Do you think it will be possible to address these issues and produce a press notice to be shared with us, as previously planned, by next Monday?

I will be around from 2.00pm till 6.00pm if you would like to discuss any of this.

Regards,

06/12/2011
Legal Annex

1. The note from the BOPA doesn't appear to reflect Robert Howe's advice. Mr Howe draws a distinction between new leases and existing leases where in both cases, he states the need for a 'collateral contract'. The BBPA paper appears to confuse the two, suggesting a collateral contract in both cases.

2. If, for a new lease, the IPC was incorporated by reference, the consideration (ie generally the money paid or other promise given in return for a benefit, which is an essential element of a binding contract) would be the payment of the rent.

3. Turning to the existing agreements, both the BBPA note and Mr Howe's advise refer to giving effect to the IPC through a collateral contract. It's not clear to me why an agreement to abide by the IPC would be a collateral contract as opposed to a stand-alone supplementary contract between the parties. More significantly, we cannot see what the consideration would be for this additional contract - we do not understand when it seems to say the consideration is being provided by the IPC itself. As mentioned, consideration is an essential element of a binding contract.

4. I would therefore be grateful if you could explicitly confirm, following consultation with legal advisors, that:

- the IPC would be incorporated into a new agreement, by reference, and that the consideration will be the payment of the rent.

- that, in relation to existing agreements, whether or not a future decision by both parties to adhere to the IPC would amount to a collateral contract, there needs to be some identifiable consideration in that case and if so, what that is (particularly if it is not intended to be rent).

5. We would suggest that some explicit description of this be also included in the draft press notice, for example in a Notes to Editors Annex.

---

Department for Business, Innovation and Skills

The Department for Business, Innovation & Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy.

to: Working together for growth

From: Brigida Simmonds (mailto:bsimmonds@beisandpub.com)
Date: 21 October 2011 13:37
To:

Subject: TRRB: Report for the Minister

Dear 

Thank you very much for your helpful suggestions this morning.

06/12/2011
Please find attached a covering letter to the Minister and the Report. I think I have included everything you suggested – there were a number of other amendments today which are mainly about typing and grammar to make it clearer. I have also included a commitment to look further at rentalisation of AWP machines.

I would be grateful if you would acknowledge safe receipt. I will be sending a copy to ALMR, SIBA and Bil (we are seeing Neil Robertson at 4pm).

I look forward to having some initial feedback from the Minister early next week.

Have a good weekend.

Best wishes. Brigid

Brigid Simmonds
Chief Executive
British Beer & Pub Association
Market Towers
1 Nine Elms Lane
London SW6 5NQ

Telephone: 020 7627 8162
Fax: 020 7627 9179
Mobile: 07710 485119

bsimmonds@beerandpub.com
www.beerandpub.com

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From: 
Sent: 25 October 2011 18:22
To: 'Brigid Simmonds'
Subject: RE: TRIM: Report for the Minister

Dear Brigid,

Just to follow up on the PICAS point, it would be very helpful if, when you come back to me at the end of the week, you could copy me an explicit small confirmation from a representative of each of the five members who would oversee PICAS, i.e.: BBPA, BII, FLVA, GMV and ALMR, that they are backing the PICAS part of the proposal. I appreciate these discussions are ongoing.

Apologies for the caution. I am just being very careful about what we advise the Minister to publicly commit to.

Many thanks.

---

From: Brigid Simmonds [mailto:brigid.simmonds@bearandpaw.com]
Sent: 25 October 2011 12:33
To:  
Cc: Martin Rawlings
Subject: RE: TRIM: Report for the Minister

Dear 

Many thanks for this and for providing a reply so quickly. I will work on all of this and come back to you.

Just a quick response on Neil Robertson. He had not seen the report when we met him on Friday and is today having lunch with Martin Rawlings to discuss the details of PICAS. We will resolve this by the end of the week.

Best wishes, Brigid.

---

From:  
Sent: 25 October 2011 12:20
To: Brigid Simmonds
Cc:  
Subject: RE: TRIM: Report for the Minister

Dear Brigid,

Following our conversations last week, I have now heard back from the Minister on the letter you put forward. He recognised that this was a good step forward in terms of the self-regulatory regime and appreciated the work you and the pubcos had done in delivering it in such a short time.

He did come back with three points, however, none of them I hope would be
major:

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Do you think it will be possible to address these issues and produce a press notice to be shared with us, as previously planned, by next Monday?

I will be around from 2:00pm till 6:00pm if you would like to discuss any of this.

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I would be grateful if you would acknowledge safe receipt. I will be sending a copy to ALMF, SLSA and EBI (we are seeing Nell Robertson at 4pm).

I look forward to having some initial feedback from the Minister early next week.

Have a good weekend.

Best wishes, Brigid

Brigid Simmonds
Chief Executive
British Beer & Pub Association
Market Towers
1 Nine Elms Lane
London, SW8 5HQ

Telephone: 020 7627 9162
Fax: 020 7627 9179
Mobile: 07710 485119

bsimmonds@beerandpub.com
www.beerandpub.com

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Many thanks. This is very helpful to know.

[Signature]

Subject: Re: BTS Select Committee Report
To: [Name]
Sent: 25 October 2011 17:25

From: [Name]

PS. I noted the further positive change in the latest version was the inclusion of...
The Department for Business, Innovation & Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy.

BIS: Working together for growth.

---

**From:** Kate Nicholls [mailto:knlcllollS@almr.org.uk]
**Sent:** 21 October 2011 10:28
**To:** RE: BIS Select Committee Report

By way of informal feedback, the meeting on Wednesday was cordial but there was a lot of push back from the companies represented as to how to proceed. There was strong resistance to substantive change to the Code, which is why the points they have listed as immediate actions are readily attainable and cannot be categorised as significant progress — as agreed, they are a good opening bid.

From our perspective, the frustration lies in the fact that this is all very reactive and responsive — they are asking us to make proposals, tell them what to do, there is no initiative or imagination from their side — which leads irreducibly to the conclusion that they are being dragged kicking and screaming.

---

**From:**
**Sent:** 21 October 2011 10:10
**To:** Kate Nicholls
**Subject:** RE: BIS Select Committee Report

Kate,

Very much appreciated - thank you.

---

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BIS: Working together for growth.

---

**From:** Kate Nicholls [mailto:knlcllollS@almr.org.uk]
**Sent:** 21 October 2011 10:09
**To:**
**Subject:** RE: BIS Select Committee Report

Good to talk. My contact details are _ e _ k and mobile is 06/12/2011
Kind regards
Kate

From: [Name] [mailto: k.nicholls@altrn.org.uk]
Sent: 20 October 2011 17:47
To: Kate Nichols
Subject: RE: BIS Select Committee Report

Kate,

I've just received a document from Bridgid - would very much value a conversation early tomorrow. Are you around?

Thanks,

The Department for Business, Innovation and Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy.

BIS: Working together for growth

From: Kate Nichols [mailto: k.nicholls@altrn.org.uk]
Sent: 18 October 2011 14:40
To: Kate Nichols
Subject: BIS Select Committee Report

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Kind regards

Kate Nicholls

Strategic Affairs Director

Association of Licensed Multiple Retailers
98 Walpole Court, Ealing Studios, London, W5 5ED
Tel: 020 8579 2080 or fax: 020 8579 7579

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06/12/2011
From: [Name]
Sent: 25 October 2011 17:47
To: Paul Wells/CW/CWG
Subject: RE: Quote reference

Dear Paul,

Thanks for getting back to me so quickly. In that case I will just reference your report.

Regards,

[Name]

---

Innovation and Skills (I):

The Department for Business, Innovation & Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy.

BIS: Working together for growth

---

From: Paul Wells/CW/CWG (mailto:paul.wells@charleswells.co.uk)
Sent: 25 October 2011 17:22
To:
Subject: Re: Quote reference

Dear,

Thank you - I have got 3pm on the 3rd in my diary.

Mike Berritt of CAMRA offered us those words when I asked him last year. I think it was a longer quote but we only used part of it, and now I cannot find his email.

Regards,

Paul.

---

To: "Paul Wells/CW/CWG" <paul.wells@charleswells.co.uk>
Cc:
Subject: Quote reference

---

Dear Paul,

06/12/2011
I think you should now have received the invitation from the Minister's office to the meeting next week - apologies for the delay in this issuing.

I had a quick question for you which I hoped you could help me with. Regarding the quote from CAMRA on the back of your leaflet - 'What the Tie Means to the Family Brewers' - do you have the occasion on which Mike Benner said this, or was it a quote provided specially for this document?

Regards,

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Charles Wells Ltd., The Eagle Brewery, Bedford, MK40 4LU, United Kingdom

Telephone +44(0)1234 272625

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From:  
Sent:  25 October 2011 17:43  
To:  'Kate Nicholls'  
Subject: RE: BIS Select Committee Report  

Kate,

That would be very helpful, thank you. And we'd be happy to try to get you a meeting with the Minister next month, diary permitting.

We are planning - all things being equal - to publish our response to the BISC Report by 20th November (as this is what Parliamentary protocol obliges us to try to do, if possible).

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BIS: Working together for growth

From:  Kate Nicholls [mailto:knlcholl$@alr.orq.uk]  
Sent:  25 October 2011 17:40  
To:  
Subject: RE: BIS Select Committee Report  

I have now received a copy of the report submitted to Ministers and will be making comments on it. I will copy to you as well later this week. It may be that at that stage, we ask for a formal meeting with the Minister.

We have no additional meetings scheduled with BBPA to discuss next steps but I have made clear that the ball is in their court to come back to us with constructive and substantive proposals. The initial suggestion is that that will happen after the Minister makes a public statement next month. I am not clear whether the latter was speculation or whether this is a timetable you are working to – it could be that they are referring to an official response to their report rather than a public statement on BISC.

From:  
Sent:  25 October 2011 17:25  
To:  Kate Nicholls  
Subject: RE: BIS Select Committee Report  

Kate,

Many thanks, this is very helpful to know.

06/12/2011
I have had a number of exchanges with Brigid over the last couple of days, so we will see what we end up with. Our legal advisers have also gone back with a couple of concerns on the 'legally binding' aspect which we would need to see resolved.

---

From: Kate Nickolls
Sent: 21 October 2011 10:28
To: [redacted]
Subject: RE: BIS Select Committee Report

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From our perspective, the frustration lies in the fact that this is all very reactive and responsive — they are asking us to make proposals, tell them what to do, there is no initiative or imagination from their side — which leads irreducibly to the conclusion that they are being dragged kicking and screaming.

---

From: [redacted]
Sent: 21 October 2011 10:30
To: Kate Nickolls
Subject: RE: BIS Select Committee Report

Kate,

Very much appreciated - thank you.

---

From: [redacted]
Sent: 06/12/2011
To: [redacted]
Subject: [redacted]

The Department for Business, Innovation & Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy:

BIS: Working together for growth.
Good to talk. My contact details are: <contact_details> and mobile is <mobile_number>.

Kind regards
Kate

From: [email] Sent: 20 October 2011 17:47
To: Kate Nichols
Subject: RE: BIS Select Committee Report

Kate,

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Thanks,

[Signature]

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BIS: Working together for growth

From: [email] Sent: 18 October 2011 14:40
To:
Subject: BIS Select Committee Report

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06/12/2011
From: Kate Nicholls [knicholls@almr.org.uk]
Sent: 26 October 2011 17:40
To: 
Subject: RE: BIS Select Committee Report

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From: 
Sent: 25 October 2011 17:25
To: Kate Nicholls
Subject: RE: BIS Select Committee Report

Kate,

Many thanks, this is very helpful to know.

I have had a number of exchanges with Brigid over the last couple of days, so we will see what we end up with. Our legal advisers have also gone back with a couple of concerns on the ‘legally binding’ aspect which we would need to see resolved.

Innovation and Skills |

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Sent: 21 October 2011 10:28
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Subject: RE: BIS Select Committee Report

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From: 21 October 2011 10:10
To: Kate Nicholls
Subject: RE: BIS Select Committee Report

Kate,

Very much appreciated - thank you.

---

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Good to talk. My contact details are _______ and mobile is _______.

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06/12/2011
Thank you, helpful.

---

From: Brigid Simmonds [mailto:bsimmonds@beerandpub.com]
Sent: 25 October 2011 14:39
To: Martin Rawlings;
Cc: Martin Rawlings;
Subject: RE: 2004 TISC Report - guest beer

Just for the record, this is what the 2004 report actually said! I will come back to you on other points.

Best wishes, Brigid

**Guest beer rights**

55. Tenants, consumers, small brewers and their representatives suggested the perceived problems for small brewers could be mitigated by reintroducing the 'guest beer provision' of the Beer Orders.\(^2\) The Beer Orders allowed for premises, which remained tied to the six national brewers to sell a brand of draught cask-conditioned beer and a brand of bottle-conditioned beer from another supplier. The Director General of Fair Trading (DGFT) found in 2000 that only 1,700 of the national brewers’ remaining public houses had guest beer rights. Whitbread’s sale of its tenanted public house estate in 2001 meant virtually no national brewers’ tenants still had guest beer rights. In light of this, the Government took the decision that the guest beer provision should be revoked with the rest of the Beer Orders in 2003.\(^3\)

56. We asked our witnesses what they thought about reintroducing a guest beer provision. Mr Thorley, Chief Executive of Punch, told us Punch still had around 500 public houses which retained a guest beer right in their agreements as a legacy of their former ownership by a brewer. However, in a survey of these tenants they found “only 17 percent
take advantage of that guest beer right [...] and 68 percent buy brands which we sell already from the brewer even though it is already on our price list".20

57. This showed one of the most curious effects of the guest beer provision:although it was included in the Beer Orders to aid small brewers it did not restrict national brewers, who were the tied suppliers to a public house, from selling beer independently and separately to that public house. This was due to the Beer Orders specifying a tied tenant could purchase from "whomsoever he may choose at least one brand of draught cask-conditioned beer selected by him".21 This did not specifically preclude tenants from purchasing their guest beer from their brewer-landlord or another national brewer.

58. Mr Bott, Chairman of the Council for SIBA, told us that this 'loophole' meant small brewers were no better off because of the Beer Orders: tenants simply substituted their tied national brewers' brands for another national brand "an awful lot of those licensees realised that instead of buying their John Smith's from the owning brewery they could buy Tetley's at the same sort of price that the brewery was producing John Smith's. We were left out of that loop. We did not gain the opportunities to sell beer that we thought we would".22

59. We asked the DTI about the possibility of the Government reintroducing the guest beer provision. They told us that as the adverse competition effects identified in the MMC report no longer existed, it would not be legally possible simply to re-instate the original guest beer provision. Nor would it be possible to extend it to pubcos as the Beer Orders were specifically directed at the six named national brewers. Further, introducing new legislation requiring the pubcos to offer tenants the choice of a guest beer could run counter to general EU competition policy by "effectively creating a market distortion. Regulatory intervention does not appear necessary, given that the market power of the large brewers is now more balanced with the purchasing power exerted by pubcos".23

60. The DTI continued, "there is nothing to stop potential tenants, whether of pubcos or brewers' premises, seeking in their detailed contract negotiations to secure rights to offer guest beers or rights to directly source some or all of their beer supplies, although this is likely to influence other terms of the deal. Likewise it is open for a pubco to adopt a policy of allowing their tenants to offer guest beers, possibly as a means of attracting suitable tenants; however these are essentially matters for commercial negotiation".24

61. We concur in the DTI's conclusion: a statutory requirement on pubcos to allow all tied tenants the option of offering a guest beer of a particular type, for example cask ales and regional or national specialities, would run contrary to EU competition law and could lead to the UK Government being challenged in the European Courts. However, the ability of public houses to offer a broader range of products, for example to satisfy demand for local products, is important in the interests of extending consumer choice. In the absence of the legislative option we recommend that pubcos allow their tenants more flexibility in their choice of the products they sell. The early adoption of such practices should afford more opportunity for small brewers to participate in the market.

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Sent: 21 October 2011 10:09
To:
Subject: RE: BIS Select Committee Report

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Kind regards,
Kate

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To: 
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Association of Licensed Multiple Retailers
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Tel: 020 8579 2000 or fax: 020 8579 7579

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Regards,

[Department for Business, Innovation and Skills]

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That's good to know – we have tried to be careful not to jump on the criticism
heard from (with regards to any part of the industry) so it would have been unfortunate
if that had been BIS.

Thank you, he is referring to BISG. As you can imagine that has not been an easy
process of the BISG who are slightly between a rock and a hard place, but have
certainly been criticised.

Whilst not committing to any specific wording, the Government will certainly
recognise the efforts of industry to deliver a robust self-regulatory
solution, provided that solution is delivered.

Can I check which statements by BIS Ralph Findlay is referring to? Or is he
referring to BISG?
growth and higher skills across the economy.

BIS: Working together for growth

---

From: Brigid Simmons [mailto:bsimmonds@beerandpub.com]
Sent: 25 October 2011 16:44
To: 
CC: David Wilson
Subject: FW: A long shot

Very much a long shot, but this would certainly be helpful, if possible!

Best wishes. Brigid

---

From: Ralph Findlay [mailto:Ralph.Findlay@marstons.co.uk]
Sent: 25 October 2011 15:59
To: Brigid Simmons
Subject: A long shot

Brigid

We were all dismayed at the language used about the BBPA by BIS. BIS may not have understood this, but it damages government interests - if the industry thinks the reputation of the trade body is harmed, the success of the trade body is threatened - and government loses the ability to deal with a single body.

Do you think that there is any way the minister could go some way to making amends when he stands up in the house? Even to say that it is clear that the BBPA has responded with urgency, clarity and commitment would be a help!

As I say, a long shot.

Kind regards.

Ralph
Brigid,

Whilst not committing to any specific wording, the Government will certainly recognise the efforts of industry to deliver a robust self-regulatory solution, provided that solution is delivered.

Can I check which statements by BIS Ralph Findlay is referring to? Or is he referring to BISC?

---

Innovation and Skills

The Department for Business, Innovation & Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy.

BIS: Working together for growth

---

From: Brigid Simmonds [mailto:bridget.simmonds@bis.gov.uk]
Sent: 25 October 2011 14:14
To: 
Cc: David Wilson
Subject: FW: A long shot!

Very much a long shot, but this would certainly be helpful, if possible!

Best wishes, Brigid

---

From: Ralph Findlay [mailto:ralph.findlay@marstons.co.uk]
To: Brigid Simmonds
Subject: A long shot!

