House of Commons

Business, Innovation and Skills Committee

# Pub Companies

## Oral and written evidence

### *6 December 2011*

*Mr Edward Davey MP, Mr Iain Mansfield and Hannah Wiskin*

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## Business, Innovation and Skills Committee

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

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# List of written evidence

# Oral evidence

## Taken before the Business, Innovation and Skills Committee

## on Tuesday 6 December 2011

Members present:

Mr Adrian Bailey (Chair)

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|---|---|
| Mr Brian Binley | Simon Kirby |
| Paul Blomfield | Ann McKechin |
| Julie Elliott | Mr David Ward |
| Margot James | |

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**Examination of Witnesses**

*Witnesses:* **Mr Edward Davey**, Minister for Employment Relations, Consumer and Postal Affairs, Department for Business, Innovation and Skills, **Iain Mansfield**, Senior Policy Official, Department for Business, Innovation and Skills, and **Hannah Wiskin**, Legal Adviser, Department for Business, Innovation and Skills, gave evidence.

**Q1 Chair:** Good morning. Thank you, Minister, for agreeing to come before the Committee to be questioned on your response to the Select Committee report on pub companies.
Just a couple of formalities. First, may I direct some comments to the public benches? I know there will be individuals with strong feelings about the issues we are going to discuss, so I ask everybody to keep their feelings under wraps. If you feel there is either a question or a response that might generate loud support or opposition from the public benches, I ask you to remain silent.
For voice transcription purposes, I ask the panel to introduce themselves.
***Iain Mansfield:*** I am Iain Mansfield, and I am a policy official at the Department for Business, Innovation and Skills.
***Mr Davey:*** I am Edward Davey. For the purposes of this hearing, I am Minister with responsibility for competition.
***Hannah Wiskin:*** I am Hannah Wiskin, and I am a legal adviser at the Department for Business, Innovation and Skills.

**Q2 Chair:** Hannah, could you just speak slightly more into the microphone.
***Hannah Wiskin:*** Forgive me. As you can tell, my voice is cracking.

**Q3 Chair:** Can I open with a question on process? It is a matter of concern to me and other members of the Committee that, at 9.48 on 24 November, the date of the Command Paper's publication, the BBPA issued a press release that quite clearly indicated that they had the details of the Command Paper before this Committee had them, which was at 10.30. Could you explain why?
***Mr Davey:*** Well, they did not have the Command Paper because no one outside Government saw our response to you. I give you that categorical assurance. What they did have, of course, was the details of the negotiations that we had agreed with them, because, obviously, we had been in negotiations with them, so clearly they had to have those details. As I understand it from reading their press release, that is what formed the bulk of their press release.

**Q4 Chair:** There are two implications of what you have just said. First, did you not at any stage in your discussions with the BBPA make it clear that to make a public pronouncement before the Command Paper came out was totally out of order? Secondly, given the accusations, I think it is fair to say, of a whole range of other interested bodies within the industry that the Department has been working too closely with, and only with, the BBPA, do you not think that underlines their particular suspicions?
***Mr Davey:*** No. I think there has been a complete misunderstanding of what has happened here. It was quite right that the BBPA made their press release because we wanted to make sure that everyone could see they were on the record and they were signed up to the agreement. So it is quite right that they made a public statement so everyone could see—

**Q5 Chair:** But not before this Committee had a chance to see it and make a public statement.
***Mr Davey:*** This Committee has had the response of the Command Paper which the BBPA did not see. The negotiated settlement was something that was very important to have in the public domain. On your second point that we had only been dealing with the BBPA, I have to say that is not the case. I am very happy to provide to the Committee details of all the meetings I have had over the last year in relation to this matter. I have counted them up. Since 1 December last year I have had 13 meetings—

**Q6 Chair:** We are going question you more closely on this. This is information that has been asked from you.
***Mr Davey:*** The reason I mention that and I can give you details when you come to these issues, Chair—

**Q7 Chair:** Well if you leave it till then—
***Mr Davey:*** The point is that when I do that it will show that we have not been simply talking to BBPA. That is simply not true.

**Q8 Chair:** We will make that assessment once you have done it. I come back to the point that a major interested body issued a press release that covered all the substantive points before this Committee had a chance to assess them and make its own observation. Do you not think that is a discourtesy to this Committee?
***Mr Davey:*** I hope that the Committee does not see it as a discourtesy. I think the BBPA—

**Q9 Chair:** I think it is fair to say that they do.
***Mr Davey:*** Okay. The BBPA can discuss with you no doubt the exact timing of their press release, but I have to say I think making sure that they are signed up publicly to the negotiations is quite an important part of that process.

**Q10 Chair:** Nobody would deny that, but it is not the issue at stake. It is the process by which an interested body could make its position clear before the Committee had had a chance to see the proposals and make its position clear.
Can I come on to some more detailed questions? First, you quoted in your response the OFT's rejection of CAMRA's super complaint. This was originally published in July 2009 and was therefore known to both you and the Secretary of State when he gave his undertaking to us to introduce a statutory code. When you had that ruling then, why have you not honoured that commitment and, indeed, used the OFT's position, if you like, as a reason for not honouring it?
***Mr Davey:*** Since that report was published there was a question that CAMRA put forward and they wanted it to go to the Competition Appeal Tribunal. The OFT said that rather than that, they would like to undertake a consultation. That consultation was in place and happening when the Secretary of State appeared before you. The result of that consultation was not published until October 2010.

**Q11 Chair:** I am not sure that that is a satisfactory response because even then you had the basic grounds that the OFT had used as a basis for observation. Yes, it went out to consultation and, as you say, that reported in October 2010. That is over a year before we completed this response. Why was no statement made in the meantime?
***Mr Davey:*** I take the process of the competition authority investigation very seriously, as the Minister for Competition. I believe all parties should. So when a consultation is ongoing, to prejudge the outcome of that consultation would be rather odd. Moreover, CAMRA had the opportunity when the report was published in October 2010 to go ahead and take it to the Competition Appeal Tribunal. So to prejudge that process would have been wrong. I have say to you, Chair, that I think it is quite right that we were not relying on a document that was effectively under challenge.

**Q12 Chair:** You really have not answered the question. The original judgment was made in 2009. It is fair to say that the Secretary of State when he gave his commitment to us knew of that. There was a further consultation which reported in October 2010. That was over a year ago. I asked why there has been no public statement of the change in your position arising from, first, the original OFT position, and secondly, the outcome of its consultation?
***Mr Davey:*** We wanted your Committee to make its report, and that is what we had been waiting to hear. The Secretary of State told you that he would take action following the receipt of your report, and that is the right timing. I think you would have considered it discourteous if we had not waited for it.

**Q13 Chair:** So the Secretary of State did not think it appropriate to indicate any change in the Ministry's position arising from the OFT report and its consultation exercise almost a year before we entered into our own inquiry.
***Mr Davey:*** The Secretary of State came before this Committee, answered your questions and made it clear that, when you had responded, we would consider your response and take action as necessary. Part of our consideration was not simply your report, but other findings—discussions with different parties in the industry and the OFT report. One takes many things into consideration in responding to a Select Committee report, but we take this Committee seriously, so we wanted to have your report and look at your inquiry.

**Q14 Chair:** The Secretary of State's commitment was to implement the recommendation that had been made in the 2009 report and agreed by the previous Government, subject to the Select Committee agreeing that these particular issues were still relevant and that this needed to be acted on. It would have been quite reasonable for the Committee to expect the Government to have at least announced any change of position that arose from the OFT report.
***Mr Davey:*** I can only quote the exchange to which I think you refer, which was between Mr Binley and the Secretary of State. Mr Binley said, "You will know that we recommended that we should re-look at the question of code of practice in the industry if we felt the pubcos were not acting properly within that voluntary code, and the previous Government accepted that they would take action if our findings were that the pubcos were not acting properly within that code. Can I ask if you will confirm that the present Government would continue that policy?" The Secretary of State answered: "I can confirm that." You went on, Chair, to say that the Secretary of State meant statutory intervention, but he did not say that; he said that we would take action. That has been our position. We have had to consider all the evidence and what action we would take, and we believe that the action we have taken is appropriate.
**Chair:** I think you are being disingenuous. There was a clear understanding from this Committee and, I think, from the Secretary of State, that that would involve statutory intervention, because that is the basis of the previous recommendation.

**Q15 Mr Binley:** You have quoted only a part of the interaction between the Secretary of State and me. It went on, and Mr Cable said, "I think the commitment is to give them until 11 June and if they have not

delivered a more satisfactory arrangement then there will have to be legislative action."
I respect you enormously, as you know, but I think the message you are being given by your staff is, to say the least, slightly ingenuous, quite frankly, because the Secretary of State knew exactly what we were talking about. We were asking whether he would take legal action to make the code of practice statutory if it had not been properly effected, by the pubcos especially: he said yes. What, therefore, did the OFT report tell you about the statutory code that you did not already know?
***Mr Davey:*** The OFT report was a very important contribution to our thinking and I want to be absolutely clear about that. The Committee acknowledges that Government intervention, particularly statutory intervention, should be the last resort—I think that is a direct quote from your report.

**Q16 Mr Binley:** It is the fourth report, Minister.
***Mr Davey:*** You need to ensure that you have good grounds for doing that. The prime reason for the state to intervene in any industry is, I think you would agree, if there are grounds of competition which are leading to consumer detriment.

**Q17 Mr Binley:** No, that is not the point.
***Mr Davey:*** Well, hold on. We believe it is the point. I have to say in response to you, Mr Binley, I thought your report made a major omission in not looking at the OFT's consultation in October 2010. I was surprised, when I read your report, that you omitted to look at that, because the OFT is an independent competition authority. I would have thought this Committee would take its report very seriously, and—

**Q18 Chair:** The issue is not about competition as such; it is about the balance of advantage between the pub licensee or tenant and the pubcos. The report is about pub companies, not competition. So will you please not continue with this complete red herring.
***Mr Davey:*** I do not believe it is a red herring, Chair, if you look at the grounds that Government use for intervention. Let me give a parallel: last time I appeared—

**Q19 Chair:** Minister, please, just let me say—you are telling this Committee what it should be looking at.
***Mr Davey:*** I am telling you what the Government looked at.

**Q20 Chair:** It is the right of this Committee to determine what it thinks are the relevant issues to look at. And will you please not lecture the Committee.
***Mr Davey:*** I am sorry; I did not mean to lecture the Committee. What I was telling you was what the Government consider are the grounds for intervention, and competition is the leading ground for intervention. Of course, there are other reasons why Governments regulate—environmental issues, social issues. But, normally, you would be very careful about intervening in the commercial contractual relationships between two parties, I would suggest to the Committee. That is why I think the solution we have come to, to make sure that the code is legally binding, with an independent mediation service, delivers what this Committee wanted and, by the way, delivers it far more quickly.

**Q21 Mr Binley:** I repeat that I was the person who had the conversation with Mr Cable, and I have no doubt that it was purely about the code of practice and the effectiveness of the code of practice, on the basis that the last report made it quite clear to the trade that, if the voluntary code of practice did not do the job it should have done—was not abided by and was not put into effect in the way that it was necessary that it should be—then legislative action would be taken.
If I may say so, Minister, it was not about competition. In fact, if you look back at the history of this whole trade, you may say that Government involvement on the basis of competition has rather messed it up. We won't go there too much, because Government in all forms have rather played a bad game in this respect.
But I repeat that this was specifically about how the voluntary code of practice was working, and the Secretary of State made it quite clear to me that if it was felt by this Committee—not by you and not by the Ministry, but by this Committee—that it was not working, legislative action would be necessary. It was our report that he was basing that answer on. So all your nonsense about the Office of Fair Trading is simply not relevant to this particular question. I may tell you that I am bitterly disappointed that my Government have reneged on this promise, because it was a promise to me.
***Mr Davey:*** I am sorry you feel that way, but I am afraid I am going to repeat our grounds, because those are the grounds we have taken our decisions on. I believe, if you look at the effect of what we have done—working on the pressure that this Committee has brought in and the pressure that has come from other parliamentarians—we have managed to negotiate a very effective set of proposals which delivers on what a statutory code would have done, but far more quickly.

**Q22 Chair:** We are moving on to areas of questioning—
***Mr Davey:*** It is rather important, because we are delivering on what Mr Binley wants.
**Chair:** That is for this Committee to make a determination on. Still on the issue of the OFT, I want to bring in Ann McKechin.

**Q23 Ann McKechin:** As the Chair has made clear, Minister, we are talking about unfair contractual terms, not specifically about the issue of consumers' interest. Am I right in saying that the remit of the OFT does not extend to considering contractual terms between corporate entities?
***Mr Davey:*** Yes.

**Q24 Ann McKechin:** So, in effect, we are talking about one thing, and the OFT is talking about something completely different. Is that the case?
***Mr Davey:*** As Minister for competition I personally think that, if you are going to intervene in industry, you should have very strong grounds for doing so.

**Q25 Ann McKechin:** Perhaps I can compare and contrast that with your commitment by your Government to introduce a Groceries Code Adjudicator Bill. That is presumably trying to correct what is considered to be an unfair contractual relationship between two different sets of corporate entities.

***Mr Davey:*** I am glad that you draw that parallel, because when I was before your Committee recently, when you had your inquiry into the draft Groceries Code Adjudicator Bill, I made it clear that the reason why we were taking action was because of the report by the competition authorities. The Competition Commission's report in 2008 made it clear that the way that the large supermarkets were operating was distorting competition and preventing investment by the supply chain into innovative products, therefore resulting in consumer detriment. Those were the grounds that the Competition Commission gave and they were the grounds from a competition inquiry on which we took action. Therefore, I think that GCA Bill analogy supports the point I am making.

**Q26 Ann McKechin:** Do you consider that the Government are unable to act when there is an issue about unfair contractual terms? Are you saying that you will never act unless a clear case is made?

***Mr Davey:*** No. It would be very unwise for a Government to say that they will never act. The point is this: the case for acting and the evidence to act has to be extremely strong.

**Q27 Ann McKechin:** There have been four Committee reports over a long period of time. Are you saying that that body of evidence is not substantial?

***Mr Davey:*** No, it is substantial, which is why we have acted, but we have taken different action from what this Committee wanted. I have to say, however, that our action meets the intent and objective of this Committee's recommendations, but it does so far quicker.

**Ann McKechin:** Well, that is something that we will move on to discover in more detail.

**Q28 Chair:** Can I come on to this? You cited the report by the Competition Commission as a rationale for the Groceries Code Adjudicator Bill, but you have said that "for Government to intervene in setting the terms of commercial, contractual relationships could set a dangerous precedent." Notwithstanding that report, you are proposing to do that in the Groceries Code Adjudicator Bill. Why, if it is so dangerous, is it okay there and not in this context?

***Mr Davey:*** I am very grateful for these questions, because you are helping me elucidate the big difference. Because there is the issue of competition in the case of the Groceries Code Adjudicator, as found by the independent competition authorities, we therefore felt that there was a case to act on the grounds of competition and consumer detriment, which is the status and locus of the OFT.

The independent competition authorities did not so find in this case. That is why we put so much weight on these competition reports. That is the right thing to do. The reason why successive Governments have moved over the past 20 to 25 years to having independent competition authorities is to ensure that Government intervention is not in any way a knee-jerk or unconsidered or in any way unfair. It needs to be balanced, so I therefore put a lot of weight on independent competition authorities and their reports.

**Q29 Chair:** You have given additional reasons why you introduced the Groceries Code Adjudicator Bill, but are you saying that you introduced it for competition reasons only and not because there was an unequal balance of advantage?

***Mr Davey:*** One of the other differences was that the supermarkets refused to establish their own adjudication scheme, if you remember. We intervened to enforce a code agreed by the Competition Commission. Here, we have managed to get agreement with the industry to set up an adjudication body.

**Q30 Chair:** We will come to that. Your use of the word industry is a little loose in this context, but you will have an opportunity to justify it in a minute. However, the principle you have established as the basis for accepting the Groceries Code Adjudicator is that there was, if you like, an outside body drafting the code. That does not appear to be the case with this particular code, or framework code.

***Mr Davey:*** The industry framework code has been developed, as you know—the Committee has looked at it—and that is what we seek to strengthen, and we have done that through negotiation.

**Q31 Chair:** Not developed by all bodies within the industry.

***Mr Davey:*** As I am sure we will come on to, when we were negotiating with the BBPA, we were in close contact with certain members of the IPC, particularly the ALMR. My officials were in touch with them on numerous occasions each week during the negotiations and we were very clear what the ALMR wanted us to achieve. I believe we moved the BBPA absolutely significantly.

**Chair:** Well, there does seem to be a difference in emphasis in terms of negotiation with the BBPA and having consultation with other bodies, but we will explore that a little more in a moment.

I come to David Ward now, who will cover other angles of statutory intervention.

**Q32 Mr Ward:** Later, we will discuss the form of intervention that you favour, but before that, can we look at the question of why not? You are swimming against a strong tide of opinion from the Committee, and you obviously have detected that. We are fascinated by the why not. Why are you so implacably imposed to the statutory intervention that we recommend?

***Mr Davey:*** I do not want to keep repeating myself, but you must have strong grounds before you introduce statutory intervention. The prime grounds for a Government to do that are competition. There are others; for example, a Government intervenes and regulates across the economy, in things like the environment, employment protection and so on, but to

intervene in one industry for a specific purpose—to intervene into commercial contractual relations—you must have some overriding reason and be absolutely convinced that self-regulation is not a better solution. I personally believe that, through the self-regulatory package we have got together, we have addressed the issues that the Committee put to Government, and we have been able to do so far more quickly. We will have all the pubcos—those that have more than 500 tenants or lessees—signed up to have made the code legally binding by Christmas. If we had gone down the statutory intervention route, it would have taken a long time.

**Q33 Mr Ward:** I will come on to the time in a second. Is what you have said to us a basic instinct generally or is it the result of research, in this particular instance, of the impact on the industry?
***Mr Davey:*** It is a little bit of both. This Government is very much a deregulatory Government. It is a Government that sees regulation as the last resort and whether it is the red tape challenge, one in, one out, or the regulatory committee, we have set a framework that is deliberately making it more difficult for Ministers to regulate. That is the right thing to do, particularly in the economic situation we are in. To regulate in one industry, I think you must have, if you are such a deregulatory Government faced with such difficult economic challenges, some extremely strong reasons that it is the only way forward. I believe that it is not the only way forward, as our research into the industry and negotiations have shown.

**Q34 Mr Ward:** Clearly the difference of opinion is that we obviously feel that that is the right route, whereas you clearly do not, but I am still not sure whether it is a general view you have about intervention or whether any in-depth research has been carried out into the likely impact on this particular industry of this particular intervention.
***Mr Davey:*** As I have said, Mr Ward, I think it is a bit of both. We are very reluctant to regulate in this Government, and we have to have strong grounds to do so. The reason we are doing it in the groceries industry is because we have very strong competition grounds from an independent report. We also think there are alternative routes through our research. We have not done an impact assessment on a statutory code, because we are not proposing a statutory code. If we had proposed a statutory code, we would obviously have had to do a full impact assessment, to look at the impact of that on the industry.
I do think that what we have done by producing certainty and stability in the industry—and very quickly—will lead to more investment, more jobs and more growth in the sector than if we had gone down the statutory route, which would have taken us some time, would have continued the uncertainty and would have led to investment decisions being put off.

**Q35 Mr Ward:** Has any part of the industry specifically made reference to the damage they believe it will do to the industry if there is a statutory intervention? If so, who, and what was the level of that damage?
***Mr Davey:*** I have not seen any analysis coming from the industry to tell me that it would have this effect or that effect, if that is the import of your question.

**Q36 Mr Ward:** A further argument made against the statutory intervention is not only that it would have a large impact but that it would be a very slow process. With a Government who had the will, how quickly could that statutory intervention take place?
***Mr Davey:*** Thank you for the opportunity to outline what we would have had to do. Clearly, we would have had to draw up a consultation paper; we would have had to consult for at least three months; we would have had to review that consultation and responded to it; we would then have had to instruct parliamentary counsel; we would, as we have done with the Groceries Code Adjudicator Bill, have had pre-legislative scrutiny. After that process, which would clearly have taken up to a year, we would then have had to fight for a slot in the legislative sessions. I do not think it is any secret that it is going to be a real scramble to get all the Bills the different Departments want in the second Session starting next May. It would have been inconceivable that such a Bill would have got into the second Session, so we would have been looking at the third Session. It is already clear that Departments are manoeuvring to ensure they secure their slot in the third Session, so you might have been looking at a fourth Session Bill, with political will.
The point of describing that process to you is that it generally takes a long time. I am looking at putting into place legislation, for example, through a potential employment Bill in the second Session, which I hope we will secure, to deliver on coalition agreements, which we have been working on from day one since the Government were formed. I am still fighting for a slot in the second Session.
I give you that analysis, because it shows how long it can take, even with a Government who are completely backing a piece of legislation, to get an Act of Parliament on the statute books. The process we are undertaking means that the code of practice will be legally binding on the big pub companies from this Christmas.

**Q37 Chair:** Minister, why did you not do the consultation during the summer and introduce the legislation now? We don't seem to have much else in the way of legislation to go on.
***Mr Davey:*** You don't think we have got much legislation?

**Q38 Chair:** No. It is all House business.
***Mr Davey:*** I think you will appreciate that business managers in the Lords would disagree with that. They have a huge amount of legislation.

**Q39 Chair:** There are only two major Bills in the Lords at the moment.
***Mr Davey:*** I assure you that the current legislative timetable in Parliament is quite chocker, for the following reason. I will probably get told off for putting this on the record, but I hope it will show you that I am being as transparent as possible. I am trying

to see whether the Groceries Code Adjudicator Bill, to which you have given excellent pre-legislative scrutiny, could get into this first Session. I am having a real fight and people are telling me that there is not room for a Bill that is already drafted, has gone through pre-legislative scrutiny, is small and relatively uncontentious. I have to say that that is prima facie evidence that the suggestion that there was a chance of getting this ready, written, published and through scrutiny ready for this Session is, frankly, fanciful.

**Q40 Chair:** The fact is, Minister, that if there is political will, the Government will get a Bill through. Considering the amount of work done on this issue over the past six years, it could have been possible to get that Bill through quite quickly.
***Mr Davey:*** I disagree.

**Q41 Chair:** I want to raise a couple of points. First, you said that you did not do an impact assessment because you were not going to introduce a statutory code. Would it not have been better to have made that decision after you had made an impact assessment and taken it into consideration?
***Mr Davey:*** If we were going to do it, it would not have been worth putting all the scarce resources we have in BIS into that work. I have to say to the Committee that we have lost about 25% of our staff since the election, so we have to be very careful about how we use our precious resources.

**Q42 Chair:** So, it wasn't a priority.
***Mr Davey:*** Well, if we were not planning to do it, it would have been odd to spend resources on an impact assessment of something that we are not going to do.

**Q43 Chair:** So, you made the decision notwithstanding the commitment made by the Minister previously very early on.
***Mr Davey:*** We waited for your Committee's report.

**Q44 Chair:** No. Surely, you had made the decision that it was not worth doing an impact assessment—you must have made that decision a long time ago.
***Mr Davey:*** No, we went through a process. We wanted to hear what you had to say about the implementation of the code of practice. We agree. I think it is worth putting this on the record, Chairman, because I know there is a lot of disagreement between myself and the Committee. I agree with Mr Ward and can see the thrust of where you are going as a Committee, and that is absolutely fine. However, we agree with you and are grateful to the Committee for showing that, in key places, the code of practice was not being implemented. On those grounds, we decided that we should act. We have taken action. We had some pretty tough negotiations with the BBPA, informed by the ALMR. We have moved the industry and we have delivered, I believe, on the spirit of the actions that you want us to take.

**Q45 Chair:** We will make a judgment on that. Obviously, I would like to check the transcript, but I believe—you certainly implied this, even if you did not state it—that you made a decision in October 2010 after the OFT consultation.
***Mr Davey:*** No, I have said that the OFT consultation was one of the things that fed into our consideration, but your report was critical.

**Q46 Chair:** The report was 2010.
***Mr Davey:*** Your latest report, which I have here, is what we responded to.

**Q47 Chair:** The OFT report was 2010.
***Mr Davey:*** The OFT report was part of our consideration, but your report is what we are responding to.

**Q48 Chair:** Would it not have been sensible to do an impact assessment in the meantime?
***Mr Davey:*** In government, Mr Bailey, one has to make sure that you are not spending taxpayers' money unwisely. Spending money on official time when you are not planning to do something seems to me to be an unwise expenditure when money is scarce. I repeat that we have lost 25% of our staff in BIS. We cannot pursue things and do impact assessments on things that we do not intend to do.

**Q49 Chair:** That is very revealing, because it was not a priority. May I make another point before I bring in Brian Binley again? You say that you are making the current codes legally enforceable, but the evidence that we have is that, in July 2011, Brigid Simmonds of the BBPA said that the codes already were legally enforceable. It would appear that you have not actually done very much.
***Mr Davey:*** I was taken by your report on this, so I thought you would be very pleased about what we had concluded. In paragraph 146 of your report, you make it clear that "The legal status of the companies codes of practice is untested. We had expected a definitive view from the BBPA and its members but all we received was contradictory advice. The inability to provide us with the necessary legal clarity is deeply concerning." It concerned me, so as part of our negotiations, we wanted definitive legal advice that it was legally binding. We have received that. I want to share it with the Committee, and I am happy to go through the process of how the code will be made legally binding and why we have managed to deliver on something that the BBPA clearly did not manage to do when it gave evidence to you.

**Q50 Chair:** It was never tested. What you have done, basically, is reinforce the original position and dress it up as Government action.
***Mr Davey:*** I completely disagree with that. We asked the BBPA for new actions that they could take, based on legal advice, to assure us that the code could be made legally binding. They went to a QC—Robert Howe, QC—to get that legal advice. That was something they did, I believe, after they had given evidence to you, on our request.

**Q51 Chair:** I think we are mainly questioning this.
***Mr Davey:*** Okay, sorry. I thought you wanted to understand how we had reassured ourselves that—

**Chair:** Yes, I think we understand. It was in your letter to us.

**Q52 Mr Binley:** Let me recap: you have talked with OFT and made a major decision based on the competitive nature of the pub trade. You have not made an impact assessment on our report. Can I therefore ask where the Ministry took its independent legal advice from, to argue that its own proposals would be legally binding?
***Mr Davey:*** Obviously, we saw sight of the advice that the BBPA had. I asked our legal advisers to scrutinise that thoroughly. It is actually pretty clear. The actions that they are now going to take following that legal advice will make the code legally binding.

**Q53 Mr Binley:** Thank you for that. The answer is that you did not take any independent legal advice. You accepted the advice, as you rightly say in your letter: "I have attached a signed statement by Robert Howe, QC, who provided legal advice to the BBPA on this issue." The BBPA is a body made up of pubcos and brewers. They are one side of this discussion, the other side, in the main, being the tenants, and the third side, as you say, being the consumers. They are one interest in this whole business, yet you have based your legal advice on the advice of Mr Robert Howe, who was their brief.
I put it to you that legal advice given by a brief is to meet the requirements of a given interest. That is what it is totally based on, and that is why the opposing interest has their own legal advice, because there is a difference of opinion in legal terms. Why didn't you recognise that and therefore get independent legal advice on behalf of the Government?
***Mr Davey:*** The Government have very experienced legal advisers. We did not take the advice that we were given by the BBPA from their adviser, Robert Howe, at face value. We raised a number of questions. I am happy to give a little more information if that helps.

**Q54 Mr Binley:** Minister, on this occasion, we ask the questions and you give the answers.
***Mr Davey:*** I am trying to say that we asked questions about the advice. We did not take it at face value.

**Q55 Mr Binley:** I will come to that, I promise you.
***Mr Davey:*** We did not simply say, "Oh, okay then, we agree"; we asked some serious questions. Frankly, we would not normally take external legal advice, because we have cost considerations to think about.

**Q56 Mr Binley:** Forgive me, but you cannot tell me you have legal experts in this field in your Department. If you have, perhaps you should have got rid of them with the 25% you got rid of. Surely you have not got that depth of advice available to you. With respect, when we come to the advice given by Mr Robert Howe, that will become increasingly apparent, but we will deal with that in a minute.
I repeat: why did you take the advice of the OFT, why didn't you do an independent impact assessment and why didn't you take independent legal advice yourself? Why didn't you think it was worth spending £3,000, £4,000 or £5,000 to get that advice?
***Mr Davey:*** The truth is, Mr Binley, the issues here are basic contractual issues. If one looks at the legal advice we have got, and very well qualified lawyers have analysed it in great depth—and I take a little exception to the way you have characterised the legal abilities of people—

**Q57 Mr Binley:** From the BBPA?
***Mr Davey:*** No, people within my Department. They are highly skilled and—

**Q58 Mr Binley:** I am sure they are. I said that they were not experts in this particular field.
***Mr Davey:*** It is basic contractual law and I would say they are.