Brigid

We were all dismayed at the language used about the BBPA by BIS. BIS may not have understood this, but it damages government interests – if the industry thinks the reputation of the trade body is harmed, the success of the trade body is threatened – and government loses the ability to deal with a single body.

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06/12/2011
As I say, a long shot.

Kind regards

Ralph
Hi Jon,

Thanks for getting back to me so quickly - much appreciated.

Regards,

---

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BIS: Working together for growth

---

Hi

This isn't a problem at all, please quote this data.

The best way to reference this data would be to state 'CAMRA commissioned research by CGA Strategy, June 2011'.

Hope that's ok.

Cheers,

Jon

---

Hi Jon,

We just spoke. I have attached the data that Jonathan Mall sent the department last month.

Can you confirm whether or not you would be happy with Government quoting this.
data in a published report and, if so, how it should be referenced?

Many thanks,

The Department for Business, Innovation & Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy.

BIS: Working together for growth

From: Jonathan Mail [mailto:jonathan.mail@camra.org.uk]
Sent: 16 September 2011 14:09
To: 
Subject: Latest Pub Closure Data

Dear [Name],

CAMRA yesterday published the latest pub closure figures which showed that over the last six months tied pubs have been closing at nearly twice the rate of non tied pubs. The full report is attached along with some of the press coverage we received. Also, links to website articles below:

http://www.google.com/hostednews/lookup/article/ALeqM5sCRH1oES9a7M149bK7I1QJp65xfY
http://news.uk.msn.com/uk/two-british-pubs-close-every-day
http://www.thisislondon.co.uk/standard/article-23387581-two-british-pubs-close-every-day.do
http://news.sky.com/home/business/article/16020437
http://www.telegraph.co.uk/news/9796550/Two-pubs-close-every-day.html

Many thanks,

Jonathan Mail
Head of Policy and Public Affairs
Campaign for Real Ale, CAMRA
e: jonathan.mail@camra.org.uk
t: 01727 795848
w: www.camra.org.uk

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07/12/2011
Hi,

This isn't a problem at all, please quote this data.

The best way to reference this data would be to state 'CAMRA commissioned research by CGA Strategy, June 2011'.

Hope that's ok.

Cheers,

Jon.

---

From: [Redacted]
Sent: 25 October 2011 11:40
To: Jon Howard
Cc: Jonathan Mail
Subject: Re: Latest Pub Closure Data

Jon,

We just spoke. I have attached the data that Jonathan Mail sent the department last month.

Can you confirm whether or not you would be happy with Government quoting this data in a published report and, if so, how it should be referenced?

Many thanks,

---

The Department for Business, Innovation and Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy.

BIS: Working together for growth
CAMRA yesterday published the latest pub closure figures which showed that over the last six months tied pubs have been closing at nearly twice the rate of non tied pubs. The full report is attached along with some of the press coverage we received. Also, links to website articles below:

http://www.google.com/hostednews/ukpress/article/ALsoAAAAPi4Mo5jC6lC1eDSt4r7M1349DK1WTgP92we?docid=-10434971315629892072714
http://news.uk.msn.com.uk/two-british-pubs-close-every-day
http://www.thisislondon.co.uk/standard/article/23987561/two-british-pubs-close-every-day.do
http://news.sky.com/home/business/article/16020437
http://www.telegraph.co.uk/news/8768350/Two-pubs-close-every-day.html

Many thanks.

Jonathan Mail
Head of Policy and Public Affairs
Campaign for Real Ale, CAMRA
E: Jonathan.mail@camra.org.uk
T: 01727 799446
W: www.camra.org.uk
From: [Redacted]  
Sent: 25 October 2011 13:40  
To: Neil Robertson (neil@bl.org/)  
Cc: [Redacted]  
Subject: [Redacted] contact details

Neil,

Very good to see you earlier - and sorry about this morning! I've mentioned the matter we discussed to Bridgid.

email is copied in and his number is [Redacted]

Regards,

[Redacted]

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BIS: Working together for growth
From: Brigid.Simmonds [bsimmonds@beerandpub.com]
Sent: 26 October 2011 12:33
To: [redacted]
Cc: [redacted]
Subject: RE: TRIM: Report for the Minister
Attachments: @

Dear [redacted],

Many thanks for live and for providing a reply so quickly. I will work on all of this and come back to you.

Just a quick response on Neil Robertson. He had not seen the report when we met him on Friday and is today having lunch with Martin Rawlings to discuss the details of PICAS. We will resolve this by the end of the week.

Best wishes, Brigid

From: [redacted]
Sent: 25 October 2011 12:20
To: Brigid.Simmonds
Cc:
Subject: RE: TRIM: Report for the Minister

Dear Brigid,

Following our conversations last week, I have now heard back from the Minister on the letter you put forward. He recognised that this was a good step forward in terms of the self-regulatory regime and appreciated the work you and the pubcos had done in delivering it in such a short time.

He did come back with three points, however, none of them I hope would be major:

1. Our legal advisers raised a number of questions about the legal certainty of the method proposed of making the codes indisputably legally binding. I have outlined this in more detail below; however, the Minister has emphasised that these issues must be resolved as the issue of making the codes be indisputably legally binding is a non-negotiable one.

2. In the ‘Further issues to be discussed’ section, he didn’t feel the AWP tie statement went as far as it could. I know we also discussed this. I wonder if it could perhaps be reworded to: “Evolution of the AWP tie, including exploring a mechanism whereby tied machine income might be removed from rentalisation calculations.”

3. In the ‘Proposals that should be defined and agreed quickly for FRI leases’ he has suggested that one additional thing that could be included there would be - for FRI Leases only - a commitment to offer lessees a tied option that allows them to purchase a guest beer direct from a small brewery to be purchased outside the tie. This could perhaps be done by amending the section in the IFC under ‘Terms of Business 1: Price List’. Given that he is otherwise not addressing the matter of the tie, he feels this could be a very helpful sign of how the Government - and the industry - is supporting British beer and may be very helpful in convincing MPs what has been done. I understand the majority of your members are already doing this, so I hope it would be possible.

Finally, a comment from me, but I had a conversation with Neil R today who indicated he had a couple of issues that needed to be resolved on governance of PICAS, before he could fully endorse them. I imagine you are already planning to speak to him about this, but it would be excellent if this could also be resolved by the end of the week, given Bill’s role as a neutral broker.
Do you think it will be possible to address these issues and produce a press notice to be shared with us, as previously planned, by next Monday?

I will be around from 2:00pm till 6:00pm if you would like to discuss any of this.

Regards,

Legal Annex
1. The note from the BBPA doesn't appear to reflect Robert Howe's advice. Mr Howe draws a distinction between new leases/tenancies where he quite rightly points to the fact that the IFC could be incorporated by reference, and existing ones where there would be a need for a "collateral contract". The BBPA paper appears to confuse the two, suggesting a collateral contract in both cases.

2. If, for a new lease, the IFC was incorporated by reference, the consideration (i.e., generally the money paid or other promise given in return for a benefit, which is an essential element of a binding contract), would be the payment of the rent.

3. Turning to the existing agreements, both the BBPA paper and Mr Howe's advice refer to giving effect to the IFC through a collateral contract. It's not clear to me why an agreement to abide by the IFC would be a collateral contract as opposed to a stand-alone supplementary contract between the parties. More significantly, we cannot see what the consideration would be for this additional contract - we do not understand what it means to say the consideration is being provided by the IFC itself. As mentioned, consideration is an essential element of a binding contract.

4. I would therefore be grateful if you could explicitly confirm, following consultation with legal advisers, that - the IFC would be incorporated into a new agreement, by reference, and that the consideration will be the payment of the rent; that, in relation to existing agreements, whether or not a future decision by both parties to adhere to the IFC would amount to a collateral contract, there needs to be some identifiable consideration in that case and if so, what that is (particularly if it is not intended to be rent).

5. We would suggest that some explicit description of this be also included in the draft press notice, for example in a Notes to Editors Annex.

From: Brigid Simmonds [mailto:bssimmonds@leamandpub.com]
Sent: 21 October 2011 14:57
To: 
Subject: TRIM: Report for the Minister

Dear,

Thank you very much for your helpful suggestions this morning.

Please find attached a covering letter to the Minister and the Report. I think I have included
everything you suggested – there were a number of other amendments today which are mainly about typing and grammar to make it clearer. I have also included a commitment to look further at rentalisation of AWP machines.

I would be grateful if you would acknowledge safe receipt. I will be sending a copy to ALMR, SIBA and BII (we are seeing Neil Robertson at 4pm).

I look forward to having some initial feedback from the Minister early next week.

Have a good weekend.

Best wishes: Brigid

Brigid Simmonds
Chief Executive
British Beer & Pub Association
Market Towers
1 Nine Elms Lane
London SW8 5NQ

Telephone: 020 7627 9162
Fax: 020 7627 9179
Mobile: 07710 485119

bsimmonds@beerandpub.com
www.beerandpub.com

<< image001.jpg@01CC9312.41854850 >>

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<< image001.jpg (5.0KB) 

>> (5.0KB)
From: [Redacted]
Sent: 25 October 2011 12:20
To: Trigid Sowards
CC: [Redacted]

Subject: TRIM: RE: TRIM-Report for the Minister

Dear Trigid,

Following our conversations last week, I have now heard back from the Minister on the latter you put forward. He recognised that this was a good step forward in terms of the self-regulatory regime and appreciated the work you and the pubcos had done in delivering it in such a short time.

He did come back with three points, however, none of them I hope would be major:

1. Our legal advisers raised a number of questions about the legal certainty of the method proposed of making the codes indisputably legally binding. I have outlined this in more detail below; however, the Minister has emphasised that these issues must be resolved as the issue of making the codes be indisputably legally binding is a non-negotiable one.

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Finally, a comment from me, but I had a conversation with Neil R today who indicated he had a couple of issues that needed to be resolved on governance of PICAS, before he could fully endorse them. I imagine you are already planning to speak to him about this, but it would be excellent if this could also be resolved by the end of the week, given BIT's role as a neutral broker.

Do you think it will be possible to address these issues and produce a press notice to be shared with us, as previously planned, by next Monday?

I will be around from 2:00pm till 6:00pm if you would like to discuss any of this.

Regards,

06/12/2011
Legal Annex

1. The note from the BBPA doesn't appear to reflect Robert Howe's advice. Mr Howe draws a distinction between new leases/tenancies where he quite rightly points to the fact that the IFC could be incorporated by reference, and existing ones where there would be a need for a "collateral contract". The BBPA paper appears to confuse the two, suggesting a collateral contract in both cases.

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4. I would therefore be grateful if you could explicitly confirm, following consultation with legal advisers, that:
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   - that, in relation to existing agreements, whether or not a future decision by both parties to adhere to the IFC would amount to a collateral contract, there needs to be some identifiable consideration in that case and if so, what that is (particularly if it is not intended to be rent).

5. We would suggest that some explicit description of this be also included in the draft press notice, for example in a Notes to Editors Annex.

From: Brigid Simmonds
To: David Cameron
Subject: Report for the Minister

Dear David,

Thank you very much for your helpful suggestions this morning.

Please find attached a covering letter to the Minister and the Report. I think I have included everything you suggested — there were a number of other amendments today which are mainly about typing and grammar to make it cleaner. I have also included a commitment to look further at rentabilisation of AWP machines.

I would be grateful if you would acknowledge receipt. I will be sending a copy to ALMR, SIBA and BII (we are seeing Neil Robertson at 4pm).

I look forward to having some initial feedback from the Minister early next week.

06/12/2011
Have a good weekend.

Best wishes. Brigid

Brigid Simmonds
Chief Executive
British Beer & Pub Association
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London SW8 5NQ

Telephone: 020 7627 9162
Fax: 020 7627 9179
Mobile: 07710 485119
bsimmonds@beerandpub.com
www.beerandpub.com

Please consider the environment before printing this email. Thank you.
From: [redacted]
Sent: 25 October 2011 11:40
To: jon.howard@camra.org.uk
Cc: jonathan.mail@camra.org.uk
Subject: RE: Latest Pub Closure Data
Attachments: Pub Openings Closures Dec10-June11 EMBARGO IN PLACE XLS

Jon,

We just spoke. I have attached the data that Jonathan Mail sent the department last month.

Can you confirm whether or not you would be happy with Government quoting this data in a published report and, if so, how it should be referenced?

Many thanks,

[signature]

---

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BIS: Working together for growth

---

From: Jonathan Mail [mailto:jonathan.mail@camra.org.uk]
Sent: 16 September 2011 14:09
To: [redacted]
Subject: Latest Pub Closure Data

Dear,

CAMRA yesterday published the latest pub closure figures which showed that over the last six months tied pubs have been closing at nearly twice the rate of non tied pubs. The full report is attached along with some of the press coverage we received. Also, links to website articles below:

http://www.google.com/hostednews/ukpress/article/ALeqM5eCRtC1oDSieY7M1A90KIWTgPSZw

docid=NO494771320095020771A

http://news.uk.msn.com/uk/two-british-pubs-close-every-day

http://www.bristolpost.co.uk/standard/article-23987581-two-british-pubs-close-every-day.do

http://news.sky.com/home/business/article/1607043

http://www.telegraph.co.uk/news/8765550/two-pubs-close-every-day.html

Many thanks,

07/12/2011
1. Total GB Pub Openings/Closures

<table>
<thead>
<tr>
<th></th>
<th>Dec-10</th>
<th>Jan-11</th>
<th>Diff</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pubs Total</td>
<td>58,985</td>
<td>58,618</td>
<td>-367</td>
<td>-0.6%</td>
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<tr>
<td>Openings</td>
<td>398</td>
<td>398</td>
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<td>0%</td>
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<tr>
<td>Closures</td>
<td>732</td>
<td>732</td>
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<td>0%</td>
</tr>
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</table>

2. Total GB Pub Closures by TV Region

<table>
<thead>
<tr>
<th>TV Region</th>
<th>Total Outlets</th>
<th>Total</th>
<th>Openings</th>
<th>Closures</th>
<th>Difference</th>
<th>% Change per Week</th>
</tr>
</thead>
<tbody>
<tr>
<td>England</td>
<td>58,985</td>
<td>58,863</td>
<td>388</td>
<td>398</td>
<td>-1</td>
<td>0%</td>
</tr>
<tr>
<td>Scotland</td>
<td>58,985</td>
<td>58,863</td>
<td>388</td>
<td>398</td>
<td>-1</td>
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<tr>
<td>Wales</td>
<td>58,985</td>
<td>58,863</td>
<td>388</td>
<td>398</td>
<td>-1</td>
<td>0%</td>
</tr>
<tr>
<td>Northern</td>
<td>58,985</td>
<td>58,863</td>
<td>388</td>
<td>398</td>
<td>-1</td>
<td>0%</td>
</tr>
<tr>
<td>Total</td>
<td>58,985</td>
<td>58,863</td>
<td>388</td>
<td>398</td>
<td>-1</td>
<td>0%</td>
</tr>
</tbody>
</table>

3. Total GB Pub Closures by Tenure

<table>
<thead>
<tr>
<th>Tenure Group</th>
<th>Total Outlets</th>
<th>Total</th>
<th>Openings</th>
<th>Closures</th>
<th>Net Closures</th>
<th>Transfers In/Out</th>
<th>Difference</th>
<th>% Change per Week</th>
</tr>
</thead>
<tbody>
<tr>
<td>Free</td>
<td>58,985</td>
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<td>388</td>
<td>398</td>
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<td>0</td>
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<td>Managed</td>
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<td>-1</td>
<td>0</td>
<td>0%</td>
<td>-1.0%</td>
</tr>
<tr>
<td>Non Managed</td>
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<td>58,863</td>
<td>388</td>
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<td>0</td>
<td>0%</td>
<td>-1.0%</td>
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<tr>
<td>Total</td>
<td>58,985</td>
<td>58,863</td>
<td>388</td>
<td>398</td>
<td>-1</td>
<td>0</td>
<td>0%</td>
<td>-1.0%</td>
</tr>
</tbody>
</table>

4. Total Pub Closures by Location

<table>
<thead>
<tr>
<th>Location Group</th>
<th>Total Outlets</th>
<th>Total</th>
<th>Openings</th>
<th>Closures</th>
<th>Net Closures</th>
<th>Transfers In/Out</th>
<th>Difference</th>
<th>% Change per Week</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Street</td>
<td>58,985</td>
<td>58,863</td>
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<td>398</td>
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<td>0</td>
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<td>-1.0%</td>
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<tr>
<td>Rural</td>
<td>58,985</td>
<td>58,863</td>
<td>388</td>
<td>398</td>
<td>-1</td>
<td>0</td>
<td>0%</td>
<td>-1.0%</td>
</tr>
<tr>
<td>Suburban</td>
<td>58,985</td>
<td>58,863</td>
<td>388</td>
<td>398</td>
<td>-1</td>
<td>0</td>
<td>0%</td>
<td>-1.0%</td>
</tr>
<tr>
<td>Total</td>
<td>58,985</td>
<td>58,863</td>
<td>388</td>
<td>398</td>
<td>-1</td>
<td>0</td>
<td>0%</td>
<td>-1.0%</td>
</tr>
</tbody>
</table>

*Please note, net closures have been calculated based on openings minus closures in order to take pubs transferring between categories into account.*
From: [Name]
Sent: 21 October 2011 14:48
To: 'Bridgid Simmonds'
Subject: RE: Report for the Minister

Dear Bridgid,

Thank you very much for this document - I appreciate the work it must have taken to secure agreement on these issues in the time available.

I will be putting it to the Minister for his consideration and get back to you on either Monday or Tuesday next week.

Regards,

[Name]

---

The Department for Business, Innovation & Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy.

BIS: Working together for growth.

---

From: Bridgid Simmonds [mailto:bridgidsimmonds@beerandpub.com]
Sent: 21 October 2011 14:37
To: 
Subject: Report for the Minister

Dear [Name],

Thank you very much for your helpful suggestions this morning.

Please find attached a covering letter to the Minister and the Report. I think I have included everything you suggested - there were a number of other amendments today which are mainly about typing and grammar to make it clearer. I have also included a commitment to look further at revitalisation of AWPL machines.

I would be grateful if you would acknowledge safe receipt. I will be sending a copy to ALMR, SIBA and BII (we are seeing Neil Robertson at 4pm).

I look forward to having some initial feedback from the Minister early next week.

Have a good weekend.