**Q59 Mr Binley:** Then can I ask you a question? There is an additional area to this whole matter which is vital. It relates to the advice given by pubcos in the main, and don't forget that half the trade are pubcos and the other half are brewers. In many respects I would exempt brewers and make the point that I believe that they are a different animal from pubcos; they are breweries with pubs in the main. The pubcos simply have pubs with no breweries and buy their product in and hence the tie in that respect. But are you genuinely telling me that the advice given by Mr Robert Howe covered the advice that the pubcos gave to their incoming new tenants on the costs of running a given pub? Is that covered by Mr Howe's response to the BBPA? Because much of this problem comes from pubcos giving totally misleading advice to new incoming tenants, advice that I would claim was near to fraudulent, in order that they take up a new pub. That seems to me to be a massively important area of this whole issue. What does Mr Howe say about that particular area in contractual terms?
***Mr Davey:*** The advice that we saw related to how the code of practice was made legally binding, not about the issue that you are referring to. The issue you are referring to is a very important one and I am glad you have raised it because one of the areas where we negotiated a strengthening of the code, particularly in respect to full repairing and insuring leases, was to ensure that the pre-entry awareness training that can be accessed has to be taken, or a waiver has to be signed. Unless that has happened, unless the pubco is clear that that has happened, the pubco would be in breach of the code if they went ahead with a lease. So we have strengthened the code in that respect. Plus, part of the agreement that we negotiated was to get a much more effective advisory service—what will become the pub advisory service—so that prospective tenants and lessees can have free advice. In addition, there will be a lot more information, a greater transparency, because of the benchmarking information that is going to be out there. You have seen that from the ALMR. We have seen now some benchmarking work by the BBPA and I am delighted to say that RICS is going to work across the industry to provide even more transparent information for that benchmarking exercise. So this package together deals with the underlying issue that you have raised.

**Q60 Mr Binley:** Let us take this a little further because RICS advice was always there. The ALMR benchmarking was well known in the industry and was available. But let me pick up this matter and I ask you to put yourself in the position of a would-be new tenant who knows very little about the trade and says, "We would love to have our own business and one of the good ways of getting into it is a pub." So they go to a pubco to take on a pub and the pubco says—we have evidence that this is the case—that the cost of running that pub is 35% of total when in fact, from a substantive survey, the costs are between about 42% and 51%. That is totally misleading information to the point of someone being caught almost in a catch-penny way—someone who is keen to take up the offer anyway. Where is the protection for those people? Who pays for them afterwards to take the matter to court? This is pre-advice before contract, not a matter of contractual agreement; it is a matter of advice being given before the contract is signed. How does someone who has lost all their life savings in taking on a pub that did not work for them pursue the matter legally?

***Mr Davey:*** I make a distinction between prospective lessees and tenants—before they sign—and people who have signed, gone into a lease and then had problems, because both those cases relate to your question. To deal with the latter first, people who become tenants and lessees, have a problem and believe that the code of practice has been breached can now be reassured in that they can go to PICAS and pay £200 to access its new, independent mediation service. If the adjudicator appointed through the service finds that the pubco has breached the code, the pubco must stop doing so and give restitution—compensation, in other words—to the lessee and tenant, who can also go to court, because that is now another option open to them. Under our proposals, that would deal with the lessee/tenant who has been practising for some time. People do not believe that has been the case up to now.

When a prospective tenant/lessee is considering taking on a pub, it is absolutely clear that if a pubco has publicly stated that it will comply with the code as part of the tenancy or lessee agreement negotiations and then fails to do so, causing loss to the future tenant or lessee, that individual can rely on the statement to seek compensation. That is a belt and braces approach.

**Q61 Mr Ward:** We talked about state intervention and the dangers of intervening in industry, which we all understand. We were also talking about contract law. Do you not, at times, see the necessity of state intervention in contractual relationships, in which there will inevitably be more powerful and weaker or vulnerable parties?

***Mr Davey:*** It is true that the state intervenes on contractual relations when individual citizens are involved against larger parties. A classic example is when the consumer gets protections under law, and tenants of a private landlord, who are renting a property, have protections in law to assist them with contractual negotiations. Generally, except out of the wider contractual law process, government does not intervene in business contractual relationships.

It is clear—again, this speaks to what Mr Binley said—that some pubcos did not ensure that people taking on leases and tenancies had the full or, indeed, correct information. That has caused a lot of problems. The question is: is statutory regulation the answer? I think the answer is to make sure that prospective tenants and lessees have all the information and pre-emptory awareness training before they sign a contract. If they did not have such information and did not sign a waiver to be given over to the pubco, the pubco would be in breach of the code of practice by allowing the contract to go ahead. That answers the problem that has been experienced—it is a real problem, and this Committee was right to pay such careful attention to it.

**Q62 Mr Ward:** Lessees and tenants have always signed contracts, but we are here today because that clearly has not proved to be a satisfactory arrangement on their behalf.

***Mr Davey:*** There are two issues. The first is making sure that, before the lessee/tenant signs the contract, they are absolutely clear what they are getting into. The measures that I have already outlined I think will really assist that process and strengthen that in the future. I think that is the right thing to do. Indeed, the Committee has called for that, and people across the industry have called for that. So it is dealing with the entry point.

Then of course when they have signed that contract and have been in the business, the question has been whether the pubcos were implementing the code of practice. This Committee quite rightly found evidence and raised with the Government the fact that, although a lot of the codes of practice have been accredited, they were not being fully implemented. We have responded to that to ensure that if a pubco is not implementing the code of practice, the tenant/lessee has leave to law, both to the courts and through a new independent arbitration system. We think that is a major step forward, and I urge the Committee not to underestimate what has been achieved.

**Q63 Mr Binley:** If you had taken independent legal advice, do you think you might have been advised that a deed of variation to incorporate the code in the lease might have been a better way of proceeding? Did your legal people consider that as a way of making it more legally binding?

***Mr Davey:*** We did indeed. That is certainly one route that people have put forward. The problem with it is that you would have to have had a deed of variation for over 20,000 leases—I think that is the right figure—and each deed of variation would incur significant costs. The approach that we have negotiated with the industry, which we have agreed to do—I am sorry for using shorthand and if "industry" is an inappropriate term; I mean the pubcos and the brewers—means that a new entrant, by reference in the contract to the code, is given the protection that I think is required. For existing tenants, a supplementary or collateral agreement running aside

from the original contract gives them, again, all the substance of a deed of variation.
So you are right, Mr Binley, to say, "Should we have gone down the deed of variation route?" We looked at it. We thought that the route that we have actually gone down with the pubcos and the brewers through the BBPA is both a cheaper and much, much quicker way. I think the speed of action is important here.

**Q64 Ann McKechin:** Minister, as a former Minister, I am somewhat astonished by the evidence that has been produced by this legal opinion, because it does appear to me that there is an inference of conflict to a reasonable man in the street. Would you not agree that, for example, if you were talking about the groceries code and you produced the legal opinion from Tesco or if you were talking about tar sands investment and you produced the legal opinion of the Royal Bank of Scotland, one might state or infer that there was conflict of interest?
***Mr Davey:*** That assumes, Miss McKechin, that we just accepted the advice and said, "Okay. Fair enough. We'll do whatever you say." That was not the case. We scrutinised that advice. We asked a lot of questions about, for example, whether considerations were involved and how those work and so on. Can I just check something with my official? I presume that advice was shared with ALMR.
***Hannah Wiskin:*** My advice?
***Mr Davey:*** No, the industry's advice.
***Hannah Wiskin:*** I do not know. You will have to ask Iain.
***Iain Mansfield:*** I could not tell you that. I can tell you what discussions they had with them, but I know that our lawyers checked the advice.
***Mr Davey:*** They have it now?
***Iain Mansfield:*** It is now being published on the website.

**Q65 Ann McKechin:** Well, they may have it now, but they did not actually have it prior to you making your decision. Did your office consult the Solicitor-General about using this advice in this manner?
***Mr Davey:*** I am advised that we would not normally do that.

**Q66 Ann McKechin:** Given that this is a rather extraordinary piece of evidence to produce to any Committee, do you not think in retrospect that it would have been advisable to have asked the Solicitor-General's opinion?
***Mr Davey:*** With respect, what the Committee is missing on this is that it was not a complicated, innovative, unusual piece of legal advice that required special counsel. This was a basic issue of contract law, and it was quite a simple piece of law.

**Q67 Ann McKechin:** I would disagree with you, Minister. I would put on record, as a member of the Law Society of Scotland, the fact that it is very clear that the legal opinion produced relates to the English law of contract. Can you advise me whether you consulted your lawyers in the Scotland Office?
***Mr Davey:*** No, we did not.

**Q68 Ann McKechin:** Why not?
***Mr Davey:*** As I understand it, basic contract law is not significantly different in Scotland.

**Q69 Ann McKechin:** Well, the law of property most certainly is. Is that not the case, Ms Wiskin; do you have any familiarity with Scottish law?
***Mr Davey:*** We are not dealing with property law; we are dealing with contract law.

**Q70 Ann McKechin:** You are dealing with contract and property law, because this is about enforceability. It is the question of a personal right versus a real right. Does Ms Wiskin know what the distinction is, and can she perhaps advise the Committee what it is?
***Hannah Wiskin:*** What we are dealing with here is an agreement by the pubcos with the lessees or tenants as a contractual agreement to be bound by the terms of the code. Therefore, although we are dealing in the general context of property law, with leases being in place, we are talking essentially about an additional contractual arrangement that does not bite directly on the lease. We have already talked about the pure contractual arrangement between—
**Ann McKechin:** Can I suggest, Ms Wiskin, that you may wish to now consult with the solicitors in the Scotland Office and produce a note on their advice for the benefit of the Committee? We cover the whole of the United Kingdom in the Committee's work, not just part of it.

**Q71 Chair:** Could you do that by Thursday?
***Mr Davey:*** I think we can do that by Thursday.[1]

**Q72 Ann McKechin:** I am very grateful. Can I just confirm this issue about a personal right? A personal right is only enforceable by contract between the parties concerned. Evidence was given to the Committee in one case where Scottish and Newcastle, which was a member of BBPA, sold its interest in its leases to another company that was not part of BBPA and, accordingly, the codes were not enforceable because they were not real rights. Do you not recognise that there is an issue here, because the tenant's ability to enforce a contract is limited if it is only a personal right rather than a real right?
***Mr Davey:*** This issue came up in our discussions with ALMR, and we think it will happen very rarely but it obviously could happen—

**Q73 Ann McKechin:** Scottish and Newcastle is a big brewer.
***Mr Davey:*** You have given an example where it has happened, although obviously there are many examples where it is not happening in that way. We went back to BBPA and said that we wanted to make sure we took a belt-and-braces approach. BBPA has agreed that in such a case before the lease is transferred to a non-BBPA member there would be a deed of variation on the leases, and it would undertake to make that happen. That is the other route, but in this case it is the route that enables you to ensure that the protections are transferred.

[1] Ev 23

**Q74 Ann McKechin:** Right. So that is a deed of variation, which would come at a considerable cost to the industry. Can you give me an estimate of what that cost would be?
***Mr Davey:*** Because we think this example will happen relatively seldom, I assume that the industry is willing to take on that cost. That is why it has made that commitment to us.
**Ann McKechin:** The industry may well pass that cost on to its tenants.

**Q75 Mr Binley:** Can I just come in as a supplementary to your supplementary? The cost of a deed of variation incorporated in the code is important. What was your estimate of that cost and whom did you get it from?
***Mr Davey:*** You have to remember that the estimates of costs of variation are going to be different depending on the lease and its conditions. I do not have the range of costs—

**Q76 Mr Binley:** I was told you had an estimation given to you. Can you confirm that you did?
***Mr Davey:*** I do not have that estimation with me, but I can confirm that it would have been significantly more expensive than the route we have chosen.

**Q77 Mr Binley:** I am told, furthermore, that you sought the BBPA's confirmation on that cost and it gave you a figure of some £15 million nationwide. Is that true?
***Mr Davey:*** I have not seen that figure. I was told that it would be a very expensive approach, but maybe Iain would like to come in.
***Iain Mansfield:*** The BBPA did tell us that figure. We did not accept that figure at face value, and we est—carried out—

**Q78 Mr Binley:** You "estimated". That was the word you were going to use, wasn't it?
***Iain Mansfield:*** Yes—not me, personally.

**Q79 Mr Binley:** You estimated. On what basis, did you estimate?
***Iain Mansfield:*** I sought the advice of legal colleagues, and we can write to you with the details of that estimate.
**Chair:** Again, by Thursday.[2]

**Q80 Mr Binley:** Can you clarify whether the individual codes become self-standing legal documents, or will it just be by reference to what is contained in the industry framework code?
***Mr Davey:*** As I understand it—Hannah may want to correct me if I am wrong—for a new tenant and lessee, the contract they sign will have a reference to the code, and that will be the code of the individual pubco or brewery. That means that if the code is improved and strengthened as time goes on, it will still relate and still be lawful, and those increased protections will still apply to the tenant and lessee. With respect to existing tenants and lessees, it is the supplementary agreement that I described earlier, but it will operate in effectively the same way: it will still apply, and give reference, to the code of practice of the individual brewer and pubco.

**Q81 Mr Binley:** Will you confirm that information to us?
***Mr Davey:*** Yes.

**Q82 Mr Binley:** Because it looks like your legal advice wishes to—
***Mr Davey:*** It is the industry framework code that is legally binding. That is the sort of building block of everything on top of that. Of course, the pubcos and the brewers can add things on top of that, but it is the industry framework code that is fundamentally the legally binding code.

**Q83 Mr Binley:** I am deeply concerned, you see, because it seems to me that you are looking at the would-be tenant and the pubco as equal bodies in terms of the powers they might employ and the ability they might have to argue. They are not equal bodies; they are totally unequal bodies. This is why we are arguing for greater protection. I wonder if you understand that particular point.
***Mr Davey:*** I agree with you that we need to make sure that the behaviour that we have seen in the past by some pubcos is not continued into the future, which is why we have spent so much time and this Committee has spent so much time examining this issue. I actually agree with you that we need to make sure this code of practice is strengthened; we need to make sure that it is legally binding; we need to make sure that there is a successful mediation service; we need to make sure that people who enter these agreements have proper advice; and we need to make sure there is a re-accreditation process. All of that we have negotiated, because—you are right—this is not a relationship of equals.

**Q84 Mr Binley:** How would the code be treated in a court of law? Would it have the same legal weight as a lease?
***Mr Davey:*** The code of practice, because it is referenced within the contract, is part of the contract, so it will be a breach of contract that someone would be taking their pubco to court about.

**Q85 Mr Binley:** But I asked whether it would have the same legal weight as a lease. You see, you will have to go to court on many of the matters in the code of practice. It is not like The Highway Code. The Highway Code refers to law after law after law; this code of practice does not. There are very few legally based or statutorily based matters that the code of practice is involved in, because it is about a human relationship. That is why I specifically want to know whether it will have the same legal weight.
The last thing I want for these good people—I have been an area manager—who start out in a pub with all of the enthusiasm in the world on the evidence given to them by the pubcos, is gradually to find that that evidence has been incorrect. I have seen people in tears—
**Chair:** Brian, will you just focus on the point?

[2] Ev 25

**Mr Binley:** I think the Minister needs to understand the personal involvement here. I want to know specifically whether it has the same legal weight as a lease.

***Mr Davey:*** Yes, I am told that it will have. In so far as the code imposes obligations on the pubco, the tenant could enforce them in the way that it can enforce obligations in a lease that it has with its landlord.

**Q86 Mr Binley:** Will the money to pursue an action of that kind be paid by other than the person who has been harmed? Will it be paid, for instance, by a fund created by the pubcos or whatever?

***Mr Davey:*** Part of the reason for setting up PICAS, the independent mediation service, is that people are worried that if they simply have to rely on going to court it could involve prohibitive costs. Therefore, I believe that the solution we have come up with is the equivalent of the adjudicator that you wish us to put into statute. The costs to tenants and lessees of availing themselves of this mediation service—PICAS—would be £200. We think that is not an unreasonable cost; it is nowhere near the sort of legal fees that I am sure you—

**Q87 Chair:** Why are you introducing £200 in addition to all the other stress that someone in that situation would have to undergo?

***Mr Davey:*** I think it is a reasonable fee, Mr Bailey. The vast majority of the costs will be taken on by the members of the BBPA; that is how it should be, although the governance of PICAS is of course not just BBPA—you've got tenants' representatives there as well. It is important that tenants and lessees who want to avail themselves of this extremely efficient approach to getting redress have a bit of skin in the game. It is only £200, and that is not an unreasonable amount.

**Q88 Chair:** I cannot help but think that for a pub licensee earning perhaps less than £15,000 a year, as we know a very high proportion of them do, even a £200 contribution will be a major disincentive.

***Mr Davey:*** We may have to disagree on this, Chair.

**Chair:** Certainly the feedback from the industry is along those lines.

**Q89 Paul Blomfield:** I want to pursue another angle if I might, Minister, on your continued insistence that the code must be legally binding. In the Government's response you state: "In cases where the tenant or lessee chooses not to sign, they can invoke the Code simply by making a complaint of non-compliance to PICAS or to the courts." I am not a lawyer, so perhaps you could explain how the code will be legally enforceable if it is not being signed by the two parties in the dispute.

***Mr Davey:*** This is one of the important elements of the package. I was concerned, and your Committee's report revealed this, that some tenants and lessees would not be aware of the code and would not be aware that it could be legally binding. Therefore, although the pubcos will be writing to all their tenants and lessees inviting them to sign, some might not sign, for whatever reason. But I did not want them to be without protection in such a circumstance, including those who just refused to sign even though they had a copy of the code. We wanted to make sure that they would still be protected if a few years later they felt that they had been badly treated. So, this is a positive way in which someone who had not signed would still be able to avail themselves of that protection, by going to PICAS or the courts. By so doing, they would of course be making sure that they had to meet their side of the code of practice, but it is belt and braces, and I would have hoped that that would have given you greater reassurance.

**Q90 Mr Ward:** I can't quite understand this belt and braces protection and its watertight nature. The recommendation of this Committee and its predecessor is that there should be a code on a statutory basis with enforcement. What would be the devastating consequences on the industry of that, compared with what you are proposing? What is the huge difference between those two that would have such a devastating impact on industry?

***Mr Davey:*** One of the issues is the continuing uncertainty. I have made it clear that the statutory route would inevitably take time, because of the passage through Parliament. Government legislation would be subject to amendments and so on. There would not be certainty. One of my desires was to try to bring what has been a very long period of uncertainty to an end. Because we can act really, really quickly by Christmas, which I think the Committee will agree is speedy action, we can get the protections for tenants and lessees in place very quickly. That therefore gives a win to tenants and lessees, because they have that reassurance, but also enables the industry to know what the framework is, and therefore they are more likely to bring forward investment.

**Q91 Paul Blomfield:** I am keen to pursue with the Minister the question I was asking a moment ago. On what basis are you confident that the courts would view the code as legally enforceable, even if it had not been signed by the two parties to the dispute? What case law might there be in similar circumstances to support that view?

***Mr Davey:*** First of all, a signed agreement is not always necessary for a contract to be binding. I am sure lawyers around the Committee would confirm that. The parties can be bound by their actions. The pubco is making a standing offer to be bound by the code of practice. That is what has been agreed. The tenant will be deemed to be accepting the code by seeking to enforce it. We are very confident that this is a way of providing belt and braces protection for tenants and lessees.

**Q92 Paul Blomfield:** Is that confidence based on case law or legal advice?

***Mr Davey:*** I am told that there is the Carbolic Smoke Ball Company case. That is a leading Court Of Appeal decision from the 19th century. The Court held that an advertisement for a product with a financial reward were it not to work constitutes a binding unilateral

offer that could be accepted by anyone who performs its terms. It is the basis for us being satisfied that a pubco's open offer to be bound by the code can be accepted at any time by lessee or tenant.

**Q93 Chair:** I would like to clarify—what is the situation with pub companies that are not members of the BBPA?
***Mr Davey:*** First of all, Greene King, which is probably the biggest member that you may have in mind, has agreed to sign up to this package. I think that is the big one. Other breweries that already have their own code of practice will still ensure that things are legally binding and still have agreed to go to the PICAS mediation service. But some of the strengthening of the code—I am glad you have given me the opportunity to clarify this—is directed at the full repairing and insuring leases. That is where the extra protection is, because that is where the detriment has been. BBPA members, the ones with by far the greatest number of FRIs, would be bound by the stronger codes.

**Q94 Chair:** So if a pub company decided that it did not want to be a member of the BBPA, and it was not going to sign up to any codes, what recourse of action would any pub owned by that pub company, or publican lessee, have in dealing with any—
***Mr Davey:*** At the moment, we are capturing all the companies in our approach. There is no pubco with more than 500 pubs outside the BBPA except Greene King, so I think we have captured that. But if you are imagining a pubco setting up that is not a member of the BBPA, it would not get accreditation—I am just checking that I am right on this—from the British Institute of Innkeeping. Therefore, when a—
**Chair:** What?
***Mr Davey:*** This is the point I was about to make, Chair. If a prospective lessee or tenant goes to the pub advisory service to get the free pre-entry awareness training and to hear about all the costs of running a pub and so on, they would be told that this pubco is not accredited by the British Institute of Innkeeping and that they should therefore be very, very wary about entering a lease or tenancy with such a pubco. It would therefore be absolutely clear that it would be a very unwise move. The point that we are making sure to address in our package—that a prospective tenant or lessee will have access to this free advice, which will make clear the significance of accreditation by the BII—is an important part of the jigsaw.

**Q95 Chair:** But there is nothing legally to stop a pub company getting together a whole lot of somewhat naive would-be tenants and recruiting them to the pubs. They would have no legal protection whatsoever.
***Mr Davey:*** They do have—I repeat myself here—the opportunity to go to the pub advisory service—

**Q96 Chair:** But they may not know about it. Who is going to tell them?
***Mr Davey:*** I think most prospective tenants and lessees would do a little bit of research. That is not an unreasonable thing for the Government, and I would argue this Committee, to expect someone who is—

**Q97 Chair:** A lot of evidence has been accumulated by this Committee that a lot of new tenants are very unaware of, if you like, the industry codes and/or their rights. They would equally be unaware of the advisory bodies, the pre-entry training and so on.
***Mr Davey:*** I would argue, with respect, that in the days of the internet and Google, to be able to find this information—the codes of practice, the availability of free advice from the pub advisory service—is not terribly demanding. It could not be easier today. It is the easiest time in the history of pubs to get that information. So I have to push back on you, Chair. It is reasonable for the Government and people who think about business to expect business people to do a little bit of research before they invest.

**Q98 Chair:** But would it not be also easy for the Government to introduce some element of legislation that would make it obligatory on any pub company to be a member of the BBPA and to sign up to these codes?
***Mr Davey:*** If we had gone down the statutory route, perhaps. But there are lots of people in the industry bodies—CAMRA, for example—who I am sure will do their best to make sure that this free advice is available to would-be tenants and lessees.
**Chair:** You do seem to be putting a large amount of weight on the advice of CAMRA. It is a pity you have not done it in the other context as well.

**Q99 Mr Binley:** My concern in terms of enforceability rests with the difference between a new lessor and an old lease. It seems to me, and the advice I have got is that a collateral agreement does not materially affect the terms of the lease and, in particular, is not binding on successors in title. If a landlord were to sell on the property to another tied pub company that was not a signatory to the framework code or not a BBPA member, the lessee would have no legal protection under the code. Is that so?
***Mr Davey:*** A new owner would normally take on all the rights and obligations of the old pubco as part of the acquisition of the pub, if that is the point you are seeking to make.

**Q100 Mr Binley:** No, I am making the point that specifically—I repeat, specifically—a collateral agreement does not materially affect the terms of the lease and, in particular, is not binding on the successors in title. You will understand that, in the pub business, there are a number of levels. The pub co-owns. Then, another company owns 200 pubs and it leases it to a company with 30 pubs and it leases it to a tenant.
***Mr Davey:*** Mr Binley, remember that this is an open offer that the pubcos are making. If the new lessee or tenant has not signed the supplementary agreement, they can still avail themselves of it.

**Q101 Mr Binley:** But this is an existing lease handed down through the framework that controls pubs in this country.
***Mr Davey:*** As I understand it, supplemental agreements made to a lease that is handed down would have an effect; they would be incorporated in the code.

**Q102 Mr Binley:** My advice is that they would not in certain circumstances. Could you check that out, please?
***Mr Davey:*** Which circumstances are you talking about?

**Q103 Mr Binley:** I repeat: if a landlord were to sell on a property to another tied pub company that was not a signatory to the framework code or not a BBPA member, the lessee would have no legal protection under the code.
***Mr Davey:*** I have now got the point. I thought I had answered that previously in response to Mr Blomfield—
**Mr Binley:** I am not sure you did.
***Mr Davey:*** If we are going back on that one, I said that we had secured a concession from the BBPA, because this point had been raised with us by the ALMR. Pubcos will be required to vary lease tenancy agreements by deed prior to the sale of a pub, where the new owner is not a member of the BBPA.

**Q104 Paul Blomfield:** I want to ask some questions in relation to PICAS. Before I do, Minister, you have mentioned PICAS. Can I just confirm whether there was consultation with the British Institute of Innkeeping over the funding of the service?
***Iain Mansfield:*** In our consultation with the British Institute of Innkeeping, they agreed the principle that funding discussions would have to take place later. We were very conscious of the need to respond to the Committee within two months.

**Q105 Paul Blomfield:** Isn't this actually fairly fundamental to the delivery of the service? The proposal is that it will be provided free because BII is paying through its corporate membership. Are you saying, as we understand to be the case, that you have not actually consulted the BII over those funding arrangements at this stage?
***Mr Davey:*** When I met the BBPA as part of the negotiations and said we needed to make more progress, one of the issues we discussed at that meeting was the corporate membership point. If BBPA members are prepared, as they have signed up to, to make the funding available for PICAS, I am sure the BII will welcome that.

**Q106 Paul Blomfield:** Don't you think it would have been wise to consult the BII properly before reaching that view?
***Mr Davey:*** As Iain has said, there was an in-principle agreement. The question was whether we could reach an agreement with the BBPA members that they would provide the money; we have.

**Q107 Paul Blomfield:** But the BII has not been formally consulted.
***Mr Davey:*** I am sure the BII will welcome the fact that we have managed to get that agreement from BBPA members.

**Q108 Paul Blomfield:** Perhaps you will know that when you have consulted them. If I can move on to PICAS, who will have overall responsibility for the service? Why not just formalise what the BII is already doing with mediation, rather than inventing a whole new mediation system?
***Mr Davey:*** PICAS will be operating under the same governance as PIRRS, which, as you know, is looking at rents, and which this Committee, in its report to the Government, was very complimentary about. Just to remind you what those governance arrangements are, they involve the BBPA, the BII, the FLVA, the GMV and the ALMR. They will be funded through a levy raised primarily from BBPA members.

**Q109 Paul Blomfield:** And that composition is embedded?
***Mr Davey:*** That is the agreed governance arrangement. One of the reasons we wanted that governance arrangement is that we have the same governance arrangement for PIRRS, which this Committee agreed is working well.

**Q110 Paul Blomfield:** If, at some stage in the future, BBPA chose to change that governance arrangement, what agreements do you have in terms of embedding that going forward?
***Mr Davey:*** It is very unlikely that they would wish to do that. It is working well; it is an agreement that they have made publicly, and it is a real step forward.

**Q111 Paul Blomfield:** Was the FLVA consulted on the composition of PICAS?
***Mr Davey:*** Let me just check.
***Iain Mansfield:*** You are meeting them this month to discuss it further.
**Chair:** I think we know the answer.
***Mr Davey:*** I think the answer is no, but it is not unreasonable to suggest that they would welcome this as representing tenants and lessees and having members of PIRRS. One of the reasons why we wanted to duplicate the Government's arrangements is that the people on that governing body are already involved in a similar mediation service, so it seemed to us that something that had already been agreed with different bodies and was working—this Committee said it was working—was the right way to go.

**Q112 Paul Blomfield:** Again, it might be more acceptable to consult bodies rather than anticipate their view on the issue.
***Mr Davey:*** We had to get back to this Committee in two months, and we had to work incredibly quickly. They have been pretty tough negotiations. It probably would help the Committee if I made it absolutely clear that these negotiations have moved the BBPA significantly. It is very difficult when you are trying to negotiate at speed to try to get a solution. I think

we have managed to get one that delivers on the spirit of what this Committee asked Government for.

**Chair:** If you had asked the Committee—obviously, I cannot second-guess the response—I think it would have been fairly sympathetic to giving you extra time. We would rather get it right than get it wrong and have to come back to it.

**Q113 Paul Blomfield:** May I pursue some further questions on PICAS? Going forward, how is that independence going to be guaranteed?

***Mr Davey:*** The approach they will take is that the governing body will appoint independent adjudicators from an approved list, similar to that that PIRRS has drawn up for valuation experts. There will be a genuine cross-industry governance board, which will appoint an independent adjudicator. I think that is a very good model.

**Q114 Paul Blomfield:** An independent adjudicator who will effectively be the arbitrator in any dispute.

***Mr Davey:*** Yes.

**Q115 Paul Blomfield:** One criticism that we had of the BII was that it had no sanctions to enforce decisions taken through mediation. What sanctions will PICAS have?

***Mr Davey:*** Both parties obviously have to be bound by the decisions of PICAS. If there is a breach of the code that the adjudicator finds, then the pubco has to start complying with the code, and the mediation service can require compensation to make amends for the code having been breached and caused problems. Let me give you an example. Under the strengthened code, we will require from the big pubcos—the BBPA members—that they ensure that the insurance they purchase is market-tested, so that they are not charging their tenants and lessees over the odds on insurance. If a complaint came from a tenant or lessee to say that they were being over-charged on insurance and PICAS found that was the case, the difference would have to be refunded. That would be a clear sanction. Of course, if then the pubco failed to comply with what PICAS had said, the BII would take away its accreditation.

**Q116 Paul Blomfield:** You have mentioned compensation in terms of redressing balance or dealing with a grievance. Would there be an opportunity to fine, so that there would be some appropriate punitive sanction for breaches of the code?

***Mr Davey:*** No. There are not going to be fines, but they would have to make that compensation for restitution.

**Q117 Paul Blomfield:** Why did you choose not to press for that level of sanction? That is something that has been looked for in the past.

***Mr Davey:*** We wanted a proportionate approach. I know there are people to whom the Committee referred in its report who feel that the ultimate sanction of losing accreditation is not sanction enough. I think it is a very powerful sanction. As I said before, if prospective tenants or lessees go to PICAS and find that the pubco they are thinking of entering a contract with is not accredited by BII, they will be warned that it would be very ill-advised to go forward with signing that contract. That is a very powerful sanction, because it would mean that such a pubco would have problems finding the best licensees.