Best wishes, Bridgid

Bridgid Simmonds
Chief Executive
British Beer & Pub Association
Market Towers
1 Nine Elms Lane
London SW8 5HQ

06/12/2011
Telephone: 020 7627 9182
Fax: 020 7627 9179
Mobile: 07710 485119
bsimmonds@beerandpub.com
www.beerandpub.com

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Company number 1182734

Registered Office: Market Towers, 1 Nine Elms Lane, London, SW8 5NQ

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06/12/2011
Dear [Name],

Thank you very much for your helpful suggestions this morning.

Please find attached a covering letter to the Minister and the Report. I think I have included everything you suggested – there were a number of other amendments today which are mainly about typos and grammar to make it clearer. I have also included a commitment to look further at rentabilisation of AWP machines.

I would be grateful if you would acknowledge safe receipt. I will be sending a copy to ALMR, SIBA and BI (we are seeing Neil Robertson at 4pm).

I look forward to having some initial feedback from the Minister early next week.

Have a good weekend.

Best wishes, Brigid

Brigid Simmonds  
Chief Executive  
British Beer & Pub Association  
Market Towers  
1 Nine Elms Lane  
London SW8 6NJ  

Telephone: 020 7627 9162  
Fax: 020 7627 9179  
Mobile: 07710 485119  
bsimmonds@beerandpub.com  
www.beerandpub.com

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06/12/2011
21st October 2011

Edward Davey MP
Minister for Employment Relations,
Consumer and Postal Affairs
Department for Business Innovation & Skills
1 Victoria Street
London
SW1H OET

Dear Minister,

The Tie, The Code and Governance

Thank you for meeting with us on 12th October. We were grateful for your positive thinking in relation to the BISC Select Committee Report on Pub Companies.

Please find attached a report to you of our proposed actions to:

- Making the Industry Framework Code indisputably legally binding
- Strengthening the Industry Framework Code
- Strengthening self-regulation by the introduction of arbitration for licensees on issues other than rent, and
- more advice and training on running a pub in the current economic climate.

I look forward to hearing from you and would of course attend any further meeting you may request.

With best wishes,

(Signed)

BRIGID SIMMONDS OBE
Chief Executive
THE TIE, THE CODE AND GOVERNANCE

Report to Edward Davey, MP
Parliamentary Under Secretary of State
Department for Business, Innovation & Skills

by the British Beer and Pub Association (BBPA)

Introduction

Following the meeting with the Minister on 12th October, the British Beer and Pub Association undertook to consider further proposals for self regulation. In essence we were asked to consider:

- Making the Industry Framework Code indisputably legally binding
- Strengthening the Industry Framework Code
- Strengthening self-regulation by the introduction of arbitration for licensees on issues other than rent, and
- more advice and training on running a pub in the current economic climate.

This paper sets out our proposals which in summary are as follows:

- Accreditation of Company Codes requiring re-accreditation every three years

- New arbitration service which allows all tenants and lessees to appeal to PICAS. This complements the existing PIRRS low cost arbitration scheme which only relates to rents.

- Legal Status of the Industry Framework Code
- Strengthening the Industry Framework Code
- Enhanced role for the BII in providing advice and setting standards

Commitments

1. The BBPA will amend the Industry Framework Code (IFC) to clarify its legal status, making it clear that all new entrants and existing tenants and lessees can rely on the provisions of the IFC and that they can seek redress of non-compliance with the IFC either through the Pub Industry Conciliation & Advisory Service (PICAS) or through the Courts.
2. In addition, the BBPA, in conjunction with BII and FLVA, its fellow signatories to the IFC, will undertake an urgent review of the provisions of the IFC in collaboration with expert legal opinion to ensure that the IFC can be easily understood and is clear in its legal interpretation in the event of any legal action in respect of non-compliance.

3. The BBPA undertakes to complete the legal processes as soon as possible, compatible with due process and due diligence, with a view to implementation of this commitment by the end of 2011.

4. A conciliation service, the Pub Independent Conciliation Advisory Service (PICAS) to be set up under the umbrella of PIRRS, through a levy raised primarily from BBPA members. Tenants/lessees to be asked to pay a sum to initiate the process, £200 for example, with the pub company paying the balance of the adjudicator fee.

5. PICAS to be operated under the same governance as PIRRS, namely the BBPA, BII, FLVA, GMV and ALMR.

6. PICAS would have the ability to refer the results of the process to BIBAS which informs the accreditation body in its audit of company codes. In circumstances where major breaches of the Code are identified, BIBAS would have the ability to seek further resolution from the Company as to its future behaviour with removal of accreditation being the ultimate sanction.

7. That the BII separate its advisory role from BIBAS to a more general advice service to prospective and existing tenants/lessees. Administration costs to be met from the Corporate Membership of the BII. Initial advice provided to the tenant/lessee for free and with fees thereafter from professional advisers vetted by the BII.

8. To introduce a three year re-accreditation process, based on an audit trail provided by the companies and evidence of ongoing management of code obligations assessed by the BIBAS Benchmarking Committee.

9. Re-accreditation would be introduced from June 2013.

10. All current members of the BBPA and Greene King agree to submit their company codes for re-accreditation as above.

11. The BBPA will review the Industry Framework Code with its current signatories, who are the BII and FLVA. We will consult with other Associations to widen the ownership and acceptance of the Code and have already commenced this process. The new enhanced Framework Code could come into effect in January 2012.
Legal Status of the Industry Framework Code

Following further legal consultation and acting on that advice, the IFC, to which all company codes of practice must adhere, will be integrated into all future and existing leased and tenanted agreements by a clear statement to be included in the IFC and referred to in all company codes of practice.

The IFC will be incorporated into all new agreements by way of a "Reference" in the primary lease/tenancy agreement. The IFC will meet the provisions of the Law of Property Miscellaneous Provisions Act, 1989, insofar as contracts in respect of land can only be made in one document or by reference to another document, in this case the IFC. Such a document may be referred to providing that, in common with the main rental agreement, there is 'consideration' given by both parties. The IFC provides such consideration by both parties.

The same legal status can be conferred on existing agreements by way of a "Collateral Agreement" through the simple mechanism of both parties signing a copy of the IFC bringing it into effect. The Company makes an unlimited and open offer to all its existing tenants and lessees which can be taken up at any time whether or not it has been formally signed by the other party. In cases where the tenant or lessee chooses not to sign up, he can invoke the Code by making a complaint of non-compliance to PICAS or to the Courts. Such a complaint brings the IFC into effect through the actions of the complainant. Put simply, a complaint triggers acceptance of the Code, since it would be untenable to seek to enforce a Code with which the complaint does not agree.

The legal position as described above is contained in the agreed note of the conference call provided by Robert Howe QC, attached at Annex 2.
Mediation and Arbitration through PICAS

A Pub Independent Conciliation & Advisory Service (PICAS) is to be established where tenants/lessees can pursue complaints of non-compliance with the IFC, breaches of company codes and less-defined complaints about behaviour. PICAS will be based on the mechanisms and governance that has proved successful under PIRRS\(^1\) and will replace the BII mediation service. PICAS will establish mediation and arbitration on a more formal and inclusive position within the process. Complaints on breaches of the Code, and less defined complaints about behaviour, should, in the first instance be dealt with through the companies own dispute procedures. Failing resolution through that process, they can be referred to an independent adjudicator from an approved list similar to that drawn up by PIRRS for valuation experts. Mediation would provide restitution to the complainant where it is appropriate. The Company and the complainant agree to abide by the decision of the adjudicator, which is currently the case under PIRRS, where the rent valuation as determined by the independent valuer is binding on both parties. Complainants will be free to pursue their grievance through the Courts, but not if they choose to avail themselves of the service offered by PICAS.

A diagrammatic representation of the proposed structure is shown at Annex 1.

---

\(^1\) PIRRS provides a cost effective alternative to arbitration in resolving rent disputes between landlords and tenants. PIRRS is funded by subscriptions raised by a levy on all BBPA members and Code signatories. PIRRS is a limited company the Directors of which are drawn from the BII, BBPA, FLVA, GMV and ALMR.
Commitment

4. A conciliation service, the Pub Independent Conciliation Advisory Service (PICAS) to be set up under the umbrella of PIRRs, through a levy raised primarily from BBPA members. Tenants/lessees to be asked to pay a sum to initiate the process, £200 for example, with the pub company paying the balance of the adjudicator fee.

5. PICAS to be operated under the same governance as PIRRS, namely the BBPA, BII, FLVA, CMV and ALMR.

6. PICAS would have the ability to refer the results of the process to BIIBAS which informs the accreditation body in its audit of company codes. In circumstances where major breaches of the Code are identified, BIIBAS would have the ability to seek further resolution from the Company as to its future behaviour with removal of accreditation being the ultimate sanction.

The BBPA will proceed in collaboration with Partners within PIRRS to establish PICAS and recruit the necessary expert adjudicators with a view to the provision of the service early in 2012.

BII Advisory Service

The provision of advice to members is a clearly defined role for the BII and one that it is well set up to do. This service will be made available to non-members of the BII, since at the point of entry prospective tenants/lessees are unlikely to be members of the BII. The service will be self-funding through the fees earned by the advisers, following a short period of free advice. In consequence, apart from the administration involved, there will be no direct cost to the BII.

Commitment

7. That the BII separate its advisory role from BIIBAS to a more general advice service to prospective and existing tenants/lessees. Administration costs to be met from the Corporate Membership of the BII. Initial advice provided to the tenant/lessee for free and with fees thereafter from professional advisers vetted by the BII.

Accreditation

The process of accreditation in accordance with the Industry Framework Code (IFC) through BIIBAS has proved effective and successful with only a few small companies.

2 BIIBAS is the accreditation arm of the BII set up specifically to accredit Company Codes in accordance with the Industry Framework Code.
left to complete. However, unlike many other similar schemes there is no reaccreditation process which would entail an audit of the companies policies and procedures such as are common in British and International standards.

A consequence of this is that the system relies on complaints, rather than a regular 'health check'. Complaints have as a consequence been seen as yardsticks against which the whole system is judged.

There is therefore a clear need to separate out the accreditation process from the mechanisms to deal with complaints and resolution of non-compliance. The introduction of a tri-ennial re-accreditation would ensure the need for companies to maintain a clear audit trail and a strong record keeping process against which BIIBAS would conduct the re-accreditation of their Company Codes of Practice. Reaccreditation would provide a steady income stream for BIIBAS and allow the BII to concentrate its efforts on providing advice and raising standards.

Commitment

8. To introduce a three year re-accreditation process, based on an audit trail provided by the companies and evidence of ongoing management of code obligations assessed by the BIIBAS Benchmarking Committee.

9. Re-accreditation would be introduced from June 2013.

10. All current members of the BBPA and Greene King agree to submit their company codes for re-accreditation as above.

Strengthening the Industry Framework Code

The BBPA is working with partners to enhance the Industry Framework Code and is confident that a measure of agreement can be reached on a range of substantive issues within a practicable timescale. We also believe that there are some further issues which can be discussed with other parties in the industry, where a measure of agreement may also be achievable before the end of November 2011. The current signatories to the Code are BII and FLVA. We will however consult with other Associations to widen the ownership and acceptance of the Code, and have commenced this process.

Previous Select Committee Reports have identified the difference between three or five year traditional tenancies of the type typically offered by family and regional breweries and a longer fully repairing and insuring lease (FRI). Traditional tenancies offer lower cost entry and exit and it is important that they are protected.

It is proposed that various clauses in an enhanced Framework Code would principally apply to longer leases under the FRI model, which are typically operated by the larger companies. Traditional tenancies would be subject to a code closer to the current
Framework Code, albeit with some refinements, as many of the additional elements required for FRI Leases are not relevant for traditional tenancies. The revised Framework Code would become the new enhanced industry 'de minimis', but it is clear that many companies would enhance their practices further as they compete to attract and retain good quality licensees to their pubs. The evidence is clear that companies have frequently exceeded the existing Framework Code and that certain additional features, included in these commitments and proposals, are increasingly common across the Industry and can thus be readily included within a strengthened revised Framework Code.

Unilateral enhancements proposed by BBPA

- **Upward Only Rent Reviews**: Putting the Framework Code on an indisputably legally binding footing, which already makes clear that Upward Only Rent Reviews must not be enforced, removes any requirement that a deed or variation of side letter is required. No Upward Only Rent Reviews will be included in new leases.

Proposals that should be defined and agreed quickly for FRI Leases

Changes where we believe an early broad agreement could be reached include:

- **Waiver Policies**: Company codes to formalise pre-entry waiver requirements to incorporate details of waiver policies in relation to pre-entry training and professional advice. This would include a requirement to sign exemption papers. (Could apply to all tenancies too)

- **Timetable for pre-entry training**: Company codes to include a specific timeframe for pre-entry training and professional advice to be undertaken, before a substantive discussion takes place to take on a lease. (Could apply to all tenancies too). We will also review whether PEAT can be enhanced to clarify further features of the many variants of agreements available in the market.

- **Timetable for information**: Company codes to include a specific timetable for information to be provided in advance of rent negotiations, rent review and renewals, together with a timescale for completion at the end of negotiations.

- **Insurance**: Company codes will specify that they will price match insurance recharge.

- **AWP Machines**: Company codes will specify exactly how machine income is distributed and will give transparency on Royalties if taken.

- **RICS Guidance**: The Industry Code and therefore Company codes, will specify that all rent review assessments must comply with RICS guidance and that rent
assessments for new FRI leases must be signed off by a RICS qualified individual.

- **Rents and other Complaints**: Company codes will include timescales for responses to all complaints and final settlements of cases.

- **Rents**: Company codes to specify a total rent assessment statement which is fully justified.

- **Professional Advice**: Codes to be much more stringent on need for potential FRI Lessees to take professional advice on new lets and renewals.

- **Dilapidations**: For a new lease company codes must make clear the company policy on dilapidations. If there is a requirement to 'put it right and keep it right', then lessees must be encouraged to undertake their own survey.

- **BDM Training**: Company codes to make it clear that over an agreed period of time, all BDMs will receive training, or be exempt under a quantified waiver scheme similar to one used for pre-entry training. All BDMs to undertake continuous professional development training (CDP).

- **Price Lists**: Companies to publish a national company wholesale price list to achieve greater transparency.

**Annual statements of compliance**: For large companies with FRI leases, there would be a requirement for an annual statement of compliance on the FRI lease operation. This would include compliance with a range of indicators including new lease negotiations entered into, percentage where a waiver was used and the number successfully completed. Similarly it would include information about the number of rent reviews, percentage completed within an agreed time frame and percentage referred to PIRRS.

BIBAS would be invited to conduct spot checks in areas of greatest risk.

**Further issues to be discussed**

In parallel with the agreement and definition of the items referred there are a number of other suggestions which the Industry is exploring with constructive industry partners. These address some sensitive commercial issues but we would undertake our best endeavours to agree further progress on such issues as:

- Evolution of the AWP tie, including exploring a mechanism whereby the issue of machine income rentalisation might be resolved.
- Simplification of the rental negotiation process,
- Rent assessments requiring greater justification of assumptions used.
• Agreement on common format of Shadow P&L statements to enable greater comparability between companies.
• Enhancement of PIRRS, including potential extension of its remit to FRI Lease renewals, not just mid-term rent reviews.
• Explore further principles of the Code in relation to balance of risk and reward.

Commitment

11. The BBPA will review the industry Framework Code with its current signatories, who are the BII and FLVA. We will consult with other Associations to widen the ownership and acceptance of the Code and have already commenced this process. The new enhanced Framework Code could come into effect in January 2012.

12. A series of proposals to enhance the Framework Code which are defined and could be agreed quickly are included. Most would apply to longer leases under the FRI model, which are typically operated by larger companies. These should be agreed by the end of November 2011.

13. BBPA is proposing an annual statement of compliance for large companies with FRI leases with BIBAS invited to conduct spot checks in areas of greatest risk.

14. A range of further issues to be discussed and explored with partners are included which address some sensitive commercial issues but we would use our best endeavours to agree these by the end of the year.

Additional Commitments

Cost Benchmarking

The BBPA has now completed and published its cost benchmarking exercise and has discussed its findings with the ALMR and the BII. It is accepted that while the Benchmarking data derives from different sources the data is compatible once these differences are taken into account. It was further agreed that there was little to be gained by amalgamating the two sets of data, ALMR being primarily multiple operator data and the BBPA being derived from single operator tenants/lessees. Nonetheless, both sets provide useful information to both incoming and existing tenants and lessees.
BDM Training

Company Codes set out provisions and commitments governing the competence and progression of BRM’s/BDM’s, including qualifications and on-going training. The BII have launched a “Certificate in Multiple Retail Management” to support companies in the training of BRM’s/BDM’s, which takes the training up to NVQ Level 4.

Conclusion

The current Framework Code has gained rapid traction and acceptance within the Industry and is increasingly understood by licensees. As a result companies increasingly recognise the value of the Codes of Practice and are much more willing to codify and improve current practices which are of benefit to both parties to the agreement. The industry is confident that the further changes it is prepared to make and others to consider, will enable a growing consensus across the broader Industry about operation of the FRI Lease and Traditional Tenancy models.

Brigid Simmonds OBE
Chief Executive
British Beer & Pub Association 21 October 2011
ANNEX 1

Governance Board

- Cross-industry constituents
- BII, ALMR, BBPA, FLVA, publicans

Arbitration

- Cyclic rent review determination
- Dispute resolution
- COP complaints
- Commercial terms
- Relationships

Quality & Accreditation

- Training, qualifications, and skills
- Independent, professional advice

PIRRS
National Institute of Rents and Rates Studies

- Codes of Practice content

PICAS
Panel of Independent Chartered Agents and Surveyors

BIBAS
British Insurance Brokers Association

PAS
Prudential Assurances Society

- Accountancy
- Valuation
- Legal
- Property
- Trade
Dear Martin,

Framework Code of Conduct

I attach a copy of Robert Howe's approved note of the conference we had with him on the 11th October.

Yours sincerely,

Jonathan Smith
Poppleston Allen

Enclosures.
Local Status of the Industry Framework Code (IFC)

For the purposes of this analysis, it is necessary first to consider the position of (a) New Leases/Tenancies, and then (b) Existing Leases/Tenancies.

New Leases/Tenancies (L/Ts)

New agreements do not present a problems in principle.

- The IFC can be incorporated into the L/T agreement by way of ‘reference’.
- It is possible that L/Ts may include a “disposition of an interest in land”, in which case they would need to satisfy s 2 of the Law of Property [Misc. Provisions Act], 1989.
- S 2(3) requires that such contracts “can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each”.
- But s 2(2) states that the terms may be incorporated in a document either by being set out in it “or by reference to some other document”.
- The IFC can therefore be validly incorporated into L/Ts by reference, and will then be enforceable under the L/T agreement.
- In order to ensure that there is a mechanism to enable the IFC to be updated without the need for individual variations of each and every L/T, which would be extremely onerous, inconvenient and expensive (for all parties).

Existing L/Ts

- Existing L/Ts do not make reference to the IFC. Incorporation of the IFC into existing L/Ts would therefore require individual variations of each and every L/T, which would be extremely onerous, inconvenient and expensive (for all parties).
- To avoid this, the easiest way to give the IFC contractual effect with existing L/Ts would be by way of a ‘Collateral Agreement’.
- Ideally, to be signed off by both parties, where a PubCo agrees to agree the terms of the IFC, and an L/T signs, confirming that he accepts, then that agreement to comply with the IFC takes effect as a contract between the parties in the usual way.
- However, even where the L/T does not sign immediately, the offer from the PubCo is a “Unilateral Offer” or “Standing Offer”, which can be taken up by the L/T at any time (Common Law – the ‘Carborundum Smoke Bell Company’).
- The adoption of the ‘Collateral Agreement’ does not necessarily have to be signed by the L/T – if by his actions he is ‘deemed to accept’.
• A complaint/reference to PECAS on the basis of non-compliance with the Code would signify acceptance of the IFC by the Court, because by lodging and registering the Code, the IFC was indicating that it accepted the offer by Public to comply with it. You could not make a complaint by alleging something you did not accept.
• Similarly, if in Court proceedings an I/F/ seeks to invoke and rely on the IFC that would also constitute acceptance, giving the IFC contractual force.
• In short, The Company makes an "INVOLUNTARY STANDING OFFER" to its E/F to comply with the IFC. This offer can be taken up at any time, so it is always open to the E/F to rely on the IFC if they wish to do so.

The Framework Code Drafting
• Robert's provisional view is that the Code as written is fairly clear and should not need to be altered substantially. However, it would be sensible to give it a "health check" before it is put forward as a contractual document.
• Negotiate with Robert House to identify a contract lawyer to review and re-draft if there are places where there might be room for interpretation (legal, examples).
From: [Redacted]
Sent: 21 October 2011 14:33
To: "Paul Wells/CW/CWG"
Cc: [Redacted]
Subject: RE: The family brewers

Dear Paul/Jonathan,

Thank you also very much for your time earlier this week. I found it very helpful to understand better the differences between lease and tenancy agreements and the evidence that you provided will be very useful when preparing advice to Ministers.

In terms of the meeting with the Minister that we discussed, I have just spoken to his office and they asked me to confirm to you that the date will be 3rd November; however, they are currently balancing a couple of other engagements and therefore expect to be able to confirm the exact time on either Monday or Tuesday next week.

Regards,

[Signature]

The Department for Business, Innovation and Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy.

BIS: Working together for growth

From: Paul Wells/CW/CWG [mailto:paul.wells@charleswells.co.uk]
Sent: 21 October 2011 12:42
To: [Redacted]
Cc: [Redacted]
Subject: The family brewers

Dear [Redacted],

Thank you for your time when Jonathan Neame and I visited this week. We found it very helpful to hear your views about the next steps following the BIS report, and I believe that the BISPA document being submitted now contains an acknowledgement of the fundamental differences between Brewery tenancy agreements and long term FRI leaseholds.

We are standing by in case you should need any more information and I have also begun to think how we can acknowledge and support the concept of a Framework Code which is two-stage. In the meantime, I have copied below our latest satisfaction survey of the brewery tenants within the Family Brewer companies. I think this is a very robust set of views as nearly half of all 4,000 tenants have been surveyed.

With best wishes,

06/12/2011
Paul

- Key findings so far (up to date as at last survey: September 2011):
  - 72% agree they receive good overall support from their Head Office
  - 51% of tenants agree their rent is 'fair' for the business they do, with only 27% disagreeing.

(Given the nature of this question, this is a positive result in light of the current economic situation.)

- 72% agree their brewery has lived up to their expectations so far, with only 11% disagreeing
- 82% would look to renew their agreement when their current agreement expires

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Charles Wells Ltd., The Eagle Brewery, Bedford, MK40 4LU, United Kingdom

Telephone +44(0)1234 272625

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06/12/2011
From: Paul Wells/CWCGW [paul.wells@charleswells.co.uk]
Sent: 21 October 2011 12:42
To: 
Cc: jnearme@shepherdneame.co.uk
Subject: The family brewers

Dear [Name],

Thank you for your time when Jonathan Nearne and I visited this week. We found it very helpful to hear your views about the next steps following the BISC report, and I believe that the BBPA document being submitted now contains an acknowledgement of the fundamental differences between Brewery tenancy agreements and long term FRI leaseholds.

We are standing by in case you should need any more information and I have also begun to think how we can acknowledge and support the concept of a Framework Code which is two-stage. In the meantime, I have copied below our latest ‘satisfaction survey’ of the brewery tenants within the Family Brewer companies. I think this is a very robust set of views as nearly half of all 4,000 tenants have been surveyed.

With best wishes,

Paul

- Key findings so far (up to date as at last survey: September 2011):

  72% agree they receive good overall support from their Head Office

  51% of tenants agree their rent is “fair” for the business they do, with only 21% disagreeing.

  (Given the nature of this question, this is a positive result in light of the current economic situation.)

  72% agree their brewery has lived up to their expectations so far, with only 11% disagreeing.

  82% would look to renew their agreement when their current agreement expires

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06/12/2011
By way of informal feedback, the meeting on Wednesday was cordial but there was a lot of push back from the companies represented as to how to proceed. There was strong resistance to substantive change to the Code, which is why the points they have listed as immediate actions are readily attainable and cannot be categorized as significant progress – as agreed, they are a good opening bid.

From our perspective, the frustration lies in the fact that this is all very reactive and responsive – they are asking us to make proposals, tell them what to do, there is no initiative or imagination from their side – which leads irrefutably to the conclusion that they are being dragged kicking and screaming.

---

Kate,

Very much appreciated - thank you.

---

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BIS: Working together for growth.

---

Good to talk. My contact details are [redacted] and mobile is [redacted].

Kind regards,
Kate
Sent: 20 October 2011 17:47
To: Kate Nichols
Subject: RE: BIS Select Committee Report

Kate,

I've just received a document from Brigid - would very much value a conversation early tomorrow. Are you around?

Thanks.

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BC: Working together for growth

---

From: Kate Nichols [mailto:k.nicholls@altr.org.uk]
Sent: 18 October 2011 14:40
To: 
Subject: BIS Select Committee Report

I spoke to Chris at the end of last week following our meeting with BBPA on Wednesday 12th October, held immediately before they met with the Minister. In light of comments made at those meetings, I suggested it would be helpful to copy you in to our ongoing correspondence with BBPA.

At our meeting on 12th October, the BBPA told us that they would not be revising the Framework Code and that their proposals for reform would only deal with the legal basis of the Code and the establishment of a new arbitration service. This was presented as a ‘take it or leave it’ proposal at the end of our meeting, and we were asked to endorse it immediately so that our support could be conveyed to the Minister. I declined to do so on the grounds that we would need to study this in the round and as part of a broader range of proposals for reform.

As I mentioned when we last met, we believe that, for progress to be made, reform must be taken forward at three distinct levels – code content, enforcement and compliance and independent redress. Arguably, whether the Code is then put on a statutory footing, formally endorsed by Government or incorporated into leases to make it legally binding is of secondary importance. We have therefore presented the attached reform proposals to both BBPA and BII. These are a series of options or possible steps which could be taken and the document is designed to form the basis of a without prejudice discussion which we hope to commence later this week.

I will let you know as soon as I am able whether the BBPA are willing to engage proactively with
us on the basis of the attached. If they are not, I fear that we will be unable to make progress and, at that stage, would wish to meet with the Minister to explain the situation.

Kind regards
Kate

Kate Nicholls
Strategic Affairs Director

Association of Licensed Multiple Retailers
9B Walpole Court, Ealing Studios, London, W5 5ED
Tel: 020 8579 2060 or fax: 020 8579 7579

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06/12/2011
From: [Redacted]
Sent: 21 October 2011 10:10
To: Kate Nicholls
Subject: RE: BIS Select Committee Report

Kate,

Very much appreciated - thank you.

---

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---

From: Kate Nicholls
Sent: 21 October 2011 10:09
To: [Redacted]
Subject: RE: BIS Select Committee Report

---

Good to talk. My contact details are [Redacted] and mobile is [Redacted]

Kind regards
Kate

---

From: [Redacted]
Sent: 20 October 2011 17:42
To: Kate Nicholls
Subject: RE: BIS Select Committee Report

Kate,

I've just received a document from Brigid - would very much value a conversation early tomorrow. Are you around?

Thanks,

---

06/12/2011
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From: Kate Nicholls [mailto:knicholls@almr.org.uk]
Sent: 18 October 2011 14:40
To: 
Subject: BIS Select Committee Report

I spoke to Chris at the end of last week following our meeting with BBPA on Wednesday 12th October, held immediately before they met with the Minister. In light of comments made at those meetings, he suggested it would be helpful to copy you in to our ongoing correspondence with BBPA.

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Kind regards.
Kate

Kate Nicholls
Strategic Affairs Director

Association of Licensed Multiple Retailers
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Tel: 020 8579 2080 or fax: 020 8579 7579

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06/12/2011
Dear [Name],

Here is the draft report and for the time being the note from the QC as a separate document. I will incorporate it as Annex 2 tomorrow.

I would welcome any feedback you have in the morning before I send you a final version.

The contact for SIBA is [Contact Information].

I have talked to his Chairman recently, but he is not aware of our most recent discussions with you. I will however be in contact with Keith Bott, probably tomorrow!

Best wishes, Brigid

Brigid Simmonds
Chief Executive
British Beer & Pub Association
Market Towers
† Nine Elms Lane
London SW8 5NQ

Telephone: 020 7627 9162
Fax: 020 7627 9179
Mobile: 07710 485119

bsimmonds@beerandpub.com
www.beerandpub.com

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Dear Martin,

**Framework Code of Conduct**

I attach a copy of Robert Howe's approved note of the conference we had with him on the 11th October.

Yours sincerely

Jonathan Smith
**Poppleston Allen**

Enclosures
Legal Status of the Industry Framework Code (IFC)

For the purposes of this analysis, it is necessary first to consider the position of (a) New Leases/Tenancies, and then (b) Existing Leases/Tenancies.

**New Leases/Tenancies (L/T)**

New agreements do not present a problem in principle:

- The IFC can be incorporated into the L/T agreement by way of ‘reference’
- It is possible that L/Ts may include a “disposition of an Interest in land”, in which case they would need to satisfy s 2 of the Law of Property (Misc. Provisions Act), 1989.
- S 2(1) requires that such contracts “can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each”.
- But s 2(2) states that the terms may be incorporated in a document either by being set out in it “or by reference to some other document”.
- The IFC can therefore be validly incorporated into L/Ts by reference, and will then be enforceable under the L/T agreement.
- In order to ensure that there is a mechanism to enable the IFC to be updated without the need for individual variations of each L/T, the relevant clause should also refer to the ability to change/modify the IFC and the contractual mechanism by which it is to be achieved i.e. agreement and sign off by the relevant parties i.e. BBPA, BII and FLVA (ALMR to be included?).

**Existing L/T**

- Existing L/T do not make reference to the IFC. Incorporation of the IFC into existing L/Ts would therefore require individual variations of each and every L/T, which would be extremely onerous, inconvenient and expensive (for all parties).
- To avoid this, the easiest way to give the IFC contractual effect with existing L/Ts would be by way of a ‘Collateral Agreement’
- Ideally, to be signed off by both parties. Where a PubCo offers to agree the terms of the IFC, and an L/T signs, confirming that he accepts, then that agreement to comply with the IFC takes effect as a contract between the parties in the usual way.
- However, even where the L/T does not sign immediately, the offer from the PubCo is a “Unilateral Offer” or ‘Standing Offer’, which can be taken up by the L/T at any time (Common Law – the ‘Carbolic Smoke Ball Company’).
- The adoption of the ‘Collateral Agreement’ does not necessarily have to be signed by the T/L— if by his actions he is ‘deemed to accept’.
- A complaint/reference to PICAS on the basis of non-compliance with the Code would signify acceptance of the T/C by the Courts, because by invoking and relying on the Code, the L/T was indicating that he accepted the offer by PubCo to comply with it (You could not make a complaint by relying on something you did not accept).
- Similarly, if in Court proceedings an L/T chose to invoke and rely on the IFC, that would also constitute acceptance, giving the IFC contractual force.
- In short: The Company makes an 'UNLIMITED STANDING OFFER' to its L/Ts to comply with the IFC. This 'Offer' can be taken up at any time, so it is always open to the L/Ts to rely on the IFC if they wish to do so.

The Framework Code Drafting

- Robert's provisional view is that the Code as written is fairly clear and should not need to be altered substantially. However, it would be sensible to give it a "health check" before it is put forward as a contractual document.
- Jonathon Smith/Robert Howe will identify a contract lawyer to review and re-draft if there are places where there might be room for interpretation (legal wrangles)
From: [name]
Sent: 20 October 2011 17:47
To: Kate Nicholls
Subject: RE: BIS Select Committee Report

Kate,

I've just received a document from Brigid - would very much value a conversation early tomorrow. Are you around?

Thanks,

[Signature]

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Sent: 18 October 2011 14:40
To: [name]
Subject: BIS Select Committee Report

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That sounds good - thank you for all your help.

Regards,

---

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---

That's in the diary for 8.30am at your office next Tuesday.

I will ask Neil to give you a call tomorrow – it will probably be around lunchtime if that’s OK.

Sorry you can’t make the 1st but hope you have a good holiday.

Kind regards,

---

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Call 01275 417815 or click this link www.bii.org/rbevents for more information and to
book your place

From: [Redacted]
Sent: 19 October 2011 13:35
To: [Redacted]
Subject: RE: Meeting/coffee with Neil Robertson

Dear [Redacted],

8:30am at BIS next Tuesday would work very well. A quick call at some point tomorrow would also be helpful, particularly before his meetings with Kate and Bridget.

I'm unfortunately on leave for the BPW event on 1st November so won't be able to make it, though otherwise would have been keen to.

Regards,

[Redacted]

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---

From: [Redacted]
Sent: 19 October 2011 12:26
To: [Redacted]
Subject: RE: Meeting/coffee with Neil Robertson

Dear [Redacted],

Neil is now back from China with his first day in the office today.

He has a meeting next Tuesday, 25th at 10.00am at Lancaster London Hotel, Paddington, W2 2TY so could he meet you at 8.30am for coffee – would it be best he came to your office? If this is convenient would you still like to speak to him on the phone beforehand?

Neil has asked me to let you know that he is meeting Kate from ALMR & Bridget from BBPA on Friday, 21st October and then the BIBAS steering committee meeting is being held on 1st November so meeting with you on 25th October would be ideal.

Sorry, but while I am emailing you could I please ask if you are able to attend the BPW Parliamentary Reception on 1st November – I don’t think I’ve had a response re this. Neil has asked me to let you know this is an informal event.

Kind regards,

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From: [Redacted]
Sent: 19 October 2011 12:10
To: [Redacted]
Subject: RE: Meeting/coffee with Neil Robertson

Dear [Redacted],

Most times tomorrow morning, Friday morning or Monday - Thursday next week
- I’m happy to shuffle things if necessary.

If meeting is next week, would also be good to have a phone call with him later
this week - when does he come back from China?

Regards,

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06/12/2011

From: [Redacted]
Sent: 19 October 2011 11:56
To: [Redacted]
Subject: Meeting/coffee with Neil Robertson

Dear [Redacted],

Neil Robertson has asked if I could try and set up a time when you and he could meet up
for a coffee - he would come to London.
Could you please let me have your availability over the next two weeks so that I can try and tie something up.

Kind regards

www.bii.org

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Innovation and Skills |

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06/12/2011
Of course.

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---

From: Mark Blythman [mailto:Mark.Blythman@greeneking.co.uk]
Sent: 18 October 2011 15:38
To: 
Subject: RE: PROTECT COMMERCIALY CONFIDENTIAL: Greene King and other brewery tied tenancy operator meeting with Edward Davey MP

Could you please let me have your phone number so I can give you a call on this?
Many thanks,
Mark

Mark Blythman
Strategy & Communications Director
Greene King plc
01284 714571
07974 132731

---

From:
Sent: 14 October 2011 15:30
To: Simon Longbottom
Cc: Mark Blythman; Tina Christou
Subject: PROTECT COMMERCIALY CONFIDENTIAL: Greene King and other brewery tied tenancy operator meeting with Edward Davey MP
Simon cc

The Minister's diary secretary is looking for a suitable slot for Greene King and other BTT operators to meet with Edward Davey. His office will be in touch in due course.

The Minister has received a request from Jonathan Neame to speak about very similar issues. It would seem sensible if you all attended the same meeting. We imagine you will have no objections to this but please let lain know if this will be problematic.

Unfortunately, this is my last day covering this area as I am moving on to a new role. will be taking over the lead from now on so please direct future correspondence his way.

Kind regards

Department for Business, Innovation & Skills

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06/12/2011
Greene King Brewing and Retailing Limited (3298903)
Greene King Retailing Limited (5265451)
Loch Fyne Restaurants Limited (SC181811)

The registered office of each of these subsidiaries is the same as that of Greene King plc, save for Loch Fyne Restaurants Limited, which is registered in Scotland and whose registered office is Belhaven Brewery, Brewery Lane, Dunbar, East Lothian, EH42 1PE.
From: Mark Blythman [Mark.Blythman@greene king.co.uk]
Sent: 18 October 2011 16:38
To: 
Subject: RE: PROTECT COMMERCIALLY CONFIDENTIAL: Greene King and other brewery tied tenancy operator meeting with Edward Davey MP

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Strategy & Communications Director
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07974 132731

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Cc: Mark Blythman; Tina Christou; 
Subject: PROTECT COMMERCIALLY CONFIDENTIAL: Greene King and other brewery tied tenancy operator meeting with Edward Davey MP

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06/12/2011
From: Kate Nicholas [knicholls@almr.org.uk]
Sent: 18 October 2011 14:40
To: BIS Select Committee Report

Follow Up Flag: Follow up
Flag Status: Completed
Attachments: proposed revisions to framework code 2.docx

I spoke to Chris at the end of last week following our meeting with BBPA on Wednesday 12th October, held immediately before they met with the Minister. In light of comments made at those meetings, he suggested it would be helpful to copy you in to our ongoing correspondence with BBPA.