**Q118 Chair:** With respect, Minister, I put that question to Greene King when its representatives were before us and they indicated to the Committee that Greene King had had no problems whatsoever.

***Mr Davey:*** I am speaking from memory, Chair, so I am sorry if I am misrepresenting you, but I think that the question that you put to Greene King was about its coming out of the BBPA and whether that had affected its reputation, and not about whether it had lost accreditation by the BII. It is the importance of the accreditation by the BII that is the point I am making.

**Q119 Chair:** I do not think that many would-be publicans would make the distinction.

***Mr Davey:*** They would be advised by PICAS that it was an important distinction.

**Q120 Chair:** If they knew about PICAS.

***Mr Davey:*** If they checked Google.

**Q121 Margot James:** You have said that the current code needs to be strengthened. What specific changes did you expect to see?

***Mr Davey:*** In negotiations to strengthen the code, when we kept going back to the ALMR and ensuring that we were listening to it, we looked at a range of issues. From memory, we had about 14 areas of the code to strengthen. The area that I am particularly keen on is in relation to rents. As the Committee found, although the RICS guidance was mentioned in the code, there was a real belief that that guidance was not being adhered to and therefore that the codes were not being implemented in this really important area. Now, because of our strengthening of the code in our negotiations, the industry code and therefore the 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.

That is one example and I could mention others. I draw the Committee's attention to that example, because if a lessee or tenant felt that the RICs guidance was not being complied with they could take their case to PICAS. That combination of a stronger code, including the fact that the code is legally binding, and the work of PICAS is the sort of thing that I believe will address some of the biggest detriments that people have faced.

**Q122 Margot James:** But what about the tenants without FRI leases? You mentioned the tenants who have FRI leases and the new tenants who are currently negotiating leases that will have an FRI, but what about the raft of tenants who are existing non-FRI tenants?

***Mr Davey:*** It is true that most of the strengthening that we have done to the code is for FRI leases; that

is absolutely true. And a lot of the areas that we have strengthened will not apply, either because they are not relevant or because they are not needed for other tenancies. Let us be clear, however, that non-FRI tenancies and leases will still have the existing code of practice, and it will still be legally binding.

**Q123 Margot James:** The ALMR told us that most of the improvements that you have agreed to make are really about enforcing existing commitments; that is the ALMR position in most of the examples, and I am sure that you felt that you didn't have time to go through them all. That is the ALMR position. It is very disappointed. What have you got to say about that?

***Mr Davey:*** First, I think that you heard evidence when you were having your hearings—I think that it was evidence from Garry Mallen and it is in paragraph 59, which you quote in your report—that supported the current RICS guidance and the current code of practice, saying that they are "much better". One of the complaints that you heard was that the current guidance and code of practice were not being implemented. Therefore, although the ALMR is right to say that for non-FRI leases there has not been a huge strengthening, for FRI leases there has been strengthening of something that your Committee had heard was good but was not being implemented.

Let me be clear that we haven't got everything that we or the ALMR wanted in the strengthening of the code, and I will be frank with you in saying that; we did not get absolutely everything. I believe that we got huge amounts on rent, insurance, dilapidations, training, price lists, upward-only rent reviews and so on. The thing we did not get was the full packet that we would have liked to have got on AWP machines. We agreed that company codes will specify exactly how machine income is distributed and it will give transparency on royalties if taken, but what some of the tenants and lessees understandably wanted was a breaking of the tie with AWP machines and we did not achieve that. I am afraid that what we had to say on a few issues, including how the AWP tie might evolve, was that we had to get the BBPA's agreement that it would continue discussing that with industry partners. I would have loved to have got agreement on absolutely everything, but we did get agreement on critical issues.

**Q124 Margot James:** I will come back to the consultation with industry partners in a minute. I want to ask one supplementary on what you have just told us. Of course, in any negotiation you do not get everything you want. You have mentioned one example where you did not get everything you want, which was the AWP machines. The ALMR, in its written evidence to our Committee, has concluded that many of the undertakings that you have achieved are either existing commitments or represent minimal change to the existing code. Although you have told us that you did not get what you wanted in the AWP negotiations, can you identify a few examples where you feel that you did get a good deal for the tenants?

***Mr Davey:*** The first key thing to remind the Committee is that this will be legally binding. I am sorry to keep coming back to that, but it is a critical point. To take your point on, these are amendments, as I understand it, to the existing code of practice. It is true that some pubcos already have these in their individual codes of practice, but these are now going into the base industry framework code, which is a step forward, because it is that fundamental code that will be legally binding.

**Q125 Margot James:** I appreciate that it being legally binding is, in principle, a step forward, but it is a bit two steps forward, one step back if what will be legally binding is not much changed from what is already in the existing commitments. Maybe that is why you have managed to conclude the discussions so quickly.

***Mr Davey:*** No, it is because these are not in the industry framework code. Some pubcos have them, but not all. We have moved them, in our negotiations, on a number of these issues.

**Q126 Margot James:** Let me come to the industry consultation. You have set out a list of further improvements in addition to the ones that you are going to make legally binding, but you have left it to the BBPA to discuss with industry partners. Given the imbalance of power between the BBPA and the tenants, for instance, I presume that you would include the tenants in the industry partners, which you list as a generic term. How can you be confident that the BBPA is best placed to lead those discussions?

***Mr Davey:*** The discussions have to have the BBPA in the room, because it is one side of the negotiations. You are right in the sense that I cannot guarantee to this Committee that those discussions will go ahead in good faith and will resolve all those issues. I know that there will be a lot of scepticism about whether those negotiations will result in solutions to these issues. I can appreciate why that might be. The Committee may think that I am naive in this respect, but I believe and very much hope that we will change the attitude and the atmosphere through what we have achieved in our package. We will see whether these negotiations within the industry develop and yield results. I am probably more optimistic than others.

**Q127 Chair:** Based on what you have said, there is something that puzzles me. You talk all the time about negotiating with the BBPA and consulting others. Why do you not negotiate with the others? Why do you not get the evidence together and say, "We are the Government, this is what we think on the basis of the evidence that we have. We should do this."?

***Mr Davey:*** I think it is fair to say that there has been quite a lot on the record, both from this Committee and outside it, of exactly what people felt about all these issues, so I think we knew what people wanted. *[Interruption.]* If we had got what one side exactly wanted, we would not have got what the other side wanted. There had to be discussions. I said earlier in my evidence that, during the negotiations, we were in regular contact with the ALMR.

**Q128 Chair:** Yes, contact—you didn't negotiate.

***Mr Davey:*** We felt that we were negotiating, frankly, on behalf of tenants and lessees. We moved the BBPA, and it will be interesting when all the evidence comes out. There has been a freedom of information request by my hon. Friend the Member for Leeds North West about all our e-mails in this area, and I am looking forward to them going into the public domain, because I think they will show that we were effective in our negotiations.

**Q129 Chair:** On the basis of what you say, I can understand why there is a view within the wider industry that all you have done is make legally binding a situation that was fundamentally inequitable to start with.
***Mr Davey:*** I disagree with that caricature. I have mentioned the RICS guidance, which I think is incredibly significant.

**Q130 Chair:** It is based on all the feedback we have had from other bodies.
***Mr Davey:*** When I read your report, I noticed that you were focusing on the lack of implementation of the code of practice, and I wanted to make sure that tenants and lessees could ensure that it was implemented to give them the power, as soon as possible, to guarantee implementation of the code of practice and, in some areas, to strengthen it. That is what we have done.

**Q131 Paul Blomfield:** I have a specific supplementary question on the line of questioning that you have been pursuing, Chair. Was the Minister interested to see the comments from Brigid Simmonds in the trade journal, *Morning Advertiser*, last week? She celebrated the fact that the Government had decided not to introduce a statutory code due to "Last-minute political lobbying" by the BBPA.
***Mr Davey:*** I am sure she would say that, because she wants to make sure that her members are pleased with her work, but, as I have said, when the freedom of information request is answered, I think we will be clear that some of the BBPA members moved rather further than they expected to.

**Q132 Mr Binley:** I thank my colleague for that quote, because it underlines the impression given all the way through this process that the important people in negotiations with Government were primarily the BBPA and the pubcos. Let us try to deal with that very briefly. How many times did you, Minister, meet to discuss these proposals with the BBPA? May I also ask whether Simon Townsend, chief officer of operations for Enterprise Inns, was included in those last-minute discussions?
***Mr Davey:*** Over this period—I want to make sure that I give you the exact figures—I met the BBPA three times over the year. Obviously, my officials met the BBPA more than that. I want to make sure that I give you the accurate figures, which are somewhere among my papers, on the detailed list of all the meetings that I attended. I told you earlier that there were 13 of them—three with the BBPA. Brigid Simmonds was at all three of the BBPA's meetings.
**Mr Binley:** He was at all three?
***Mr Davey:*** No, Brigid Simmonds was.
**Mr Binley:** Brigid Simmonds, not Simon Townsend.
***Mr Davey:*** In terms of the others, Simon Townsend, Roger Whiteside and Ralph Findlay were at the meeting on 12 October. At the third meeting, on 1 December, Ralph Findlay was there with Brigid Simmonds.

**Q133 Mr Binley:** But don't you understand, Minister, that, at the point at which you were absolutely coming to your conclusions, you were priming negotiations with one particular interest group in this business and not with others? Let me quote some examples. The Fair Pint Campaign said that nothing in the code of practice is new and almost all of it existed before 2008. The Forum for Private Business argued that last minute lobbying by the BBPA has led to the Government's weak proposals on reform. The FSB made similar accusations. In light of the fact that the pub industry is made up of a whole series of small businesses, all those organisations carry as much weight if not more and as much credibility if not more than the BBPA and the pubcos. Why was it that you concentrated all your negotiating efforts and meetings at the last moment, before you made your announcements, with that particular interest group and not the others that I have talked about?
***Mr Davey:*** We needed to get the BBPA to move. We did not need to move—

**Q134 Mr Binley:** No, you didn't.
***Mr Davey:*** If I may finish, Mr Binley. We knew what the position of tenants and lessees was. I have met CAMRA three times over this period. I have met with Greg Mulholland, the chair of the all-party group, four times in this period. I have met representatives of ALMR, who are obviously members of IPC, so I did know what the lessees and tenants wanted. Indeed, I had copious reports and information to know what they wanted, and they did not want to move. They wanted us to move the BBPA. I believe, and I am sure the record and history will show this, we have moved the BBPA in a number of significant ways, which I believe will deal with the detriment that lessees and tenants have suffered.

**Q135 Mr Binley:** The impression given is not as you have said. The impression given is that you were trying to get an agreement with the BBPA in order to support the line you had decided to take.
***Mr Davey:*** That is not the case.

**Q136 Mr Binley:** That is why you did not meet with the other people who opposed that line. Isn't that true? Isn't that an impression that could be drawn from your answer?
***Mr Davey:*** I am sure you may want to paint that impression—

**Q137 Mr Binley:** No, I asked you if it could be drawn.
***Mr Davey:*** All I am saying is that is not what happened. It is absolutely not what happened. We knew what we needed to achieve to try to deal with

the detriment. I think the way that some tenants and lessees have been treated is appalling. I wanted to create a package that would mean that could not happen again. I believe we have absolutely done that. More importantly—something I am afraid the Committee has not given us any credit for in the line of questioning today—we have managed to do this really quickly, and that is important. Tenants and lessees who are having problems now, today, can now rely on a legally binding code of practice. If we had gone down the other route, we would have been waiting for a significant period of time.

**Q138 Mr Binley:** But that is not the view of other sections of interest in this area of activity. I repeat, most of the stuff involved in the negotiations with pubcos and brewers are not new and almost all already existed and did so before 2008. Can you see why this Committee has been frustrated in the last three reports out of the four it has produced? Nothing has happened to change the process, and I do not believe that many of the little people that I want to protect are going to be protected under the agreement that you have brought forward.
***Mr Davey:*** Well, I think you are wrong on that, Mr Binley.

**Q139 Mr Binley:** Let us see.
***Mr Davey:*** We will see, but I stand by the fact that we have got a legally binding code. In your report to Government, your Committee admitted that you did not believe that had been achieved. Because we have now got that; because we have got effectively an independent judicator via PICAS; because we have got a new Pubs Advisory Service; and because we have got a reaccreditation process, we have made real progress. I know some people feel that the code of practice does not go far enough. We have tried to make it go further, and I hope the industry will be able to take that further forward as well. But I believe this is a really strong package. I believe it will deal with many of the problems, and I believe it empowers lessees and tenants to get justice and to get justice starting quickly.

**Q140 Chair:** Minister, for every Committee report that we have had, we have had assurances from the industry in response to it, and every time the Committee has felt that they have made real progress. That real progress has not materialised. So this is why the Committee is so sceptical about the assertions that you are making. Can I just ask you one other thing? In your consultations did you include the Federation of Small Businesses and the Forum of Private Business?
***Mr Davey:*** It is fair to say that I did not personally meet with them although I am aware of their views. I don't know whether officials met them.
***Iain Mansfield:*** I met with the Federation of Small Businesses.

**Q141 Chair:** I think it was the Forum of Private Business that initiated the first inquiry—no, the Federation of Small Businesses. Given that these are organisations that are philosophically opposed to excessive regulation, did you not think it significant that they should be so wholeheartedly in favour of Government intervention and statutory intervention here?
***Mr Davey:*** We listened to their views very carefully.

**Q142 Chair:** It doesn't sound like it.
***Mr Davey:*** The point is there are an awful lot of people in this area. During the last year I have had 13 ministerial meetings on this. I have met with officials on numerous occasions. The officials have met the industry on numerous occasions. We have had numerous reports from the OFT, yourselves and from others. I think you would agree with me, Chair, that the different views of different people were not unknown.

**Q143 Chair:** Not unknown, but given the significance of these organisations, they might reasonably have expected you to have met them.
***Mr Davey:*** Well, we met a lot of organisations. Officials have met some of the ones that I have not met. I would come back to you, Chair. I think the record of 13 ministerial meetings is not a record that suggests that I have not paid attention to this issue and to different people's views.

**Q144 Mr Binley:** Minister, the trade sitting behind you does not accept that you have treated this matter on an equitable basis. That is the truth of the matter. I want you to know that and I want you to know it because for your sake and mine, publicans are some of the most important opinion formers in the land. They will remember this. So that is why I want to fight to get you to change your mind because it impacts upon me. But let me then ask, having said what you have said, if the meetings were formal meetings, are you prepared to give us a record of those discussions, the dates and whom you met with at the 13 meetings that you were involved with?
***Mr Davey:*** I am very happy to give you the details of whom I met and when we met. I will take advice about whether I can disclose the minutes. For the record today, so that you are not kept in too much anticipation, Mr Binley, I can tell you that I met with Greg Mulholland, the chair of the all-party parliamentary group, four times, and on some of those occasions he was joined by other people, including from CAMRA and IPC. I met with Martin Horwood on three occasions. As you know, he had a private Member's Bill which did not get its Second Reading two weeks ago. I had three meetings with CAMRA, sometimes with Greg Mulholland. I think one of the occasions may have been with Martin Horwood, though the record I will send you will detail that. I had three meetings with the BBPA: one with just Brigid Simmonds and two with other members as I have discussed earlier. I had one meeting with the Family Brewers and Greene King. I had two meetings with the ALMR, including one where Simon Clark from IPC was there. I think that is a fairly comprehensive list but I will send you it in writing.