At our meeting on 12th October, the BBPA told us that they would not be revising the Framework Code and that their proposals for reform would not deal with the legal basis of the Code and the establishment of a new arbitration service. This was presented as a 'take it or leave it' proposal at the end of our meeting, and we were asked to endorse it immediately so that our support could be conveyed to the Minister. I declined to do so on the grounds that we would need to study in the round and as part of a broader range of proposals for reform.

As I mentioned when we last met, we believe that, for progress to be made, reform must be taken forward at three distinct levels – code content, enforcement and compliance and independent redress. Arguably, whether the Code is then put on a statutory footing, formally endorsed by Government or incorporated into leases to make it legally binding is of secondary importance. We have therefore presented the attached reform proposals to both BBPA and BIS.

I will let you know as soon as I am able whether the BBPA are willing to engage proactively with us on the basis of the attached. If they are not, I fear that we will be unable to make progress and, at that stage, would wish to meet with the Minister to explain the situation.

Kind regards
Kate

Kate Nicholas
Strategic Affairs Director

Association of Licensed Multiple Retailers
98 Warpole Court, Ealing Studios, London, W6 9ED
Tel: 020 8578 2080 or fax: 020 8578 7579

Registered office as above. Registered in England No: 3964186

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06/12/2011
Dear All,

Please find attached a note of the Minister's meeting with the British Beer and Pub Association and member companies.

Meeting with Pub Companies and...  www.bis.gov.uk

From:  Stephen
Sent:  10 October 2011 11:57
To:  Davey MPST, Cable MPST, SPAD MPST
Cc:  Willetts MPST; Prisk MPST; Perm Sec (BIS); Kelly Bernardette (MPST DG); Chambers Sarah (CCP); Swift Jane (CCP); Campbell Olivia (COPME)
Subject:  BRIEFING: Edward Davey meeting with major pub companies - Wednesday 12th October 3pm

Stephen: cc

Please see attached briefing for Edward Davey's meeting with the major pub companies on Wednesday this week. We have a 15 minute pre-brief with him tomorrow to bring the Minister up to speed on recent developments. Hence, we ask for the Minister to read the meeting brief before tomorrow's pre-brief.

Department for Business, Innovation & Skills:  [logo]

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<< File: Briefing - Edward Davey meeting with Pub Companies 12.10.11.DOC >>
Meeting with Pub Companies and the BBPA
Re BIS Committee's recent 'Pub Companies' Report
12th October 2011

Edward Davey (ED), Minister for Employment Relations, Consumer and Postal Affairs
Ralph Findlay, Chief Executive, Marston's plc
Roger Whiteside, Chief Executive, Punch Taverns plc
Simon Townsend, Chief Operating Officer, Enterprise Inn plc
Jonathan Paveley, Chairman, Admiral Taverns
Brigid Simmonds, Chief Executive, British Beer and Pub Association
   Competition Policy Advisor, BIS
i, Competition Policy Advisor, BIS

Actions: ED requested that officials be very clear about how any new proposals differ from what is currently there and whether these would constitute a step change.

- ED started by noting the progress the industry has made up to June 2011, highlighting the PIRRS initiative as an example of good self-regulation. He went on to say however that the Select Committee's report reflected very badly on the industry. He recognised that the Government and the Pub industry have a joint, significant, challenge in responding to the Committee's Report. He was clear to the pub companies that Parliament is seeking action on this with pressure from all sides. Martin Horwood's Private Member's Bill should not be dismissed lightly. He highlighted how Private Member's Bills have been won against Government opposition in similar circumstances. It is therefore crucial that the Pub Industry contribute to the effort to avoid statutory regulation by providing a credible, strengthened self-regulatory framework.

- ED set out the criteria for a credible, strengthened self-regulatory framework as an alternative to legislation/statutory code:
  - To ensure the Framework Code of Practice is indisputably legally binding, the Code needs to be incorporated into contracts.
  - To agree to strengthening the Framework Code to be written into contracts, including being clearer on RICS guidance.
  - To establish an independent dispute resolution framework along the lines of the BIBAS/PIRRS model.

- Brigid Simmonds (BS) said that progress has been made but unfortunately it may have been too late for the BIS Committee. She admitted that the industry could have done more and had been guilty of failures in the past. She was clear that the Free of Tie issue is fundamental to their business model.

- In regard to how the industry could satisfy the Minister that it could offer a final, strengthened self-regulatory solution, one of the steps it has taken is to seek advice from a Q.C. on putting the Framework code on a legal footing. They believe this can be achieved through a Collateral Agreement. To strengthen
self regulation it was proposed to set up a PICAS (Pubs Independent Conciliation and Arbitration Service) based on the ACAS model, which would be simple, low cost and accessible. They would also commit to announcing publically by the end of the month that they were taking these self regulatory steps.

- The pub companies stated that the Collateral Agreement means that even if Licensees do not sign up to the Framework Code initially it is still available to them if they subsequently approach the PICAS body i.e. it is legally binding on the pubcos when the Code is signed or not. Edward Davey stated that he thought this was a good approach although BIS solicitors would need to look at what was finally proposed.

- In regard to the PICAS initiative and how complaints would be made, Simon Townsend said that the process would have a chargeable element of a proposed £200 which would prevent vexatious claimants. Accessibility would be maintained especially as this cost would be charged to the organisation should they be found against. Experts already available through the BII would be available through the PICAS system at low cost to resolve issues before formal proceedings.

- Brigid Simmonds said they have started discussions with RICS with regard to improving guidance but this is in its early stages.

- ED welcomed these points which he recognised were important to counter the argument that there is not a self-regulatory solution available. It was acknowledged that implementing an ACAS style arbitration system would take the emotion out of disputes and focus on facts. In particular ED welcomed the legally binding element; he would like BIS officials/lawyers to look into this area.

- ED said that he accepts that there will be challenges from some bodies to any form of self-regulatory solution but ultimately Parliament has the veto on this. He stated that if the worked up proposals to be presented to him in the next month are strong enough he could win the argument in the House. It is key therefore that RICS guidance is tightened up and that the Codes are tightened to further the transparency of process should be fundamental to all the proposals.

- Roger Whiteside sought clarification on what was capable of being delivered over the next month. It was made explicit that a strengthened framework Code needed to be put on a legally binding footing – the current Framework code would not suffice. It was agreed that getting agreement on a strengthened Framework code would not happen within a month but ED sought; and received, the pub companies commitment that this process would be worked into the plans presented to him within a month.
From: Paul Wells/CW/CWG
Sent: 14 October 2011 15:59
To: Paul Wells
Subject: Re: The family brewers perspective

That's great, could we say 2.30pm? If you could let me know where you are I will come along then.

Thanks,
Paul

---

From: Paul Wells/CW/CWG
Sent: 14 October 2011 15:51 CET
To: Paul Wells
Subject: RE: The family brewers perspective

Paul,

Yes, any time in the afternoon is fine with me.
The Department for Business, Innovation & Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy.

BIS: Working together for growth

---

From: Paul Wells/CW/CWG [mailto:paul.wells@charleswells.co.uk]
Sent: 14 October 2011 15:18
To: 
Subject: Re: The family brewers perspective

I am in London and free on Tuesday afternoon, if that’s any good?
Regards,
Paul

---

From: 
Sent: 14/10/2011 15:18 CET
To: Paul Wells
Subject: RE: The family brewers perspective

Dear Paul,

Thank you for your email. I would be very happy to meet you next week to discuss the BISC report.

Which day are you in London?

Regards,

---

Business, Innovation and Skills |

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BIS: Working together for growth

---

From: Paul Wells/CW/CWG [mailto:paul.wells@charleswells.co.uk]
Sent: 14 October 2011 14:13
To: 
Subject: The family brewers perspective

06/12/2011
Dear,

I write on behalf of the Independent Family Brewers of Britain to ask if we may be able to arrange a meeting with you in order to talk about the BiSC report and the next steps following its publication. Brigid Simmonds of the BBPA has passed your details to me.

I am in London usually once a week, and our brewery is an hour north at Bedford, so perhaps you would like to choose - your office or here? I can rearrange my diary to fit in with yours.

Thanks, and best wishes,

Paul.

Paul Wells
Chief Executive,
Charles Wells Ltd.

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Charles Wells Ltd., The Eagle Brewery, Bedford, MK40 4LU, United Kingdom
Telephone +44(0)1234 272625

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06/12/2011
From: Paul Wells/CW/CWG [mailto:paul.wells@charleswells.co.uk]
Sent: 14 October 2011 15:46
To: 
Subject: Re: The family brewers perspective

I am in London and free on Tuesday afternoon, if that's any good?
Regards,
Paul
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BIS: Working together for growth.

---

From: Paul Wells/CW/CWG [mailto:paul.wells@charleswells.co.uk]
Sent: 14 October 2011 14:13
To: 
Subject: The family brewers perspective

Dear [Name],

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Charles Wells Ltd.

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Regards,

Paul Wells
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Charles Wells Ltd.
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Simon cc

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06/12/2011
I would be most grateful if, in due course, you might be able to suggest a date for a meeting.

Best wishes,

Sophie

-----Original Message-----
From: Katie Blower
Sent: 06 October 2011 09:27
To: katie.waring@bis.gsi.gov.uk
Subject: BIS Select Committee report into pub companies

Hi Katie,

Good to talk to you in Birmingham - hope you have fully recovered, although I guess you never have quiet times any more.

I just wanted to drop you a quick email on the Government response to the BIS Select Committee report into pub companies. As you have probably seen, the Committee's report last month was strongly critical of the industry and called for a commitment from government to introduce statutory regulation.
My client, the British Beer and Pub Association (BBPA), has been responsible for the implementation of the current voluntary code and believes that the Committee's conclusions have ignored the progress made in the last two years in pricing, training and rent assessment and fail to fully appreciate the vital role tenanted pubs play in allowing cheaper and easier new entrants and lessees to offset some of the risk of owning a pub in these challenging economic times.

BBPA Chief Executive, Brigid Simmonds, would be really keen to discuss with the Secretary of State his perspective on the sector and how the industry could satisfy the government of its commitment to meaningful reform and the best-interests of the thousands of pubs and pub-lessees throughout the UK.

I know the Minister is extremely busy but we would be particularly grateful for the opportunity to exchange views on these important matters, in order to allow the discussion to contribute to the department's response due towards the end of the year.

Thanks very much Katie.

Katie
From: Simon Longbottom [mailto:SimonLongbottom@greeneking.co.uk]
Sent: 10 October 2011 15:41
To: 
Subject: Invitation to attend meeting with Edward Davey MP - 12th October 2011

Dear,

Further to your email and letter dated 3rd October from Minister Edward Davey requesting a meeting with myself alongside other industry colleagues, I attach a response to that letter and a request to the Minister for a separate meeting. If you would like to know anything further before passing this on to Minister Davey, please do not hesitate to contact me on 07974 132509 or on email as above. A hard copy will also follow in the post.

<<GK response to Ed Davey MP 10102011 Final.doc>>

Kind regards

Simon Longbottom, MD Pub Partners

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06/12/2011
10 October 2011

Edward Davey MP
Minister for Employment Relations, Consumer and Postal Affairs
Department for Business, Innovation & Skills
1 Victoria Street
London
SW1H 0ET

Dear Minister

Business, Innovation & Skills Select Committee Report on Pub Companies

Thank you for the invitation to meet you on Wednesday 12 October. I understand that the meeting is being organised to include the BBPA and two of its larger Pub Company members, to discuss the Select Committee’s most recent report into Pub Companies and the strong recommendation for Government to introduce legislation.

As you will be aware from the report, Greene King relinquished membership of the BBPA last year, for a variety of reasons but significantly because we did not feel that the BBPA adequately represented the interests of all its members, and particularly companies like ours which operate a Brewery Tied Tenancy (BTT) model.

As such, we would like to request a separate meeting with you, either for Greene King alone or alongside other BTT businesses who, like us, have taken the recommendations of the predecessor Select Committee in its 2010 report extremely seriously and have taken every opportunity to cooperate and communicate with the Committee.

Greene King has also ensured ongoing communication with your department, including senior officials in your Competition team, and recently briefed Chris Hopkins and Iain Mansfield on how we have implemented our Code of Practice and ongoing plans to ensure strict adherence to the Code.

As you know, Greene King has been a brewer and pub operator for more than 200 years and currently owns more than 2,500 pubs, hotels and restaurants across the UK. We were the first company to introduce the Code of Practice in 1998, and have continuously evolved our licensees’ support package over the last 12 years to reflect changing economic conditions.

A significant proportion of our industry BTT peers feel as strongly as Greene King does that an alternative approach is needed to that of imposing legislation onto the entire industry that is being called for. The adoption of the Select Committee’s full recommendations, to include statutory regulations across the industry would, in effect, punish the entire industry and not just those pub companies that have still not put their business in order.

Cont.../2
We also believe that the introduction of additional red tape would mean excessive costs for the entire industry and would significantly damage this vital part of the UK economy and erode opportunities for individual licensees to build their business. As you will appreciate, the tied brewery tenancy facilitates low cost access to running a pub.

We would very much welcome the opportunity to discuss this with you at your convenience. I would be happy to co-ordinate with your office and with senior colleagues from within our industry if that would be helpful.

Yours sincerely

Simon Longbottom
Managing Director,
Greene King, Pub Partners
Hi,

Please see email/attached.

---

From: Simon Longbottom [mailto:Simon.Longbottom@greeneeking.co.uk]
Sent: 10 October 2011 15:41
To: [Redacted]
Subject: Invitation to attend meeting with Edward Davey MP - 12th October 2011

Dear [Redacted],

Further to your email and letter dated 3rd October from Minister Edward Davey requesting a meeting with myself alongside other industry colleagues, I attach a response to that letter and a request to the Minister for a separate meeting. If you would like to know anything further before passing this on to Minister Davey, please do not hesitate to contact me on 07974 132509 or on email as above. A hard copy will also follow in the post.

<<GK response to Ed Davey MP 10102011 Final.doc>>

Kind regards

Simon Longbottom, MD Pub Partners

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06/12/2011
Greene King Brewing and Retailing Limited (3298903)
Greene King Retailing Limited (5265451)
Loch Fyne Restaurants Limited (SC181811)

The registered office of each of these subsidiaries is the same as that of Greene King plc, save for Loch Fyne Restaurants Limited, which is registered in Scotland and whose registered office is Belhaven Brewery, Brewery Lane, Dunbar, East Lothian, EH42 1PE.

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06/12/2011
10 October 2011

Edward Davey MP
Minister for Employment Relations, Consumer and Postal Affairs
Department for Business, Innovation & Skills
1 Victoria Street
London
SW1H 0ET

Dear Minister

Business, Innovation & Skills Select Committee Report on Pub Companies

Thank you for the invitation to meet you on Wednesday 12 October. I understand that the meeting is being organised to include the BBPA and two of its larger Pub Company members, to discuss the Select Committee’s most recent report into Pub Companies and the strong recommendation for Government to introduce legislation.

As you will be aware from the report, Greene King relinquished membership of the BBPA last year, for a variety of reasons but significantly because we did not feel that the BBPA adequately represented the interests of all its members, and particularly companies like ours which operate a Brewery Tied Tenancy (BTT) model.

As such, we would like to request a separate meeting with you, either for Greene King alone or alongside other BTT businesses who, like us, have taken the recommendations of the predecessor Select Committee in its 2010 report extremely seriously and have taken every opportunity to co-operate and communicate with the Committee.

Greene King has also ensured ongoing communication with your department, including senior officials in your Competition team, and recently briefed Chris Hopkins and lain Mansfield on how we have implemented our Code of Practice and ongoing plans to ensure strict adherence to the Code.

As you know, Greene King has been a brewer and pub operator for more than 200 years and currently owns more than 2,500 pubs, hotels and restaurants across the UK. We were the first company to introduce the Code of Practice in 1998, and have continuously evolved our licensees’ support package over the last 12 years to reflect changing economic conditions.

A significant proportion of our industry BTT peers feel as strongly as Greene King does that an alternative approach is needed to that of imposing legislation onto the entire industry that is being called for. The adoption of the Select Committee’s full recommendations, to include statutory regulations across the industry would, in effect, punish the entire industry and not just those pub companies that have still not put their business in order.
We also believe that the introduction of additional red tape would mean excessive costs for the entire industry and would significantly damage this vital part of the UK economy and erode opportunities for individual licensees to build their business. As you will appreciate, the tied brewery tenancy facilitates low cost access to running a pub.

We would very much welcome the opportunity to discuss this with you at your convenience. I would be happy to co-ordinate with your office and with senior colleagues from within our industry if that would be helpful.

Yours sincerely

[Signature]

Simon Longbottom
Managing Director,
Greene King, Pub Partners
From:                        
Sent: 10 October 2011 08:22  
To: 'Brigid Simmonds'  
Subject: RE: BIS Select Committee Report  

Brigid,

That will be fine - I am sure the Minister will be happy to see them.

Regards,

-----Original Message-----
From: Brigid Simmonds (mailto:bsimmonds@beerandpub.com)  
Sent: 09 October 2011 21:26  
To: 
Subject: Re: BIS Select Committee Report  

I mentioned that some of the family brewers would be keen to meet with you to discuss the BIS Report, but can I make a request that I bring one more to the meeting with the Minister on Wednesday? The problem I have is that that two companies that might be perceived by others to be the culprits in all of this, are seen to be having the meetings too!

Could I possibly bring Jonathan Paveley who is Chief Executive of Admiral, but as important, Chairman of Hook Norton - a Family Brewer?

Best wishes, Brigid.

Brigid Simmonds  
Chief Executive  
British Beer and Pub Association  
020 7627 9162  
07710 485129  

On 28 Sep 2011, at 11:44 AM, wrote:

> Brigid,
> 
> Good to speak just now. Just to confirm location, the meeting next week is at 1 Victoria Street.
>
> Regards,
The Department for Business, Innovation & Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy.

BIS: Working together for growth

--- Original Message ---
From: Brigid Simmonds <mailto:bsimmonds@beerandpub.com>
Sent: 28 September 2011 09:03
To:
Cc:
Subject: BIS Select Committee Report

Dear [Name],

I am not sure if you have moved on, but at this early stage, could I make an approach to you both to ask for a meeting to discuss the findings of the BIS Select Committee Report and the Government's next steps.

Since our meeting in August, we have been working with BIS to enhance our offer of self regulation. This will include more help for licensees with business advice, mentoring and an ability to appeal on issues other than rent (currently covered by PIRRS).

As you can imagine we were very disappointed by the Select Committee Report who seemed to have ignored all our progress. We have also published our benchmarking figures on costs (with the support of ALMR), but the Select Committee ignored this too.

We are meeting with ALMR to see how we could work together more closely.

It would be good to put a date in the diary for a meeting, even if it was in a couple of weeks' time.

I look forward to hearing from you.

Best wishes, Brigid

Brigid Simmonds
Chief Executive
British Beer and Pub Association
020 7627 9162
07710 480119

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Company number 1182734

Registered Office: Market Towers, 1 Nine Elms Lane, London, SW8 5NQ

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I mentioned that some of the family brewers would be keen to meet with you to discuss the BIS Report, but can I make a request that I bring one more to the meeting with the Minister on Wednesday? The problem I have is that two companies that might be perceived by others to be the outliers in all of this, are keen to be having the meetings too.

Could I possibly bring Jonathan Paveley who is Chief Executive of Admiral, but as important, Chairman of Hook Norton - a family brewer?

Best wishes. Brigid

Brigid Simmonds
Chief Executive
British Beer and Pub Association
020 7627 9162
07710 465119

On 28 Sep 2011, at 11:44 AM, wrote:

> Brigid,
>
> Good to speak just now. Just to confirm location, the meeting next week is at 1 Victoria Street.
>
> Regards,
>
> >> The Department for Business, Innovation & Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy.
> BIS: Working together for growth
>
> ------Original Message------
> From: Brigid Simmonds [mailto:bsimmonds@beerandpub.com]
> Sent: 28 September 2011 09:03
> To: 
>
Cc: Pamela Bates
Subject: BIS Select Committee Report

Dear

I am not sure if you have moved on, but at this early stage, could I make an approach to you both to ask for a meeting to discuss the findings of the BIS Select Committee Report and the Government's next steps.

Since our meeting in August, we have been working with BII to enhance our offer of self regulation. This will include more help for licensees with business advice, mentoring and an ability to appeal on issues other than rent (currently covered by PIRA).

As you can imagine we were very disappointed by the Select Committee Report who seemed to have ignored all our progress. We have also published our benchmarking figures on costs (with the support of ALMR), but the Select Committee ignored this too.

We are meeting with ALMR to see how we could work together more closely.

It would be good to put a date in the diary for a meeting, even if it was in a couple of week's time.

I look forward to hearing from you.

Best wishes, Brigid

Brigid Simmonds
Chief Executive
British Beer & Pub Association
020 7627 9162
07710 485119

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From: [Redacted]
Sent: 06 October 2011 14:43
To: 'Kate Nicholls'
Subject: RE: Meeting tomorrow

Kate

For your future reference, [Redacted] 1

The Department for Business, Innovation & Skills is building a dynamic and competitive UK economy by creating the conditions for business success, promoting innovation, enterprise and science, and giving everyone the skills and opportunities to succeed.

From: Kate Nicholls [mailto:k.nicholls@altr.org.uk]
Sent: 06 October 2011 14:04
To: [Redacted]
Cc: kate@altr.com [at] uk
Subject: Meeting tomorrow

Just confirming we are still meeting tomorrow at 10am as provisionally agreed to discuss progress to date post publication of the BIS Committee Report. I have attached a copy of an Internal ALTR document which we have been using to determine our own internal policy and which I thought may be helpful for you to have in advance and which may help to shape our discussions.

Kind regards
Kate

Kate Nicholls
Strategic Affairs Director

Association of Licensed Multiple Retailers
9B Walpole Court, Ealing Studios, London, W5 5ED
Tel: 020 8579 2060 or fax: 020 8579 7679

Registered office as above. Registered in England No: 3964186

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06/12/2011
Kate spell your name wrong - I only realised this when my reply received a bounce back.

From: [redacted] [mailto:[redacted]@almr.org.uk]
Sent: 06 October 2011 14:54
To: [redacted]
Cc: kate@nlcommunications.co.uk
Subject: Meeting tomorrow.

Just confirming we are still meeting tomorrow at 10am as provisionally agreed to discuss progress to date post publication of the BIS Committee report. I have attached a copy of an internal ALMR document which we have been using to determine our own internal policy and which I thought may be helpful for you to have in advance and which may help to shape our discussions.

Kind regards,
Kate

Kate Nicholls
Strategic Affairs Director
Association of Licensed Multiple Retailers
9B Walpole Court, Ealing Studios, London, W5 5EO
Tel: 020 8579 2080 or fax: 020 8579 7579

Registered office as above. Registered in England No: 3964186

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<table>
<thead>
<tr>
<th>OPTION 1</th>
<th>Code</th>
<th>Enforcement</th>
<th>Redress</th>
<th>Commentary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self Regulation</td>
<td>Framework Code revised by existing signatories to clarify points of concern raised during Committee debate and to translate principles into quantifiable obligations. RICS to be engaged in drafting sections on rental valuation to ensure their guidance is accurately reflected and properly enforceable.</td>
<td>BIIBAS remit and authority to be strengthened in line with Bill proposals and Committee recommendations eg power of censure, enhanced disclosure of all complaints not just final decisions.</td>
<td>All rent reviews to be formally signed off internally by RICS qualified individual.</td>
<td>BBPA states that it will only speak to current Code signatories on content and competition concerns preclude discussions on pricing. This option is unlikely to deliver clarification and adjustment of existing requirements and is unlikely to deliver further meaningful reform in line with previous recommendations. The Code will still not apply to all forms of agreement nor non-BBPA members.</td>
</tr>
<tr>
<td>OPTION 2</td>
<td>Mediated Solution</td>
<td>Framework Code revised through Government facilitated consultation with all stakeholders. Minimum standards and final text to be formally endorsed and approved by Ministers. Mediated settlement to address commercial issues related to pricing and tying arrangements. A similar approach was applied in 2004 by OPM in developing a Code of Practice for Commercial Leases and is also proposed in response to the Hargreaves Review.</td>
<td>BIIBAS strengthened as per above and in light of comment from other stakeholders eg BIIBAS findings to be made binding. BI mediation service to act as a referral mechanism for unresolved complaints or matters which fall short of best practice. Public interest in non industry reps on compliance committee and proactive spot checks on compliance. Retention of self-regulatory model allows for conflict resolution.</td>
<td>Code to be incorporated into the lease or key commercial provisions to be made new lease clauses. Free of tie or guest beer arrangements to be included by means of deed of variation and come into effect at next rent review period, renewal or in the absence of reviews after fixed period of time (3 or 5 years). BI mediated settlements to be made legally binding.</td>
</tr>
<tr>
<td>OPTION 3</td>
<td>Mandatory Code</td>
<td>Government to consult on content of a revised Code to be placed on a statutory footing. Statutory Code to include a mandatory requirement to offer lessees a free of tie option with market rent review at the start of a lease, rent review or renewal and for tied leases to include a guest beer provision.</td>
<td>BIIBAS to be strengthened as per above and in light of further Government recommendations and prosection. Retention of voluntary self-regulatory mechanism provides incentive to resolve complaints.</td>
<td>Existing self-regulatory ombudsman eg Property Ombudsman who regulates estate agency and search industry to provide independent redress and act as a court of appeal.</td>
</tr>
<tr>
<td>OPTION 4</td>
<td>Statutory Regulation</td>
<td>Government to consult on content of a revised Code to be placed on a statutory footing. Statutory Code to include a requirement for certain companies and types of agreement to offer all lessees a free of tie option with market rent review at the start of a lease, rent review or renewal and for tied leases to include a guest beer provision.</td>
<td>No self-regulatory enforcement mechanism ie BIIBAS is abolished.</td>
<td>Independent Statutory Adjudicator - paid for by a levy on the largest pub companies - provides legal redress as par the GCA with the groceries code.</td>
</tr>
</tbody>
</table>
Subject: RE: Part in the world of Food

Dear [Name],

Happy to meet you at [Date]. It will be for a meeting schedule for that date. However, we should plan to set up a meeting with [Client] to be held at [Date] and time. We agree to play a role of the client in early potential changes.

Further,

PHI WITCHERLEY
Corporate Foodservice and Retail After-Sales
Coventry, UK

Tel: 020 1234 5678
Fax: 020 1234 5678
Email: info@witchenley.co.uk
Website: www.witchenley.co.uk

Please reply to this email and let me know if this would be satisfactory.

Best regards,

[Name]

Date:

For PHI WITCHERLEY (witchenley@witchenley.co.uk)
Date: 11 October 2011 19:35
To: Col Rayner (EC), Chris Morey (BAE)
Subject: RE: Part in the world of Food...

Zara,

Thank you.

Following Zara's email, I would like to set up a meeting with you. As well as being British's largest chain, Zara holds the same status as the world's leading fashion retailer, H&M. This would be held at [Date] and time. We would like to meet you to discuss the quality of your business, including your work and potential for growth.

Let us know what you think,

[Name]
Dear [Name],

I hope this message finds you well. I wanted to let you know that things are developing quickly and it would be good to have the stores open.

Thanks for all the work up until now.

[Name]

On behalf of [Department for Business, Innovation & Skills]

The Department for Business, Innovation & Skills (BIS) is making a difference by supporting successful growth and higher skills across the economy.

With warmest regards for your continued support,

[Name]

[Date: 06/12/2011]

---

I hope the information I shared recently is of interest.

He mentioned that they were doing an urgent internal for them on a laboratory scale.

He would be interested to talk to you about options - and whether, given [BIS] No... there is any alternative now.

Best,

[Name]

Wircherry@bismail.co.uk

2nd Deputy Director, Innovation & Growth and Director, Higher Education, BIS

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Ritterer TR Manager

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<< AT5003109.gif (2.0KB) 
AT5003110.gif (2.0KB) 

>> (4.0KB) 

06/12/2011
From: 
Sent: 04 October 2011 16:49
To: 
Subject: FW: Invitation to attend meeting with Edward Davey - 12th October

From: Davey MPST
Sent: 04 October 2011 16:36
To: 
Subjects: FW: Invitation to attend meeting with Edward Davey - 12th October

Next one

Department for Business Innovation & Skills

From: 
Sent: 04 October 2011 16:26
To: 
Subject: Invitation to attend meeting with Edward Davey - 12th October

Dear,

Roger Whiteside is grateful for the opportunity to meet with the Minister on 12th October and I confirm he will attend.

Yours sincerely,

Roger Whiteside

From: 
Sent: 3 October 2011 02:14:14 PM GMT+01:00
To: Brigid Simmonds <bsimmonds@bebrandpub.com>
Subject: Urgent invitation to attend meeting with Edward Davey - 12th October

Dear Brigid,

Please find attached an invite to meet with Edward Davey on the 12th October.

Please also find attached the invites for Mr Roger Whiteside and Mr Simon Townsend. I am informed that it has been arranged for you to forward these invites on to them as our office does not have their email addresses. Hard copies are also being sent in the post to all parties.

06/12/2011
Kind Regards,

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Company number 182734

Registered Office: Market Towers, 1 Nine Elms Lane, London, SW8 5NQ

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Punch Partnerships (PTL) Limited (3512363), Punch Partnerships (PML) Limited (3321199), Punch Partnerships (PGRP) Limited (3988664).

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Following Zoe's email, I would like to set up a meeting with you. As well as being John's legal team, I need to be involved in the broader legal considerations and I would like to work closely with Michelle. For Company XYZ, I have a meeting at around 4pm this Friday. We would like to discuss the legal implications in detail. We would like to include Chris Miles, John's legal team, to attend the meeting.

Let me know what you think.

Phil

--

**HEINEKEN**

Phil Witcher

Corporate Communications and Public Affairs Manager

Corporate Social Affairs

---

Please reply to the unsubscribe option at the end.

Some issues that you might have

--

Ours at least not mine

Phil

---

Subject: Re: In the world of real people

Zoe

Please get in touch with andleet. Things are developing quickly and it would be good
in real life when next.

Thanks for the heads-up.

---

Microsoft Word Document for Spreadsheets, Innovation &

3D

The document for Business, Innovation & Growth is already being reviewed and comments will be sent by Tuesday. The conditions for business success are moving quickly, and enterprises and nations are grappling with the skills and opportunities to succeed.

Zoe

---

Subject: Re: In the world of real people

Zoe

---

I met with Witcher from Heineken recently (on other things).

He mentioned that they were doing an zipost, internal IA for them on a statutory code.

We would be interested to talk to you about options - and whether, given BIS, there is any alternative now.

Zoe

06/12/2011
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BIS: working together for growth

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06/12/2011
From: [Redacted]
Sent: 04 October 2011 16:49.
To: [Redacted]
Subject: FW: Urgent invitation to attend meeting with Edward Davey - 12th October

Please see the first response.

Thanks

From: Davey MPST
Sent: 04 October 2011 16:35.
To: [Redacted]
Subject: FW: Urgent invitation to attend meeting with Edward Davey - 12th October

[Redacted]

Please see the first response.

From: Brigid Simmonds [mailto:brigid.simmonds@beerandpub.com]
Sent: 04 October 2011 09:17
To: [Redacted]
Cc: [Redacted]
Subject: Re: Urgent invitation to attend meeting with Edward Davey - 12th October

Dear [Redacted]

Many thanks for your invitations. I can confirm that Simon Townsend from Enterprise Inns, Roger Whiteside of Punch and myself are available for the meeting on 12th October.

Following my discussion with [Redacted] I can also confirm that we will be joined by Ralph Findlay, Chairman of the BBPA and Chief Executive of Marston.

Best wishes.

Brigid

Brigid Simmonds
Chief Executive
British Beer and Pub Association
020 7627 9162
07710 485119

On 3 Oct 2011, at 02:14 PM, [Redacted] wrote:

Dear Brigid,

Please find attached an invite to meet with Edward Davey on the 12th October.

06/12/2011
Please also find attached the invites for Mr Roger Whiteside and Mr Simon Townsend. I am informed that it has been arranged for you to forward these invites on to them as our office does not have their email addresses. Hard copies are also being sent in the post to all parties.

Kind Regards,

<<Brigid Simmonds.doc>><<Roger Whiteside.doc>><Simon Townsend.doc>>

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<<Brigid Simmonds.doc>
<<Roger Whiteside.doc>
<<Simon Townsend.doc>>

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Any views and opinions expressed in this e-mail may not reflect the views and opinion of the British Beer & Pub Association.

The British Beer & Pub Association is a company limited by guarantee and registered in London.

Company number 1182734

Registered Office: Market Towers, 1 Nine Elms Lane, London, SW8 5NB

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06/12/2011
The Greene King letter must not go to Brigid - they are not a member of the BBPA. I will arrange for that to be emailed separately.

Many thanks

---

The Department for Business, Innovation & Skills is building a dynamic and competitive UK economy by creating the conditions for business success; promoting innovation, enterprise and science; and giving everyone the skills and opportunities to succeed.

Thanks very much. The e-mail address is below with all four to go to this for Brigid to forward. I believe we would like hard copies to go out as well but to the individual postal addresses.

bsimmonds@beerandpub.com

I will contact Brigid to request that the e-mails are forwarded and to highlight the urgency.

Thank you
Please see attached.

Thanks very much. The e-mail address is below with all four to go to this for Brigid to forward. I believe you would like hard copies to go out as well but to the individual postal addresses.

bsimmonds@beerandpub.com

I will contact Brigid to request that the emails are forwarded and to highlight the urgency.

Thank you.
Dear Brigid,

In the light of the Business, Innovation and Skills Select Committee’s recent ‘Pub Companies’ report, recommending to the Government to introduce legislation to address the continued serious issues within the industry, I would like an urgent meeting with you to discuss how the industry proposes to address these serious concerns.

To that end, I will be holding a meeting at 3pm on Wednesday, 12th October 2011 in my office at the Department for Business, 1 Victoria Street, London, to discuss this matter with yourself and the other pub companies. I very much hope you will be able to attend.

Yours sincerely,

EDWARD DAVEY
Dear Roger,

In the light of the Business, Innovation and Skills Select Committee’s recent ‘Pub Companies’ report, recommending to the Government to introduce legislation to address the continued serious issues within the industry, I would like an urgent meeting with you to discuss how the industry proposes to address these serious concerns.

To that end, I will be holding a meeting at 3pm on Wednesday, 12th October 2011 in my office at the Department for Business, 1 Victoria Street, London, to discuss this matter with yourself and the other pub companies. I very much hope you will be able attend.

Yours sincerely,

Edward Davey
Minister for Employment Relations,
Consumer and Postal Affairs

Edward Davey MP

3 October 2011

Roger Whiteside Esq
Chief Executive Officer
Punch Taverns plc
Jubilee House
Second Avenue
Burton-upon-Trent
Staffordshire  DE14 2WF
Dear Simon,

In the light of the Business, Innovation and Skills Select Committee’s recent ‘Pub Companies’ report, recommending to the Government to introduce legislation to address the continued serious issues within the industry, I would like an urgent meeting with you to discuss how the industry proposes to address these serious concerns.

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Yours sincerely,

[Signature]

EDWARD DAVEY

Edward Davey MP
Minister for Employment Relations,
Consumer and Postal Affairs
Dear Simon,

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Yours sincerely,

[Signature]

EDWARD DAVEY
How about this:

I very much hope you will be able attend as your input will be crucial.

Slightly amended 2nd paragraph:

I will be holding a meeting at 3pm on Wednesday, 12th October 2011 in my office at the Department for Business, 1 Victoria Street, London, to discuss this matter with yourself and other pub companies. I very much hope you will be able attend.

Thanks
Please see attached...


---

From: Davey MPST
Sent: 03 October 2011 11:56
To:  
Cc: Davey MPST
Subject: FW: Urgent invitation to pub companies to attend meeting with Edward Davey - 12th October

As discussed urgent meeting invite letter to be letter headed

Thank you

---

From:  
Sent: 03 October 2011 11:34
To:  
Cc:  
Subject: Urgent invitation to pub companies to attend meeting with Edward Davey - 12th October

In the light of a conversation with Katie Waring on Friday last week, we would like to arrange an urgent meeting with the pub companies next week (12th October, 3pm - already arranged in ED diary with [Redacted] for ED to go hard on them and reinforce the importance of them offering up solutions in the light of the Select Committee report.