**Q145 Mr Binley:** I don't question your work rate. I simply question whether you have listened to the right

people in this particular area of activity. The point is that you might not have done.

**Q146 Chair:** Can I come back to this issue of delivery that I mentioned earlier? You say in your response, "given the high level of Parliamentary interest in this matter, the industry will lose no time in fulfilling the commitments it has publicly made." The fact is the industry has a track record of not delivering on its commitments. What is there that absolutely binds them to delivering?
***Mr Davey:*** The critical issue, which I have stressed time and time again at this Committee, is that this code of practice is made legally binding. I have said to the large pubcos that if it is not made legally binding by Christmas I will revisit the issue.

**Q147 Chair:** But they thought it was anyway.
***Mr Davey:*** You will see that some BBPA members did not think it was legally binding—

**Q148 Chair:** I don't quite see how that is going to transform their approach.
***Mr Davey:*** I think it does, because it means that tenants and lessees can rely on the code in court and, in due course—I think by February—at PICAS. PICAS is being set up by February. That is the deal. We hope and expect the other, smaller pub companies and brewers to have made their codes legally binding in the first quarter of next year.

**Q149 Mr Ward:** In terms of the proof of the pudding, how will you evaluate the delivery of the agreement in terms of both the letter and the spirit of the proposals?
***Mr Davey:*** Let me reiterate, because it really is important, that these must be made legally binding at pace. That is absolutely critical, and it is my first point of evaluation. I think we, you, Parliament and the industry will see whether or not this package delivers. I believe it will deliver. I think it is a very strong package. I know that people wanted a statute, but I repeat that that would have taken a much longer time to deliver. We are delivering at pace.

**Q150 Mr Ward:** If there is evidence that it is not delivering, will you consider statutory intervention?
***Mr Davey:*** I am not going to give that commitment today. I want to see whether or not these codes are made legally binding, and I have given a very short timetable for that.

**Q151 Mr Ward:** This may have been covered while I was out of the room. I heard you talking about the timings. In case it was not asked, the BBPA has obviously committed to deliver a certain number of reforms. Will you undertake to update us in writing by 10 January 2012 on the progress made by the BBPA?
***Mr Davey:*** I can write to the Committee in January next year. I have stressed the importance that I attach to the legally binding nature and the implementation. They are central to our case. I will be able to update you in January on whether the large pubcos have done that, and on any other progress on other parts of the deal.

**Q152 Mr Ward:** On the further reforms that the BBPA has committed to discuss with industry partners, can you tell us which specific groups and organisations they have committed to consult with?
***Mr Davey:*** I think the Association of Licensed Multiple Retailers will want to be very much involved in those discussions. One thing that Kate Nicholls asked me when I met her was to make sure that the BBPA were actually putting meetings in the diary, because she felt that the meetings would not go in the diary. I believe those meetings are now in the diary.

**Q153 Margot James:** On the beer tie, is the balance between risk and reward fair at the moment, in your view?
***Mr Davey:*** I think the critical thing about the tie is that it is clearly a very good model in the traditional tied tenancy model. The risk and reward there seem to be working. Indeed, we have heard people from CAMRA and your own Committee say that it is an important part of the framework for family and regional brewers.
The real problem with the risk and reward relationship has come in the fully repairing and insuring leases. There have clearly been problems. Anyone who has read the accounts of how some tenants and lessees have been treated knows that we needed to take action. I believe the action that we have taken will ensure that that risk and reward relationship is at least transparent and open, and that people know the risks and rewards as they enter their agreement.

**Q154 Margot James:** Should it be the principle that a tied tenant should not be worse off than a free of tie tenant?
***Mr Davey:*** They will not be the words in the strengthened code, but the critical thing for me was on the rent assessment and how that will apply. I think that is one of the biggest issues that we have seen, and because the code now says, particularly for FRI leases, that they must comply with RICS guidance, I think that is a big step forward.

**Q155 Margot James:** What about the sharing of discounts?
***Mr Davey:*** Do you want to say a little bit more?

**Q156 Margot James:** Interested parties have given us evidence that we should be encouraging a fairer share of the discount that the pubcos get on their beer before they force the tied tenants to sell it at a given price.
***Mr Davey:*** I do not think the code goes into that, but what we wanted to see was more transparency on the costs and the prices, and with the new benchmarking information that has come forward, particularly now that RICS is going to engage, I think that will be more available, but those agreements on discounts and sharing are contractual arrangements. As long as there is the transparency and disclosure that we are trying to produce in our strengthen code, I think it is up to the parties.

**Q157 Margot James:** Do you think you can enforce transparency in that situation, because the brewers are

getting large discounts and the suspicion is that they pass on a small fraction of them to the tenants? Would you be prepared to look at that again?
***Mr Davey:*** What we have said is that those sorts of issues are part of the ongoing discussions that the BBPA have agreed to take with the industry. I made it clear that we had not resolved absolutely everything. We focused on a number of issues. From my discussions with ALMR, I know that there are one or two other details that they want to pursue, and now they are able to.

**Q158 Margot James:** Will there be a statement in the new code about a free-of-tie option?
***Mr Davey:*** No. There will not be. We did ask about whether there should be a guest beer in the code, but we were referred to a report under the last Government by the then DTI, which said that that would be anti-competitive, so we did look around those issues.

**Q159 Margot James:** Does it not strike you that the whole relationship involving the beer tie is inherently anti-competitive?
***Mr Davey:*** We come back to the OFT report, where we started this inquiry. This Committee told me that it did not want to focus on such issues at the beginning of this meeting. We did, because it is one of the things that I have been concerned about over a number of years, particularly in opposition—I know the Secretary of State felt that. We were very worried that the tie could be of detriment to the consumer. That is why CAMRA made its super-complaint to the OFT, but the OFT's report makes it very clear that that is not a detriment to consumers, and it is also that the tie is a legal arrangement.

**Q160 Margot James:** I do not expect you to go back over all that ground, because I did hear what you said at the beginning, but if the beer tie is not anti-competitive, why should a guest beer not be?
***Mr Davey:*** There was a report—
**Margot James:** Where is the logic there?
***Mr Davey:*** I am very happy to write to the Committee with a copy of the report that we relied on.

**Q161 Mr Binley:** I cannot believe what you have just told us and, from their response, nor can the audience. Are you truthfully telling me that in a situation where a tenant—a licensee—goes into a new business, he should not have a range of opportunities open to him, which includes a commercially fair rent only as part of that option? How would that possibly deny competition? Can you tell me how that option would possibly deny any competition?
***Mr Davey:*** You are talking about fair rent? Free of tie? Which is—

**Q162 Mr Binley:** Yes, I am talking about a range of options to a new tenant that a pubco puts to them. You can either have a situation where you are paying rent and have a limited discount to alleviate rent, or you can have a situation where you are totally free-of-tie but pay a full commercial rent. How does that limit competition?

***Mr Davey:*** What you are talking about is what contractual arrangements are agreed between two parties. If the OFT had said that particular contractual arrangements were anti-competitive, then we would have acted. That is one of the reasons why I started off with that discussion. But when we looked at it—looking at your report—the real problems in their relationship came from the free repairing and insuring leases. That is why we have strengthened the code in those areas, and I think there have been a lot of problems in those areas.

**Q163 Mr Binley:** But don't you realise that those options would put more power in the hands of the intended incoming licensee, and that would balance the whole operation in a much fairer way and open up much more competition?
***Mr Davey:*** I am not sure if that—

**Q164 Mr Binley:** Well, I can tell you from working in the trade, it would.
***Mr Davey:*** All I can rely on is an independent competition authority report.

**Q165 Mr Binley:** Well, they are wrong.
***Mr Davey:*** I know it is a widely shared view that the OFT are wrong. For Ministers to override an independent competition authority report would, I think, be quite something.

**Q166 Chair:** Can I just mention, Minister, in the context of this discussion, that in your blog you have written, "One pub alone in Surbiton has helped give birth to community activities such as the world famous Surbiton Ski Sunday and resurrected the local legend of Lefi Ganderson, the Goat Boy of Seething Wells. And it sells great beer!"? Interestingly, that was formerly a tied pub that has now gone free-of-tie.
***Mr Davey:*** Listen, I think the market is delivering a lot more free-of-ties.

**Q167 Chair:** It has to.
***Mr Davey:*** If you look at the increase in the number of free-of-ties, that is a very welcome development, but I would point out that that is happening without regulation. That is what the market is doing and what licensees are wanting, and you have seen the pubcos—

**Q168 Chair:** Why should—
***Mr Davey:*** If I may finish this point, which is really important.
**Chair:** Minister, why should the option of going from one to the other be anti-competitive?
***Mr Davey:*** I rely—I am sorry that you do not put so much weight on it as I do—on the report of the independent competition authority about whether a tie is anti-competitive or not. I put a lot of weight on that. The fact—again, your report did not cover this—that the market is seeing the pubcos selling off a lot of the tied pubs to free-of-tie is a market-driven solution.
I would recommend and I am very happy if you would like to have a drink in The Lamb. It is a superb pub, and if you want to join us this Sunday as well, I would be—

**Chair:** The issue is whether a would-be tenant has the option of choosing one or the other; it is not whether the tie in itself is anti-competitive.

**Q169 Mr Binley:** Don't you understand, Minister, that the reason why the pubcos are having to shed pubs is that their financial model is unsustainable? Don't you understand that?
***Mr Davey:*** I do understand that.

**Q170 Mr Binley:** And is that what you are sympathising with—to give them a chance to get rid of those pubs? Is that what you are telling us?
***Mr Davey:*** I think, Mr Binley, you are showing that the market is driving a solution here. Because the model of the pubcos does not appear to be working, they are having to throw in the towel for these pubs that they are selling off, but it is for them to decide what their business model is and for them to make the adaptations that they feel are necessary. I observe that the increase in the free-of-tie, driven by the market, is something that suggests that—and I would see it as evidence that—a regulatory solution to the tie is not needed.

**Q171 Mr Binley:** But how many little people get desperately hurt on the way?
***Mr Davey:*** That is why we need a strengthened code of practice; that is why we need to make it legally binding; that is why we need a mediation service; and that is why we need a pub advisory service, so people can have the pre-entry awareness training. What you are again pointing to, Mr Binley, is a set of proposals that we have come forward with, and which we have negotiated hard on, that I believe will produce the solutions that we all want.

**Q172 Chair:** I have a couple of concluding questions. First, on Brulines—you said very little in your report except to say that flow monitoring equipment falls outside the remit of the Weights and Measures Act 1985. Given the importance of this issue to publicans, will you take any action to remedy that?
***Mr Davey:*** I am glad you raised that matter, because I was going to have to write to the Committee anyway. I think that the way we expressed our response to the Committee on Brulines was not completely correct. The difference is this: I am told that, legally, under the Weights and Measures Act, in general the Brulines equipment is not in use in trade if it is being used for monitoring purposes, which is really what we were saying in our response to you. However, I am told now that, in general, if it is being used not just to monitor, but then to go ahead and fine someone, the act of the fine means that in general it is in use for trade. I am happy to write and formally put that on the record, because we were incorrect in our response to you on that point. However, when a fine or penalty in general triggers the fact that the monitoring equipment is in use in trade, local trading standards and local courts can then come into play. Thank you for giving me chance to clarify that point, but we will put it in writing for you.[3]

**Q173 Chair:** Are there any other errors that you know that we have not heard about?
***Mr Davey:*** Not that I'm aware of. Everything else is perfectly formed.

**Q174 Chair:** Can I come back to the issue of the OFT and the comparator with the Groceries Code Adjudicator Bill? Originally, the OFT found that there was no competition case to answer on groceries. Only after industry protest and a reassessment by the Competition Commission was there a finding of potential future risk to competition. You have just taken the position of the OFT; in view of the outcry from the industry, would you consider putting it to the Competition Commission?
***Mr Davey:*** We looked at this point and I took advice on it. We would have to have, under the Enterprise Act, competitive reasons—reasons for competition—that we think the OFT had not considered. We do not have those and therefore, were we to refer it to the Competition Commission without such reasons we would be subject to judicial review and, I am advised, would lose. So we have considered that point, and again, I am happy to write to you about that, but we do not believe that option is open to us. CAMRA could have appealed when the OFT reported in October 2010, but it chose not to.

**Q175 Chair:** What would be considered an adequate level of evidence to submit it to the Competition Commission?
***Mr Davey:*** Pretty significant, I am advised. Given that the OFT had done a thorough report, and given that they are an independent competition authority, Ministers, under the Enterprise Act, would need to be totally clear that this is evidence that had not been considered by the OFT. The Act is deliberately written that way to ensure that Ministers cannot second-guess and override reports from independent competition authorities; otherwise, there would be no point in having competition authorities that were independent.[4]

**Q176 Chair:** To lay people such as myself, the rate of closures and the lack of competition that inevitably results from that closure would seem to be a prima facie case upon which to build some evidence. It is up to the players in the industry to put that forward, but certainly, I think we might look at gathering that evidence.
Minister, may I conclude by thanking you for coming here?
***Mr Davey:*** It was a pleasure.
**Chair:** It was not the easiest—one thing I suspect it wasn't was that—but thank you. It has given us an opportunity to go through the issues. This will not be our last act on this; I think there is still some way to go. When will we have the final framework?
***Mr Davey:*** I think for the large pubcos, because they are the ones who need to make it legally binding, before Christmas. They are already amending the framework, and I have already seen a version taking account of all the things that they agreed. They did

[3] Ev 24

[4] Ev 24

agree to ensure that legal experts went over it to ensure that all the i's were dotted and t's crossed.

**Q177 Chair:** Will you submit that to the Committee?
***Mr Davey:*** We will. I expect it for the large pubcos before Christmas.
**Chair:** That concludes the formal part of the questioning. I can make it clear to you, Minister, that you have made a whole number of assertions about how this will work and how successful it will be. I hope this will be the last report of the Committee, but I suspect it is not going to be, and the one thing I can assure everybody in the industry is that the Committee will not let it go. With that, I conclude my remarks.

# Written evidence

**Written evidence submitted by the Department for Business, Innovation and Skills**

## Pub Companies: A Legally Binding Code

In advance of the oral evidence on Tuesday 6 December I would like to provide written evidence as to how the Industry Framework Code (the Code) will be made legally binding. This should be read alongside the Government's response.

As the Government's response made clear, I agree with the Committee that making the Code legally binding and therefore enforceable through the courts is essential. This is what a statutory Code would achieve and what the reforms the Government has set out will also achieve, though much more quickly. The Committee has stated "*It is not yet clear how the Government will make these codes legally binding and more detail is needed for the Committee to properly assess the proposed package of reforms.*" I am therefore providing further details, which I would be happy to discuss further on Tuesday if desired.