I attach a draft letter, with office addresses. The only email I have is Brigid Simmonds' (bsimmonds@beerandpub.com) - I will contact her later today and ask her to ensure the other recipients are forwarded the email. Due to the short timescales, we would like this letter to be sent out today.

Please could you arrange for this to be put onto official BIS letterhead, and advise on the language used for this type of invitation.

Many thanks,

---

Department for Business, Innovation & Skills
The Department for Business, Innovation & Skills is building a dynamic and competitive UK economy by creating the conditions for business success; promoting innovation, enterprise and science; and giving everyone the skills and opportunities to succeed.

<< File: 3 October - Invitation to Pub cos to discuss BIS Committee report.doc >>

<<

Brigid Simmonds.doc  (27.6KB)

>>

(27.6KB)
From: Davey MPST
Sent: 03 October 2011 12:10
To: 
Cc: 
Subject: FW: Urgent invitation to pub companies to attend meeting with Edward Davey - 12th October
Attachments: 

Please see attached. 

As discussed urgent meeting invite letter to be letter headed. 

Thank you

In the light of a conversation with Katie Waring on Friday last week, we would like to arrange an urgent meeting with the pub companies next week (12th October, 3pm - already arranged in ED diary with) for ED to go hard on them and reinforce the importance of them offering up solutions in the light of the Select Committee report. 

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this letter to be sent out today. Please could you arrange for this to be put onto official BIS letterhead, and advise on the language used for this type of invitation. Many thanks.

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<<< File: 3 October - Invitation to Pub cos to discuss BIS Committee report.doc >>>

<<<
Roger Whiteside.doc (30.0KB)
Simon Longbottom.doc (30.0KB)
Simon Townsend.doc (30.0KB)
Brigid Simmonds.doc (30.0KB)

(121.1KB) >>>
In the light of a conversation with Katie Waring on Friday last week, we would like to arrange an urgent meeting with the pub companies next week (12th October, 3pm - already arranged in ED diary with [ ] for ED to go hard on them and reinforce the importance of them offering up solutions in the light of the Select Committee report.

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Please could you arrange for this to be put onto official BIS letterhead, and advise on the language used for this type of invitation.

Many thanks

Department for Business, Innovation & Skills

The Department for Business, Innovation & Skills is building a dynamic and competitive UK economy by creating the conditions for business success; promoting innovation, enterprise and science; and giving everyone the skills and opportunities to succeed.
Dear Brigid/ Simon/ Roger/ Simon

In the light of the Business, Innovation and Skills Select Committee's recent 'Pub Companies' report, recommending to the Government to introduce legislation to address the continued serious issues within the industry, I would like an urgent meeting with you to discuss how the industry proposes to address these serious concerns.

I will be holding a meeting at 3pm on Wednesday, 12th October 2011 in my office at the Department for Business, 1 Victoria Street, London, to discuss this matter with the pub companies. I very much hope you will be able attend.
Many thanks for providing this.

The Department for Business, Innovation & Skills is building a dynamic and competitive UK economy by creating the conditions for business success; promoting innovation, enterprise and science; and giving everyone the skills and opportunities to succeed.

Please find the minutes attached along with the list of formerly tied pubs that are now thriving, which were presented to the meeting.

Many thanks

Jonathan

Thank you very much for providing this information.

Are there any minutes you could share with me on the recent APPSPG debate on the future of the pub industry?

Many thanks

06/12/2011
The Department for Business, Innovation & Skills is building a dynamic and competitive UK economy by creating the conditions for business success; promoting innovation, enterprise and science; and giving everyone the skills and opportunities to succeed.

From: Jonathan Mall [mailto:jonathan.mall@camra.org.uk]
Sent: 16 September 2011 14:09
To:
Subject: Latest Pub Closure Data

Dear,

CAMRA yesterday published the latest pub closure figures which showed that over the last six months tied pubs have been closing at nearly twice the rate of non tied pubs. The full report is attached along with some of the press coverage we received. Also, links to website articles below:

http://www.google.com/hostednews/ukpress/article/AlCqM5gCHTCi0DSiaY7M11490JW7p6Zwe?docId=N040497/1316095020771A
http://news.uk.msn.com/uk/two-british-pubs-close-every-day
http://www.thelondon.co.uk/standard/article-23987581-two-british-pubs-close-every-day.do
http://news.sky.com/home/business/article/16070437
http://www.telegraph.co.uk/news/8766550/Two-pubs-close-every-day.html

Many thanks,

Jonathan Mall
Head of Policy and Public Affairs
Campaign for Real Ale, CAMRA

e: jonathan.mall@camra.org.uk

t: 01727 798448

w: www.camra.org.uk

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From: Brigid Simmonds  
Sent: 28 September 2011 11:45
To: BIS Select Committee Report
Subject: RE: BIS Select Committee Report

Brigid,

Good to speak just now. Just to confirm location, the meeting next week is at 1 Victoria Street.

Regards,


---

The Department for Business, Innovation & Skills (BIS) is making a difference by supporting sustained growth and higher skills across the economy.

BIS: Working together for growth

--- Original Message ---

From: Brigid Simmonds [mailto:bsimmonds@beerandpub.com]
Sent: 28 September 2011 09:03
To: [mailto:bsimmonds@beerandpub.com]
Cc: [mailto:bsimmonds@beerandpub.com]
Subject: BIS Select Committee Report

Dear [Name],

I am not sure if you have moved on, but at this early stage, could I make an approach to you both to ask for a meeting to discuss the findings of the BIS Select Committee Report and the Government's next steps.

Since our meeting in August, we have been working with BII to enhance our offer of self-regulation. This will include more help for licensees with business advice, mentoring and an ability to appeal on issues other than rent (currently covered by FIRRS).

As you can imagine we were very disappointed by the Select Committee Report who seemed to have ignored all our progress. We have also published our benchmarking figures on costs (with the support of ALMR), but the Select Committee ignored this too.

We are meeting with ALMR to see how we could work together more closely.

It would be good to put a date in the diary for a meeting, even if it was in a couple of week's time.

I look forward to hearing from you.

Best wishes, Brigid

Brigid Simmonds
Chief Executive
British Beer and Pub Association
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Any views and opinions expressed in this e-mail may not reflect the views and opinion of the British Beer & Pub Association.

The British Beer & Pub Association is a company limited by guarantee and registered in London.

Company number 1182734

Registered Office: Market Towers, 1 Nine Elms Lane, London, SW8 5NQ

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From: Brigid Simmonds (bsimmonds@beerandpub.com)
Sent: 28 September 2011 08:03
To: 
Cc: 
Subject: BIS Select Committee Report

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Since our meeting in August, we have been working with BII to enhance our offer of self-regulation. This will include more help for licensees with business advice, mentoring and an ability to appeal on issues other than rent (currently covered by PIRRS),

As you can imagine we were very disappointed by the Select Committee Report who seemed to have ignored all our progress. We have also published our benchmarking figures on costs (with the support of ALMR), but the Select Committee ignored this too.

We are meeting with ALMR to see how we could work together more closely.

It would be good to put a date in the diary for a meeting, even if it was in a couple of week’s time.

I look forward to hearing from you.

Best wishes, Brigid

Brigid Simmonds
Chief Executive
British Beer and Pub Association
020 7627 9162
07710 485119

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BBPA COMMENTARY ON THE BIS SELECT COMMITTEE REPORT

OCTOBER 2011

1. The BBPA commentary seeks to assess the recommendations made by the BIS Select Committee and provide information which might be used in any Government response.

Since their introduction, the BBPA has been looking to improve transparency and effectiveness of the new company codes.

There has been little evidence of infringement with only 27 complaints, (none of which were considered by the BII to be major breachs), made in the first year.

The BBPA/IPPC survey also indicates that in little less than a year the codes have become embedded in company practices and are generally perceived as delivering on their purpose.

BBPA members have provided some £265 million worth of support for their tied tenancies and leases in the last year and rents in real terms have fallen by some 20%.

2. Implementation of the new Codes of Practice

Previous Committee Reports

17. The new Framework Code of Practice was an outcome of the Mediation process where agreement to a new framework was reached between the BBPA, the BII and the FLVA. This agreement required translation into the new framework.

Drafting was completed by the end of December 2009 as a result of extensive collaboration between the three bodies. The short delay in publication was as a result of ratification processes.

Deadlines and Delays

28. All the major companies had submitted their codes by the June 2010 deadline accounting for over 98.6% of BBPA member pubs (23,000 pubs). 10 of these were accredited by the end of July and a further 10 by the year end.

The timetable was extremely challenging and smaller companies, (representing 324 pubs), took longer acquiring knowledge from the major companies before they submitted their Codes for accreditation. The previous BIS Committee was conscious of the need not to impose costs on small businesses and the parties to the Agreement therefore decided that very small companies should have more time to complete the accreditation process.
3. The Framework Code and company codes

34. The BBPA/IPC survey found that:

92% of new entrants were aware of the Code of Practice and confirmed that they were given the opportunity to confirm their understanding of the Code before signing it.

76% of existing licensees were aware of the new 2010 Code of Practice and but 89% have received a copy of the code.

Given the nature of surveys, this indicates a very strong awareness of the codes.

It is difficult to substantiate the claim that “approximately a third of lessees had not even seen a copy of their companies' codes”, other than to suspect that, like an insurance policy, you do not look at it unless you need to. There is no particular reason why a busy publican should need to look at the code unless they have a problem with their landlord.

Pre-Entry Requirements

Training

36. Whilst the IPC have continuously been opposed to the notion that those purchasing leases from existing leaseholders should also be subject to the same requirement to undergo pre-entry training, the desire of leaseholders to sell their leases onward without any constraint remains a matter to be resolved.

39. The BBPA/IPPCC survey found that the pre-entry training waiver was applied in 20% of cases rather than the 15% originally estimated by the BII. This does not mean that the waiver is being inappropriately applied, but reflects the extensive experience that some publicans already have when entering into a new lease or tenancy agreement.

40. While welcoming the Pre-Entry Training it is not clear how the Committee arrives at the conclusion that “However, the training is inadequate”. There is no evidence that the efficacy of the training has been raised as an issue with either the BBPA or the BII.

Professional Advice

45. As with the waiver the BBPA recognises that good practice should be enshrined in ensuring that proof of the taking of advice is recorded. Some companies already include this as good practice; Enterprise Inns for example. In future such good practice could be included in the Guidance to the Framework Code.

The absence of an audit trail does not mean that such advice is not being taken. Indeed the survey indicates that 83% of new-entrants took professional advice, as reported by the lessees themselves. It is reasonable to assume that the remainder
as with Pre-Entry Training, did not need such advice as they were previous experienced leaseholders.

As with Pre-Entry Training the requirement for new lessees to take advice has been resisted by some current lessees when it comes to the sale of their current agreement by assignment.

**Minimum Requirements for Company Codes**

47. While the provision of information regarding all business could always be improved and more widely disseminated, it must remain the responsibility of the lessee to fully acquaint themselves with the business in which they propose to engage. That is the primary purpose of their engaging professional advice. Pre-Entry Training also makes it clear that a prospective lessee should not sign an agreement if they do not understand it, or are not fully familiar with the range of options available to them.

48. The BBPA will further investigate the claim that 18% of lessees were not given a full copy of the lease and heads of agreement before being asked to sign, as this would be unacceptable if true. Without further investigation it is difficult to ascertain whether this an implementation issue or a misunderstanding by the persons being questioned, or systematic failure of a particular company/companies.

**Terms of Business**

**Flow Monitoring Equipment**

53. The Guidance to the Framework Code referring to the requirement for a protocol where flow monitoring equipment is used includes the need to have evidence other than the evidence from the equipment. No evidence has been presented that indicates that this requirement is not being complied with. Buying-out is a serious breach of the agreement, as recognised by the Committee and companies must be able to pursue cases where they believe it to be taking place. A refusal to co-operate in an investigation does not show good faith by the lessee.

54. The Committee have received reports from Brulines as to the reliability of the equipment from investigations undertaken on their behalf by the National Weights & Measures Laboratory. The same body has made it clear that the equipment is not and cannot be covered by the Weights & Measures Act, neither is it in the BBPA's gift to make it subject to legislation.

**Rent Assessment**

64. The primary purpose of the RICS guidance is in the application at rent review, when the lessee has the right of tenure subject to a rent review, which should be assessed fairly.

Now that RICS guidance has been updated, the Framework Code will be amended to make it clear that companies should recognise and give due regard to the RICS
Guidance, although it is clear that all companies are already aware of, and do recognise the Guidance.

The RICS Guidance itself is subject to the professional expertise of the valuer as the introduction to the Guidance makes clear. The Guidance sets out what is considers to be best practice, but qualifies this advice by stating that 'members have the responsibility of deciding whether it is inappropriate to follow the guidance'. The Guidance also states that 'it does not follow members will be adjudged negligent if they have not followed the practices recommended in this guidance. It is for each individual chartered surveyor to decide on the appropriate procedure to follow'.

Rents are subject to market forces and the Guidance takes that into account. It is for both the pub company and the prospective lessee to ensure that sufficient information is provided and sufficient knowledge is acquired to value that judgment.

A tied tenant should be no worse off than a free of tie tenant

68. The European Block Exemption, in recognising the legitimacy of tied arrangements, acknowledges the existence of countervailing benefits which are clearly demonstrated in the level of rent reductions granted by companies in the last few years.

£23 million in rent reductions have been granted, other than at rent reviews. Overall rents have reduced by 20% in real terms since 2008.

The benefits accrued to tenants' amounted to £265 million in 2010, benefits that do not arise in non-tied estates.

Tied lessees have received a substantial amount of additional assistance, in addition to reduced rents, including marketing support, reduced prices and business expertise.

The ownership of the Guidance rests with the RICS as the professional body which has consulted widely with all parties. Their guidelines state:

7.2.1 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. In arriving at a market rental value, it is preferable for analysis to be made of transactions relating to similar properties with similar lease terms. Indeed, the efficiency of the market relies on transparent market evidence.

AWP Machine Tie

76. The BBPA is not in a position to exclude the AWP tie in its Framework Code on the clear legal advice that it would be contrary to Competition law to do so. This advice has been relayed to the Committee on a number of occasions. Companies which retain the tie do so on the basis that their experience has shown that free of tie machines earn considerably less than those that are managed through the tie.
There is however a clear requirement that they explain to lessees how the lessee's share of AWP income is treated under the terms of their tenancy or lease.

Disclosure and Transparency

Shadow Profit and Loss Accounts

80. All company codes include the requirement to provide a shadow profit and loss account and companies report their compliance with this requirement. That 20% of new entrants report that they did not receive one is a cause for some concern which will be further investigated by BBPA. This may result from a misunderstanding of the question being asked and the interpretation of the information they are being given which may not necessarily be described as a shadow profit and loss account.

Benchmarking Costs

86. The BBPA recognised the value of the ALMR benchmarking exercise and reference to it is given in all the company codes. The issue has been around the compatibility or otherwise between the ALMR data and the costs experienced by owner operators in the tied market sector. The ALMR data derives from its members which are largely multiple operators and some managed house data. In both cases the difference in costs lies principally in the employment of managers rather than owner occupiers.

The BBPA has published data sourced from all of its members, the data being an amalgamation of individual pub accounts where they are available. The BBPA has been able to produce data that is compatible with the ALMR data, albeit that it represents a different segment of the market. This data was probably published too late to be included in the Select Committee Report, but it might be helpful to refer to its existence in the Government response.

A national database of rents

100. Companies have indicated that they are willing to co-operate with the RICS lead on creating a National Database on rents.

However supplementary evidence submitted to the Committee by the RICS makes it clear that the creation of a national database of pub rents should be approached with extreme caution. They cite one BBPA member company with 70 different agreements and conclude that the provision of such a database and disclosure of trading details is not straightforward and is a practical, logistical and legal minefield.

PIRRS

108. The lack of awareness of PIRRS does not indicate a 'malaise at the heart of the industry'. A recognition of 50% by existing and new-entrants of PIRRS is relatively high given that the system is in place for those that are in dispute over their rent reviews. Given that 50% are aware, the relatively low number of referrals
indicates that as a percentage of those that are aware, relatively few have need to recourse to the available dispute recognition.

Both the BBPA and the BII and the industry's trade press have given publicity to PIRRS and it is written into all company codes. That 92% of new entrants acknowledge receiving the Code of Practice and less than half of those have picked up on the dispute resolution mechanism is only indicative that they have not seen that mechanism as particularly relevant at the time they have signed an agreement. The BBPA will however endeavour to boost the recognition of PIRRS through the publication of their second annual report, due shortly.

BRMs/BDMs

117. The industry is actively engaged in the improvement of its managers through training which has been developed through the BII and Universities engaged in hospitality courses. Such improvement is an on-going process. Companies are committed to the process. Evaluation of such improvements is difficult to substantiate except to point out that the BBPA/IPCC survey indicated that 82% of existing lessees described their relationship as satisfactory or better.

Disputes

119. There is some confusion in the Report as between the reference to independent arbitration referred to in the 2009 Business and Enterprise Report and the mediation and dispute procedure now being put in place through the BII. The arbitration referred to concerns about disputes over rent reviews; an issue that has been dealt with by the formation of PIRRS. The new Framework Code and the processes of accreditation and enforcement of the Codes has revealed the desire for dispute resolution in other areas covered by the codes and indeed other areas not covered by the codes. Mediation is a positive outcome of the experience gained through the implementation of the new codes of practice.

123. The fact that mediation has been able to resolve issues indicates that companies are keen to resolve such issues and the existence of the codes has facilitated that process. The BBPA is looking to go further with the creation of an independent resolution service which is separated from the accreditation service operated by the BII through BIIBAS. The service would operate with similar governance that is in place for PIRRS.

4. Compliance, policing and enforcement of the codes of practice

138. There is a significant difference between a company that resigns its membership of BBPA (such as Greene King) for reasons which are entirely unconnected with, and pre-dated, the introduction of the Industry Framework Code of Practice, and a company being denied membership of BBPA as a result of its failure to comply with the requirements of that organisation. Greene King took its decision to leave the organisation for its own reasons and its position on the tie was unaffected as it had already committed to a code and the accreditation process.
As the BBPA made clear to the Select Committee, it is not membership of the BBPA which is the sanction, it is complaints to the BII which are upheld, or ultimately the removal of accreditation by the BII, which would damage the reputation of companies and make it difficult for them to attract new tenants and lessees.

**Legal Enforceability**

140. The Committee has received the legal opinion obtained from its lawyers, DLA Piper, on a number of occasions. The advice is clear that the codes of practice would be recognised by the Courts in cases of dispute. It is difficult to know what further assurance the BBPA could give. To date no cases have been brought forward challenging the codes of practice, or where the codes might be used to support the case of an aggrieved lessee. That there are no such cases rather argues that the codes are being complied with, or at least mechanisms exist that ensure that there is no need to involve the Courts in any dispute to date.

5. The Beer Tie

149. BBPA presented evidence that nine of the largest companies had free of tie or free of tie pricing agreements. Such options can only be offered freely by companies; a collective agreement to do so would be contrary to competition law.

152. CAMRA has its own view on the Tie and has refused to accept the findings of the recent OFT Inquiry instigated by them. The fact that many lessees do not wish to accept the increased risk offered by a free of tie option indicates the advantages associated with the Tie, particularly in a falling beer market. The association between rent and beer prices is not co-incidental, it is fundamental to the operation of the Tie where reductions in rent are directly associated with higher beer prices and the countervailing benefits referred to earlier.

153. Tied agreements are a result of negotiation based on rent; drink prices, discounts and a variety of factors which the prospective lessee must determine suit his situation best.

6. Conclusion

It is not surprising that those who have consistently campaigned against the tie take a different view and have sought to undermine the codes of practice. That they have been able to do so on the basis of little evidence and primarily through the use of charges and assertions is naturally a disappointment to the BBPA and its members.

Nevertheless, the BBPA and its members retain their faith in the promulgation of Codes of Practice and are actively seeking to make improvements based on the experience of the operation of those over the last twelve months.

The BBPA is fearful that a Statutory Code as well as being overly bureaucratic and expensive to operate would only operate at a minimal level, providing no incentive for improvements. In such a case it is likely that it would be detrimental to the interests of the very people it seeks to protect. A Statutory Code would only be effective through the Courts where it would be used to demonstrate that there had
been detriment to the rental agreement by a failure to follow the Code. In such a case the Code would be enforceable. In all other cases it could not be used to ensure compliance with its provisions since there would no obligation to comply. The Government's own Guidance on Statutory Codes makes this clear.
The Independent Family Brewers of Britain
What The Tie means to the Family Brewers

January 2011
Executive Summary

There has been much political and trade debate over the past 2 years over the use of the Tied pub system by pub companies and breweries alike. Much of this has surrounded the larger pub companies, and this has served to damage the reputation of the Tie generally and to the Family Brewers, to whom the Tie is of paramount importance.

Abolition of the Tie will result in brewery closures, the loss of well-known and respected beer brands and the loss of more of the great pubs for which Britain is famous. This will impact on all communities -- suburban and rural -- in terms of the loss of the hub of their community, and jobs for local people and local suppliers, plus also have the effect of reducing consumer choice and competition.

There are 3 key reasons for the continuation of the Tie

1. It is in the best interests of the tenant

With the security of the Tie, the brewers buy, insure and maintain the properties operated by their tenants. This provides a very low entry cost for tenants setting up a business, creating new employment opportunities for entrepreneurs. When sales increase or decrease, the system causes the financial impact to be shared between the pub and the brewery, thus lowering the tenant’s risk.

As the businesses are co-dependent, IFBB members provide extensive support services to tenants which are not available to licensees operating in the free house market. This is particularly helpful in a difficult economic climate. Not surprisingly then, IFBB members have a lower turnover of tenants compared to the industry as a whole.

2. It is in the best interests of the consumer

The Tie benefits the consumer by enabling a wider choice of locally brewed beer brands, particularly specialist cask beers, than would be available if Family Brewers ceased to exist. They also enjoy well-invested pub premises which compete vigorously with other on-trade outlets in their local markets.

3. It is in the best interests of our local communities and economies

The Tie benefits geographically diverse local communities and their economies by guaranteeing jobs at the brewery, in its pubs and with suppliers to the business.

IFBB members are major employers in many fairly small towns. Employment at the breweries is important for those involved directly and for suppliers of ingredients and services. Each pub provides employment, often in small communities, and in rural areas many pubs are given a lifetime to remain open because IFBB members take a long term view about viability and will support licensees as they grow the business.

Tourism is a vital part of the economy and a visit to some historic pubs is high on the list of things to do for visitors to the UK. The IFBB members strongly support this by maintaining and preserving many of the most historic pubs in the country, for the benefit of visitors and local residents alike.

Why should you support the IFBB Members?

- **Independent Pub Closures**
  - We are GOOD EMPLOYERS, often small family owned.
  - We are backbone of the industry, providing employment, often in small communities, and rural areas many pubs are given a lifetime to remain open because IFBB members take a long term view about viability and will support licensees as they grow the business.

- **Regional Heritage**
  - We are the independent backbone of the UK's heritage.
  - We provide the UK's most unique choice.

- **Cask Beer**
  - We are the heart of Britain's beer.
  - We defend the small breweries.

- **Local Employment**
  - Employment for local people and suppliers.
  - Jobs for the locals.

- **Low Entry Cost**
  - Lower entry cost for tenants.

- **Visit**
  - Things to do for visitors to the UK.
  - Surrounded the larger concerns.

Background to the Independent Family Brewers of Britain (IFBB)

Historically, breweries were major local industries, and in the early 1900's there were over 600 in the UK. The IFBB was formed in 1993 to represent a distinct and unique sector of the UK brewing industry - the family owned brewery – and to defend the Tie and highlight its importance to the longevity of breweries and success of tenant licensees. Membership in the last 10 years has fallen from 38 to just 29 members, due to breweries closing or being bought by larger concerns.

Today, our 29 members between them own 4,200 pubs throughout England and Wales, providing employment for around 36,000 people. The majority of these pubs (around 77%) are run under the brewery Tied Tenancy system (where the brewer maintains the fabric of the public house), with both new and experienced pub licensees benefiting from comprehensive training and support from their local brewer – our member. In addition, our members brew over 450 brands of beer and are working hard to introduce these brands to a new generation of beer drinkers, thus providing excellent choice for the consumer in both our pubs, within the free trade (including pub companies) and in bottle and can, to be enjoyed at home.
The History of the Tie

The origins of the Tie lie in the brewers desire to ensure the quality of their cask beers, due to the natural short shelf life of the product. By buying pubs near to their roots, brewers were able to produce and distribute quality beers, to be enjoyed locally by their customers.

The Tie is a mutually beneficial agreement between the landlord brewer and the tenant licensee. The tenant rents premises from the brewer at a reduced commercial rate and is supplied by that brewer with a range of products. The brewer therefore has a marketing outlet that guarantees the distribution of their beer, and the tenant the opportunity to run his or her own business at a lower start-up cost.

In recent years, the brewing industry has been changed dramatically by issues from the Beer Orders of 1989 damaging it irreversibly. The Beer Orders encouraged the proliferation of long leases, giving businesses the ability to charge a premium and assign the lease once the business had built up - this had the effect of creating more of a property market type assignment. As a result of the Beer Orders, a pub owning brewer was limited to 2,000 pubs (none of our members have more than 400 pubs in their respective estate), and this eventually led to the formation of pub companies which tended to operate more like a property company than a pub owning brewer.

In recognition of the unique operating conditions IFBB members operate under, the European Commission gave the Family Brewers' Tie block exemption from competition law, and this was renewed again in early 2010 for a further 12 years. There have been around 20 interim reviews in the past 40 years by UK and EU authorities of the Beer Orders and in all cases the brewery Tie has been judged to be fair to all parties. However, the Orders have continued to result in closed pubs, closed breweries, higher prices and a decrease in brand choice.

The publication of the Business and Enterprise Committee (BEC) report, in May 2009, has further damaged the reputation of traditional brewery tied tenancies within the trade and media. However, following this report, all IFBB members have taken on board the recommendations of the report and are introducing their own industry accredited Codes of Practice, much of which was already standard practice within their operations.

The traditional pub usually has one of three forms of ownership, giving rise to different bases for the Tie:

1. Freehold – where the owner licensee buys the pub outright and is therefore free to buy all products from any source. Often the owner licensee will take loan finance from a supplying brewer in return for a product Tie (Tie by loan)
2. Long (assignable) lease – where a premium may be paid for the lease at a point when it is assigned. These leases may operate on a tied or free-of-lease basis, dependent on the landlord / lease owner
3. Traditional brewery Tied (non-assignable) tenancy – a shorter term tenancy agreement, typically for a 3 to 6 year term, with a full or partial Drinks Tie, as offered by our members

It is worth noting that recent research has indicated that over 57% of pub failures in the UK in recent months have been free-of-lease pubs. Equally, if a licensee has bought an assigned lease and subsequently failed, this has usually come about because of the terms of acquiring this lease from a previous licensee rather than the Tie itself. Within the IFBB membership, during 2009 only 41 pubs were closed permanently – compared to an industry average of 39 pubs per week (2,365 in the year).

How does the Tie work?

The Tie has the effect of creating a dry rent and a wet rent payable to the brewery by the tenant licensee.

• The dry rent is fixed (subject to rent reviews, which are covered within the tenancy agreement) and is the element for renting the building from the brewery. The rent is determined by the pub's past beer sales volume and on predicted Fair Maintainable Trade (the level of trade achievable at the pub, if that pub is run by a reasonably effective operator)

• The wet rent is variable, since it is a percentage of the prices paid to the brewer for stock i.e. beer and other products. Hence this wet rent then varies in line with the pub’s beer sales and the tenant pay rent only on what he sells. This offers the tenant some protection during a downturn because, if sales reduce, so will this element of rent.

If the Tie were to be abolished, then this protection would disappear and the fixed cost to the tenant would increase significantly.

A Tied tenancy offers lower rents than in commercial property situations because:

• The brewer can make a single delivery of a range of products, thereby improving distribution efficiency

• The brewer can afford to look long term at investment because of the secure distribution channel

• The rent has traditionally been calculated on beer volume and Fair Maintainable Trade figures (the level of trade achievable at the pub, if that pub is run by a reasonably effective operator) rather than a full commercial rent based on the value of the property, its location and total square footage of the building

The Tie and the Consumer

The Tie operates in the best interest of the consumer by maintaining both product and pub choice. Within the operation of the Tie, brewers make available a wide range of products to their tenants, including those of the major European brewers. The Tie allows brewers to invest considerable capital and resources into developing new products to meet consumer demand, and also to invest in improving their pubs and facilities.

The Tie and the Tenant

The brewer will offer a full support package to its tenants including full access to a Business Development Manager, training, marketing and promotions advice and product knowledge awareness. This support is often referred to as SCORPAs (Special Commercial or Financial Advantages) and has been calculated to be worth £5,040 to a licensee in their first year of a tied tenancy.

The Tie and the Brewer

The Family Brewers provide a vital part of the UK's brewing heritage, and the abolition of the Tie would see this tradition lost.

The Tie gives the brewers the opportunity to:

• Have an outlet for their own beer

• Secure the sales of a certain volume of beer, through trading with their own tied houses, thus safeguarding brewery jobs and the brewers themselves

• Develop and promote new beers with confidence, giving the consumer more choice and variation

*Research conducted by CGA Strategy for the British Beer & Pub Association February 2010
*Source: IFBB Annual members survey 2010
*Research conducted for PPA by Intertec for the British Beer & Pub Association February 2010
Facts and figures

During 2010 the IFBB independently surveyed over 1,300 of their members’ tenants, representing approximately 42% of the total Tied tenancies operated.

Within this survey:

• 72% agree they receive good overall support from their Head Office
• 56% of tenants agree their rent is fair for the business they do, with only 26% disagreeing. Given the nature of this question, this is a positive result in light of the current economic climate and the negativity surrounding Tied tenancies
• 72% agree their brewery has lived up to their expectations so far, with only 9% disagreeing
• 83% would look to renew their agreement when their current agreement expires

“The Independent Family Brewers of Britain represent all that is best in the world of beer and pubs. For generations these businesses have carefully nurtured and improved their properties, which are 4,300 of the best places in the country to find a warm welcome, good food and great beer. Unlike many pubs these days you will still find the name of the brewery on an IFBB member’s pub, and that name will probably indicate which cask beer is available inside.

Innovation is a hallmark of these companies and they rarely sit still. New beers are being brewed and many hundreds of pubs improved with investment capital.

In a very tough trading environment our members will continue to steadily improve their properties and supply the highest quality beers to enjoy in them.

In the end we stand for the enduring qualities of high quality products, well run pubs and moderate beer consumption, providing discerning customers with products that they choose to buy.”

Paul Wells - Chairman of the IFBB

“Without the right to tie pubs, the Family Brewers wouldn’t bring their beers to the bar. Closures amongst the smaller brewers would be inevitable. The tie is a viable way for them to run their pubs.”

Mike Benner - Chief Executive, CAMRA

“Having been with the company for 22 years, it still feels like a family company and the hierarchy are still approachable and very supportive. When I recently asked for help with refurbishing or toilets they sold us with capital investment, and managed the project from beginning to end. The other business support from our brewery in this form of beer dispensing, the Master Caskman scheme, beer quality, the Tenants Extra publication and our EDM, backed up by a great range of products, provides substantial benefits over anything I could expect from a Free of Tie scenario, whether freehold or leasehold.”

Martin Perkins - Brewery tenant, Croydon

“The Family Brewers guard and cherish the distinctive business model of the traditional tied tenancy. ALMR applaud the fact that they know their pubs, they understand the history and their close engagement in support of the business success of their tenants sustains their long term future at the heart of the nation’s affection.”

Nick Bish - Chief Executive, ALMR

“Cask beer is one of the few growth areas in pubs today largely driven by regional brewers. Having their own estate as a shop window for their brands allows the consumer more choice and a significantly better quality product. Being a brewer and a retailer means they can confidently invest in cellars, equipment and training and show by example how other pub operators can benefit their business. Cask beer is only found in this British pub which is part of Britain’s culture and in many villages the pub is the centre of the community.”

Paul Nunny - Director, Cask Marque

“The reason we decide to join our brewery having been at a large pub company for many years was because we like the fact we would no longer be a number - we are a name. In return we have had great service, products, a marketing manager and most importantly services of an excellent EBD. We truly believe we would not get this back up if we were Free of Tie.”

Alan Gover - Brewery tenant, Aldershot

“These are difficult times in which to do business - you need someone on your side. There is a very real sense that my brewery isn’t just along for the ride. Our success, and their success, is indivisible, and it’s reassuring that they are behind us in our enterprise.”

Chris Maclean - Brewery tenant, Faversham
Background to the pub debate

• 1980's –
  – The Big Six brewers, 90% market share and majority of pubs brewery owned
  – Pubs are managed (directly employed staff) or tenanted (short term renewable agreement)
• Licensees press for longer agreements to build up ‘goodwill’
• The long lease – fully repairing and insuring – is created, shifting costs from brewers to licensees, and creating a lease premium market.
• 1990's –
  – The Beer Orders breaks up the brewers ‘complex monopoly’
  – And replaces it with pub owning plc’s
• By 2000 all national brewery tenanted estates have been sold to pubco’s, and re-sold, and re-sold…
• Consolidation creates two giants – Punch and Enterprise.
The current UK brewery market

- National brewers
  - Heineken, Molson Coors, Carlsberg, ABInbev – all owned offshore
  - They maintain share above 85%
  - Keen to enhance profitability – the UK is fiercely competitive

- There are two regional PLC brewers – Marstons and Greene King
  - They have managed pubs, long leases and tenancies.
  - They brew real ales

- The Family Brewers
  - 29 members, a total of 4000 pubs – about 8% of the pubs market.
  - Three quarters are tenancies, the rest managed, and leased pubs.
  - All brew real ales, and rely on the beer tie for sales

- Micro brewers
  - Fast developing sector due to 50% excise duty discount
  - They use the tie when they can afford to buy pubs.
The pub market

- Three types of pub
- Free house: often owner operated, is able to buy beer from any source and is not tied, hence ‘free’. Usually the operator will take loan finance from a brewer, hence ‘loan tied’.
- Long (assignable) lease: A premium is paid to the departing licensee, and the operator is sometimes tied for beer, sometimes not. Rent will vary accordingly. Always FRI, so dilapidations must be paid on exiting the lease.
- Brewery (non assignable) tenancy: a shorter term tenancy agreement for between six and ten years, renewable but not assignable, with a tie for drinks products, hence the term ‘wet rent’.
Two key points

• The Block Exemption
  – The EU Competition Commission grants an exemption from vertical integration rules to brewers for the tie. Partly because we are de minimis, in competition terms, but also because we can show ‘special commercial or financial advantage’ (SCORFA’s) which are afforded by the brewery in the wet rent.
  – The UK Block Exemption for the tie was renewed in 2010 for twelve years.

• The Office of Fair Trading
  – They have investigated the tie following a ‘super complaint’ by the Campaign for Real Ale in 2010.
  – It concluded that the tie was not anti-competitive for the consumer and that both beer choice and retail price were effectively operated in the pub market.
The traditional brewery tenancy

- The tied brewery tenancy provides not only a low cost entry for a licensee starting a small business, but also offers a low cost/low risk exit as neither the freehold nor the lease need to be sold to another investor. A tied brewery tenancy is a less risky financial option (and requires less capital) than either buying a freehold or taking on a lease premium.
- The brewer owns and insures the pub, and pays for repairs, improvements and alterations, and
- the tenant will buy the inventory (tables, chairs etc) and stock at value, this being his only capital investment.
- A traditional brewery tied tenancy (inventory and stock) can be acquired for as little as £5,000 and would rarely cost more than £50,000, depending on the size of the inventory and ingoing stock value of the pub in question.

*Typical* £20k - £30k.
2011 update

- All family brewers have Codes of Practice in place
- There are no reported issues needing mediation by the BII service PIRRS
- The traditional brewery tenancy is fundamentally different to the long FRI lease market and should be governed separately
- Licensee recruitment is a competitive business, hence a wide range of rental terms, so each company tailors their ‘offer’ to be attractive.
- The 2004, 2009, 2010 and 2011 Select Committee reports have all been focussed on the ‘power of the pubcos’ and the lease market, not the traditional brewery tenancy.
- May 2009: ‘The position of the local brewers operating a small tied estate also needs to be considered; we would not wish to damage regional brewers.’
- March 2010: ‘We have received no evidence to suggest that the tie is a cause of controversy or dispute between smaller family and regional brewers and those who operate their tied estate.’