As this is an industry-led rather than a statutory solution, it will not be for the Government to make the codes legally binding: instead this will be a matter of contract between the pubco and the lessee/tenant.

When looking at how the *Code* will bind pubcos it is helpful to distinguish between new and existing leases/tenancy agreements. In both cases the objective is to incorporate the Code into such agreements, so that non-compliance by a pubco with any of its provisions, would amount to a breach of contract.

## New Leases/Tenancies

In this case, pubcos have committed to include in all of their new agreements from now on a clause that expressly incorporates the Code. The Code will be incorporated into all new agreements by way of a "Reference" in the primary lease/tenancy agreement.

## Existing Leases

Where dealing with existing agreements, the same opportunity for incorporation into a new contract does not apply.

Instead pubcos have committed to offer to enter into separate agreements with the lessee or tenant, promising to be bound by the Code. This will be 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 straight away, he could nevertheless 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 offer by the pubco to comply with the IFC.

The major pubcos have committed to completing this by the end of the year and will be sending letters to all of their lessees informing them of this.

## Sale of Leases

The BBPA has committed to ensuring that the Industry Framework Code makes clear that if a member has a lease which is to be sold to a company outside BBPA membership or without a company code that complies with the Industry Framework Code, that member will vary the lease (by means of a deed of variation) prior to the sale taking place, to ensure that the Framework Code continues to be legally binding on the new pubco.

I have attached a signed statement by Robert Howe QC, who provided legal advice to the BBPA on this issue, in which he makes it clear that in his opinion both new agreements and existing agreements are legally binding and enforceable. This advice has also been considered by Government legal advisers, who concur that taking such actions will make the Code legally binding.

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

*5 December 2011*

## SUMMARY NOTE ON THE ENFORCEABILITY AND LEGAL STATUS OF THE UK PUB INDUSTRY FRAMEWORK CODE OF PRACTICE FOR TIED TENANTED AND LEASED PUBS

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 (Miscellaneous 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/T's 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 ie agreement and sign off by the relevant parties.

*Existing L/T*

- Existing L/T do not make reference to the IFC. Incorporation of the IFC into existing L/T's 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 Supplementary 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 "Supplementary 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 TIC 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.

*Robert Howe, QC*

*20 October 2011*

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**Supplementary written evidence submitted by the Department for Business, Innovation and Skills**

Following the evidence session held on 6 December 2011 on the Government's Response to the Select Committee's report on pub companies, I promised to write to the Committee to provide further information on a number of points.

LEGALLY BINDING CODE: INTERACTION WITH SCOTTISH LAW

We have taken advice from the Office of the Advocate General, which as you know, acts as adviser to the UK Government on matters of Scots law. In short, the legal principles that apply when considering the binding nature of this Code are similar in both jurisdictions.

As in England and Wales, the Code can be incorporated into a new lease agreement either by it being set out in the actual lease or by reference to another document. The formalities required for a lease to be binding are contained in different legislation (the Requirements of Writing (Scotland) Act 1995 as opposed to the Law of Property (Miscellaneous Provisions) Act 1989), but this doesn't affect the central question of whether the Code can be incorporated.

Likewise, an existing lease can be varied to incorporate the Code or, as is being proposed in this case, a separate contract can be entered into by means of a written unilateral offer by the pubco to be bound by the Code, that can be accepted by the lessee/tenant at any time. OAG have also pointed out that the Scottish courts might view such an open offer as a promise (and therefore be capable of binding the pubcos even without it being accepted). This construction isn't essential to achieve the desired objective, but shows why we can give strong assurances that existing lessees/tenants will get the benefit of the Code.

OAG shares our doubts about whether all of the obligations in the Code would be binding on successors in title, even if incorporated into the lease by way of a deed of variation. Some of the provisions may not be regarded as essential characteristics of the lease, though that would ultimately be a matter for the courts. OAG agrees that the solution to this uncertainty would be for a new pubco to agree to be bound by the code, which is of course what is being proposed.

### Referring the Matter to the Competition Commission

I agreed to write to the Committee explaining why the Government didn't refer this matter to the Competition Commission.

Section 132(3) of the Enterprise Act 2002 gives the Secretary of State power to make a reference to the Competition Commission if he has reasonable grounds for suspecting that any feature or combination of features of a market in the UK for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the UK.

That power may only be exercised if:

(a) the Secretary of State is not satisfied with an OFT decision not to refer (section 132(1)); or

(b) the Secretary of State has brought information to the OFT's attention which he considers relevant to the question of whether the OFT should make a reference, but is not satisfied that the OFT will make a decision on whether or not to refer within a reasonable time frame.

The key question, therefore, that the Government had to consider was whether there were reasonable grounds to suspect that a competition problem existed, such that it couldn't be satisfied with the decision of the OFT not to refer.

The Government could not identify any such reasons. Significantly, in October 2010 the OFT had concluded that there were no competition issues adversely affecting consumers. This wasn't a case where the OFT had identified concerns but decided not to refer. The Government had no evidence to suspect that this decision had been taken wrongly. Nor did the Government have any new evidence that could lead to a different decision being made.

On that basis, a decision to refer the matter to the Competition Commission could have exposed the Secretary of State to challenge by way of judicial review.

The Government therefore concluded that there were no grounds to refer the matter to the Competition Commission.

### Brulines

As I stated to the Committee, upon re-examination the wording in the Government's response did not fully reflect the complexities involved in this matter. I apologise once again for this and welcome the opportunity to set the record straight.

When the response stated that Brulines equipment was not in use for trade, we were considering only a limited set of circumstances. One of these circumstances would be likely to be if the Brulines equipment were simply being used by the pubco for the purposes of monitoring, with no sanction resulting from the data.

However, where Brulines flow monitoring equipment is used for determining whether or not a lessee has bought beer outside the tie and the calculation of any fine or penalty as a consequence is based on that determination, the Government believes it is likely that the equipment would be considered to be in use for trade. However it is the responsibility of local authority trading standards where the need arises to consider the precise nature of the circumstances to ascertain whether offences have been committed under the Weights and Measures Act 1985 and this will ultimately be a matter for the Courts to decide.

Section 7 of the Act makes it clear as to the circumstances which determine whether or not equipment (like Brulines) is in use for trade. Where the transaction is by reference to quantity, the use of the equipment is for the determination of that quantity and the transaction relates to the transfer of money or money's worth then the equipment is in use for trade. There is considerable case law on the subject of use for trade and it is not possible to generalise however if the equipment is not considered to be in use for trade then it does not fall within the scope of the 1985 Act.

### Estimation of Cost of Making the Code Legally Binding via Deed of Variation

I agreed to write with our views on the BBPA's estimate of the cost were the code to be made binding through a deed of variation to each lease and tenancy agreement.

The Government did consider whether the Code should be made legally binding via deeds of variation. According to the figures produced by CGA Strategy, this would have involved some 28,000 leases and tenancy agreements.

We recognised that before entering into a deed of variation the parties would in all probability want to seek their own legal advice, which, given the numbers involved, would place a considerable cost on both the pubco and on the licensee community.

We couldn't of course identify with any precision what that legal costs would be. The Committee will appreciate that such costs would depend on the complexity of the individual lease or tenancy, the nature of the legal advice sought, and the charge-out rate of the individual legal adviser. The degree to which each pubco would choose to take individual advice on each lease was uncertain.

However, even assuming that the average cost per lease or tenancy of providing advice to the two parties was £250, which we suspect would be at the lower end of what reputable legal advice would cost, the cost to business for 28,000 leases/tenancies could be in the region of £7 million. Whilst considerably lower than the "in excess of £25 million" figure that was asserted by the BBPA, this would nevertheless represent a considerable burden on both licensees and pubcos.

The department's aim was to find a solution that would make the Code legally binding whilst imposing the lowest possible burden on the industry as a whole. The solution that I set out in my letter to you of 5 December and at the evidence session meets these criteria.

### A Compulsory Guest Beer Option

In my evidence, I referred to a 2004 report by the Department for Trade and Industry which had indicated that the introduction of a guest beer right could be in breach of European Competition Law. I have since realised that the report in question was actually the Select Committee for Trade and Industry's second report of that session, on Pub Companies[1], which cited evidence from the Department for Trade and Industry and agreed with the DTI's position on this matter.

### Details of Meetings and Attendees

Over the course of the last year I have had the following meetings with stakeholders to discuss pub industry issues.

1 December 2010—Greg Mulholland MP/Chair of All Party Parliamentary Save the Pub Group + Emily Ryan and Jonathan Mail (both from CAMRA—Campaign for Real Ale), Simon Clarke and Kate Nicholls of the IPC.

16 February 2011—British Beer and Pub Association.

7 March 2011—Martin Horwood MP—discuss a 10 minute rule motion on a private members bill regarding tied public houses.

8 June 2011—Greg Mulholland MP + Mike Benner (Chief Executive, CAMRA) (with Vince Cable).

28 June 2011—Bob Neill MP/DCLG Minister.

18 July 2011—Martin Horwood MP + Mike Benner (Chief Executive, CAMRA), Jonathan Mail (Head of Policy and Public Affairs, CAMRA).

12 October 2011—Simon Townsend from Enterprise Inns, Roger Whiteside from Punch. Ralph Findlay, Chairman of the BBPA and Chief Executive of Marstons, Brigid Simmonds from British Beer and Pub Association.

1 November 2011—Martin Horwood MP.

3 November 2011—Simon Longbottom, Managing Director of Pub Partners, Greene King; Jonathan Neame, Chief Executive, Shepherd Neame; Paul Wells, Chair, Independent Family Brewers of Britain; Stuart Bateman, Chief Executive, Batemans; William Lees-Jones, Chief Executive, JW Lees; David Turner Tenant and Lease Director, Youngs.

9 November 2011—Greg Mulholland MP + Jo Swinson MP (with Vince Cable MP).

21 November 2011—Tim Sykes, Chairman of Beds & Bars and ALMR President, Kate Nicholls. Strategic Affairs Director of Association of Licensed Multiple Retailers, Nick Bish, Chief Executive of ALMR.

[1] http://www.publications.parliament.uk/pa/cm200405/cmselect/cmtrdind/128/12802.htm

23 November 2011—Greg Mulholland MP, Martin Horwood MP, Tim Farron MP, David Ward MP, D Foster MP and Jo Swinson MP.

1 December 2011—Ralph Findlay, Chairman of the BBPA and Chief Executive of Marstons, Brigid Simmonds from BBPA.

*Edward Davey*
Minister for Employment Relations, Consumer and Postal Affairs

*8 December 2011*

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

On behalf of the All-Party Parliamentary Save the Pub Group, I am writing to you regarding the Government's recent response to the Business, Innovation and Skills Select Committee report on Pub Companies.

As we are sure you are aware, we and many others from the pub trade were extremely unhappy with the Governments response to the Business, Innovation and Skills Select Committee's fourth and final damning report into pub companies. The report clearly showed that Pub Companies had failed to regulate in line with the recommendations of the previous three reports and as such, the Government should implement reforms including putting the codes of practice on a statutory footing.

Despite making clear promises to do so, the Government response has failed to offer anything substantive, let alone actually adopting the Select Committee's recommendations. Ed Davey gave assurances to stick to the previous Government's plans to set a timetable to act if the industry did not reform itself in response to a question posed by Greg Mulholland in the House on the 30 June 2010; *"after vigorous lobbying, including by the all-party "Save the pub" group, the last Government confirmed plans to relax the beer tie and to set a timetable to act if the industry did not reform itself. Can we get an assurance from the Minister that this Government will stick to that plan and timetable?"* Mr Davey answered *"yes"*, which clearly and unequivocally indicates backing both the plan and the timetable. The plan stated that:

— "We will endorse the one year deadline for the industry to show it is complying with its own Code, making clear that Government will monitor progress for one year and intervene to regulate the market by putting the Code on a statutory basis backed by an industry enforcer if the industry fails to deliver.

— "We will push the industry further to offer freedoms for tenants to offer consumer choice as part of their Code of Practice. The code of practice should offer tenants a tie/non tie option to enable them to best reflect the needs of the community and a guest beer option for those tenants that opt for a beer tie.

— "We will also make clear that Government will monitor progress for one year and intervene to introduce a non-tie option and legislate for a Beer Order to allow guest beers if these flexibilities are not introduced".

The fundamental commitment here is to introduce a statutory code, a free-of-tie option and a guest beer right for tenants who remain tied. It is clear and explicit.

The Rt Hon Vince Cable also confirmed to the Select Committee that the Government would take legislative action (again, along the lines of the plan put forward by the previous Government) if the Select Committee found that the large pub companies had not reformed. Mr Cable was asked by Brian Binley, "You will know that we recommend that we should re-look at the question of code of practice in the industry if we felt the pubcos were not acting properly within that voluntary code, and the previous Government accepted that they would take action if our findings were that the pubcos were not acting properly within that code. Can I ask if you will confirm that the present Government would continue that policy? Mr Cable replied: "I can confirm that".

Below are outlined a series of grave concerns that the Government's response to the Select Committee report has prompted:

— Firstly the response is based primarily on negotiations with the British Beer and Pub Association (BBPA) which took place behind closed doors, not only excluding Independent Pub Confederation (IPC) organisations but without even the IPC or the Committee's knowledge. The previous attempt at bringing forward a solution to these issues was based on mediation, but this method had limited success. For Ministers to then draw up a solution with only one side of that dispute consulted is not only reprehensible but also, considering the nature of the industry, renders it illegitimate. Had the IPC been included, the department would be aware that the response is not offering anything substantive at all. Believing the submission of the BBPA is frankly naive and the very fact that they are now claiming that the problem is solved should demonstrate that they have conned Ministers and officials at the Department for Business Innovation and Skills. The fact of the matter is that this is their code and offers very little to the licensee.

— The response states "Following intensive discussions with Government, the industry has now made a commitment that it will implement a range of substantive reforms". To claim that these are industry-agreed reforms is outrageous, given the failure to involve the other side of the argument in the negotiations.

— The proposals make no significant changes to the Codes of Practice asked for by the Select Committee or IPC organisations such as CAMRA, Fair Pint and the Federation of Small Businesses. They do not address the fundamental issue that the Pubco model takes, and by its nature must take, more from pub turnover than is fair, leading to failures and to closures.

— They fail to include any action on delivering flexibility such as a genuine free of tie and guest beer options, which means there is no effective mechanism to reduce the overinflated prices of tied products and is a key reason the proposed reforms are weak and ineffectual. Would the Department for Business, Innovation and Skills agree with the EU and domestic competition law principles that the disadvantages of the tie should be countervailed by benefits, one of which would be a reduced rent, in order to render the tied licensee no worse off than if they were free of tie?

— We would also raise concerns that in Mr Davey's recent article for *Lib Dem Voice*, he said that there was a call "to end the tie entirely". There was no such call in the Select Committee response and nor was there such a call from the IPC and others within the pub sector. The call was simply for reform of the tie. We would also note here that the proposals that were put forward would only impact on Pub Companies that have over 500 Pubs, thus protecting the family brewers.

— The Government have also swallowed the myths being peddled by the BBPA that free of tie pubs were closing at a greater rate than tied pubs, stating in the response that *"it sees little evidence to indicate that tied pubs are more likely to close, as has been suggested"*. This is despite figures compiled by the Save the Pub Group and CAMRA, based on existing CGA figures, which showed that the exact opposite was the case. These figures were sent to the department, although we received no acknowledgement of these and they were evidently ignored.

— These two points demonstrate a complete misunderstanding of the subject matter and failure by Ministers and the department to act with due diligence, as well as showing how ill-thought out the whole process has been.

— It is acknowledged in paragraph 29 of the response that the question is over risk and reward, with no free of tie option that puts all the eggs of rebalancing in the one RICS guidance basket. We would urge ministers to seek confirmation from RICS that the countervailing benefits (including a lower rent) outweigh the inflated tied product prices, since the Government response relies almost entirely on the correct guidance.

— We would further note that under the Government proposals, rent review assessments do not have to be signed off by a RICS official; this is only required for new lease rent assessments. The fact of the matter is that what is needed is for all rent review assessments to be signed off by a RICS official. What has been proposed by the Government is the antithesis of what is needed.

— PICAS, the independent mediation body, is set to be funded by the BBPA and thus in turn by the Pubcos; PICAS as a result is in no way an independent body. Not only this, but it will also not deal with rent disputes, which will be dealt with by PIRRS.

— There also appears to be confusion over the actual role of PICAS, as to whether it is an independent mediation body or an arbitration body. Both Government and BBPA comments on PICAS appear to be confused. Given that mediation with the large Pub Companies is unlikely to work, are ministers in a position to confirm that PICAS will be an arbitration body which would be significantly more effective in ensuring redress of code breaches?

— We note that the PICAS arbitration body will cost lessees £200 to complain, which in fact creates a worse situation than we have now, and is a further disincentive to whistle-blowing on bad practice by the Pub Companies.

— It also states in the Government response that "PICAS will be operated under the same governance as PIRRS, namely the BBPA, BII, FLVA, GMV and ALMR and would be funded through a levy raised primarily from BBPA members". The Save the Pub Group understand, however, that the GMV knew nothing of their future involvement in PICAS, having been neither asked nor consulted on it.

— The Save the Pub Group have also been made aware by the ALMR that they were contacted in October and given a very brief description of PICAS's function. We gather they were unwilling to support the proposal without further detail and in the absence of information on other changes to the code and therefore asked for a detailed and formal proposal to be submitted to the PIRRS Board for its consideration. The Save the Pub Group understand that the ALMR have not been asked to participate in PICAS per se, although as a Board member of PIRRS they would consider any sensible request to build on existing functions or bring in new services under the PIRRS umbrella. We are lead to believe no formal proposals have been submitted to PIRRS.

- With regard to prescribed flow monitoring, the department have been told- by the very people taking advantage of the law's vagaries—that flow monitoring equipment is not in use for trade, and therefore does not need to be prescribed. We have been made aware, however, of a vastly differing legal opinion from a QC. If ministers maintain this view, do they at least agree that data obtained from equipment that is not prescribed is not suitable as evidence in an allegation of buying out and that physical evidence, other than a confession obtained by intimidation, is necessary before a court action is taken.
- This is yet another broken promise by the Government, which committed to the recommendations of the Healey Plan; announced on 19 March 2010, this stated that:
  - We will respond to the industry concerns over Brulines—these are the flow measurement devices that ensure the tie contract is being observed and that the tenant is not buying beer outside the contract. Government will make clear our view that the industry should voluntarily ensure that all such measuring equipment is calibrated by the National Weights and Measurement Laboratory with the backstop that failure to do so will result in Government prescribing the equipment to ensure fairness.
- This is also confirmed in a letter from The Rt Hon Lord Drayston, who stated that "if industry fails to ensure that any flow measuring devices used to ensure that the contract tie is being observed have been "calibrated" by the National Measurement Office, the Government intends to prescribe the equipment in order to ensure that the ticket is fair".
- The Government response fails to set out a mechanism to ensure that the BBPA's promises will be delivered—given past failings of the BBPA, this is reckless, and mechanisms must be put in place to ensure successful delivery.
- Will the Government also commit to a full public consultation on these proposals in 12 months time, to discern whether the commitments that have been laid out have been properly delivered? As it stands, the proposals include a review which will only involve the BII and the FVLA, both of which are funded by Pub Companies and therefore prejudice the findings of the review.
- The Government response clearly acknowledges there are unfair practices at work in the pub sector, stating in the report that "The Committee identified a wide range of concerns in this area. It is clear that, as the Committee has stated, significant reforms are needed quickly, particularly around transparency, dispute resolution and the legal status and strength of the Code . . ." How therefore do Messrs Cable and Davey reconcile the governmental response which they have published with their own personal commitments to act on the Select Committee's recommendations?

*30 November 2011*

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

SUMMARY OF KEY POINTS FROM ALMR

The Association of Licensed Multiple Retailers (*ALMR*) welcomes the opportunity to submit further written evidence to the Committee as part of its ongoing inquiry into pub companies and following the publication of the Government's response.

We are disappointed that the Government has chosen not to follow the Committee's well-researched and evidenced recommendations. We are particularly concerned about the absence of any detailed timetable or mechanism for full implementation and consultation, ongoing monitoring by Government to ensure that these commitments are delivered and meaningful sanctions.

We note that the Government response refers throughout to industry commitments but these are in fact unilateral commitments offered by the BBPA. Our aspiration remains for a genuinely pan-industry regulatory framework and Code of Practice, which is drafted and agreed by all sides and which covers all landlords, not just BBPA members.

The proposals put forward by BBPA and endorsed by Government will clarify the legal status of the Industry Framework Code only in respect of new leases. We remain concerned, however, about the status of existing lessees and do not believe that the proposals put forward will significantly change their position from present.

It remains our view that the only way to make the Industry Code indisputably legally binding is to incorporate the Code into the lease by means of a Deed of Variation or alternatively revised clauses of the lease—making clear that these provisions will only stand as long as an exclusive purchase obligation is in place. We are also unclear about the status of company codes as it would appear from the proposals as currently drafted that legal remedy through the courts is specifically restricted to the Industry Framework Code.

The proposals relating to the establishment of a new conciliation and arbitration service have the potential to be helpful. However, we have heard PICAS referred to by Ministers as a "regulator"—it is not. At best it is a mediation service but in the absence of effective sanctions and operational independence, it cannot be a regulator nor can it impose a solution on recalcitrant parties. In order to deliver the redress mechanism requested

by the Select Committee in 2004, 2008, 2009 and 2011, PICAS will need to be properly constructed, with a clear remit and independent authority to act.

We welcome the recognition by the Minister that the relationship between landlord and lessee has not operated fairly in recent years and that there is now an urgent need to rebalance the risks and rewards inherent in the contractual relationship. We also welcome the recognition that the problems have arisen in respect of FRI leases, where this balance has been particularly distorted; we would emphasise, however, that that this imbalance arises irrespective of the length of the FRI lease. It is our view that, where possible, the Code should be strengthened for all pub agreements and that the number of additional controls for FRI leases should be genuinely exceptional and granted on the basis of the nature of the agreement.

If the Framework Code is to become the legally binding document, then it is vital that it is comprehensively re-written to include specific, measureable commitments and expanded to include the more intransigent aspects of the relationship which continue cause the biggest problems. We are also extremely concerned that no timetable or proposed consultation/mediation mechanism for addressing these and other substantive commercial issues is included in the paper.

We are particularly concerned that the proposals make no reference to effective sanctions and penalties to give a new self-regulatory regime teeth and to act as an effective deterrent. Re-accreditation is not a check of fairness of lease terms, nor is it a health check of compliance with the Codes' provisions. We would very much welcome a regular health check but do not believe simple re-accreditation at three-yearly intervals will deliver this. The *ALMR* has proposed a system of annual statements of compliance and spot checks to be directed at a random selection of lease negotiations and a review of rental valuation calculations within them.

*2 December 2011*

SUBMISSION

The Association of Licensed Multiple Retailers (*ALMR*) welcomes the opportunity to submit further written evidence to the Committee as part of its ongoing inquiry into pub companies and following the publication of the Government's response.

We are disappointed that the Government has chosen not to follow the Committee's well-researched and evidenced recommendations and a copy of our press comment is attached. Whilst we acknowledge that there may be different means to achieve the same ends, we do not believe that the compromise package of proposals offered by the BBPA is sufficient to deliver the meaningful reform the Committee concluded was overdue in the industry. We are particularly concerned about the absence of any detailed timetable or mechanism for full implementation and consultation, ongoing monitoring by Government to ensure that these commitments are delivered and meaningful sanctions.

We note that the Government response refers throughout to industry commitments but these are in fact unilateral commitments offered by the BBPA, not the industry as a whole. Our aspiration remains for a genuinely pan-industry regulatory framework and Code of Practice, which is drafted and agreed by all sides and which covers all landlords, not just BBPA members.

In its earlier evidence to the Committee, and in subsequent discussions with both the Department and BBPA, the *ALMR* made clear that substantive reform was required in four key areas—the legal status of the regulatory framework, code content, enforcement and compliance and independent redress. We were clear, however, that the success of these reforms would hinge on the content of the Code. We continue to believe that a strong regulatory framework in and of itself will not deliver meaningful reform if the Code of Practice remains weak and vague.

We are pleased that the Government has acknowledged the need for wholesale reform of the current self-regulatory model, and acknowledged that there are unfair practices within the industry which need to be addressed. We welcome the establishment of clear objectives for the industry by Government, namely:

- To make the Code indisputably legally binding.
- To establish an independent arbitrator.
- To rebalance the risk and reward in the commercial relationship.

Based solely on the details provided in the Government response, we do not believe that the commitments volunteered by the BBPA are sufficient to satisfy these Ministerial objectives in full. The devil is in the detail of many of these proposals and the potential for reform is greatly dependent on the willingness of all sides of the industry to work together in a spirit of genuine consultation and a clear timetable for the delivery of substantive reform, particularly in respect of the balance of risk and reward.

*Indisputably legally binding*

The proposals put forward by BBPA and endorsed by Government will clarify the legal status of the Industry Framework Code—something which has been in dispute during the course of the most recent Select Committee and which is therefore helpful. The *ALMR* has consistently argued that the only way to make the commitments

volunteered through a Code of Practice is to incorporate them in the lease. As far as we understand it, the proposals put forward by the BBPA will do this in respect of new leases.

We remain concerned, however, about the status of existing lessees and do not believe that the proposals put forward will significantly change their position from present. A collateral agreement does not materially affect the terms of the lease and in particular is not binding on successors in title. If a landlord were to sell on the property to another tied pub company who was not a signatory to the Framework Code or not a BBPA member, then the lessee would have no legal protection under the Code. For example, many lessees would have originally had leases with Scottish & Newcastle and been covered as such by the BBPA Code of Practice. Those pubs were sold to an industry property vehicle and subsequently passed to a management company. Whilst they still remain tied, they fall outside the scope of the Code of Practice and the lessees would be afforded no legal protection under the Framework Code as a result. Given the fact that the major pubcos have signalled that they will dispose of packages of pubs, this problem could re-emerge.

It remains our view that the only way to make the Industry Code indisputably legally binding is to incorporate the Code into the lease by means of a Deed of Variation or alternatively revised clauses of the lease—making clear that these provisions will only stand as long as an exclusive purchase obligation is in place. We continue to press for this to be offered to all existing lessees who want it to ensure that Ministerial expectations are satisfied.

We further note that the proposals relating to the legal status of codes only apply in respect of the minimum industry standards set out in the Industry Framework Code. We are unclear about the status of company codes—many of which will place more strenuous obligations on the pub companies and some of which will represent best practice. How are these to be enforced? How is compliance to be assessed? What is the mechanism for legal redress in respect of these obligations? It would appear from the proposals as currently drafted that legal remedy through the courts—which remains the only sanction—is specifically restricted to the Industry Framework Code.

*Independent Arbitrator*

The proposals relating to the establishment of a new conciliation and arbitration service have the potential to be helpful but too little information is provided to allow us to make a detailed assessment; and the Government is taking much on trust. We have heard PICAS referred to by Ministers as a "regulator"—it is not. At best it is a mediation service but in the absence of effective sanctions and operational independence, it cannot be a regulator nor can it impose a solution on recalcitrant parties. This is a problem identified by BII in its earlier evidence to the Committee.

In order to deliver the redress mechanism requested by the Select Committee in 2004, 2008, 2009 and 2011, PICAS will need to be properly constructed, with a clear remit and independent authority to act—PICAS has the potential to be helpful. The *ALMR* is supportive of any development which builds on and strengthens the existing self-regulatory structure. Providing PICAS builds on what works well at present in terms of enforcement and compliance—BIIBAS complaint handling and investigation, BII mediation, informal and formal dispute resolution mechanisms—and is not imposed in place of any of those, then the *ALMR* cautiously welcomes it as a step towards addressing legitimate political and industry concerns; but only if it is accompanied by refinements in the following areas:

- It must be accompanied by a substantive strengthening of the Code—over and above what has been provisionally proposed to Ministers. It will also need to include timetables for the internal handling of complaints/disputes and penalties and sanctions for non-compliance.
- It must be accompanied by a strengthening of BIIBAS enforcement and compliance activity in line with BII and IPC recommendations to the Select Committee—a weakening or removal of activity and authority from BIIBAS is not acceptable. We do not believe it is tenable for BIIBAS to simply be operating on the basis of complaints or cases referred from PICAS and PIRRS. We also note that the cost of referring a case to PICAS may be prohibitive or off-putting to some lessees, therefore a cost free complaint mechanism, such as provided by BIIBAS, will be important.
- Best Practice in self-regulation suggests that an independent Chair and majority public interest representatives on the governing body would be helpful. The success of PICAS, and indeed PIRRS, will be dependent on the individuals involved picking up cases and challenging norms. They must have the independence and authority to act. PIRRS and PICAS Boards should have clear and separate remit.
- Removal of accreditation is not an effective or ultimate sanction and provides no real deterrent at present. Given that there is a cost involved in referring a complaint/dispute to PICAS the ability to award costs and provide restitution to the tenant/lessee is important and is not referred to in the papers seen to date.
- No reference is made to the publication of cases and complaints referred to PICAS. This is another effective deterrent and should be explored as a matter of urgency.

We accept and understand that much of this detail is to be determined in consultation. It is a source of regret that the full details were not shared with the PIRRS Board and all listed stakeholders before being submitted to Ministers.

*Redressing the balance of risk and reward*

We welcome the recognition by the Minister that the relationship between landlord and lessee has not operated fairly in recent years and that there is now an urgent need to rebalance the risks and rewards inherent in the contractual relationship. The *ALMR* has consistently stated that the tie per se is not the problem, but rather whether both sides enjoy a fair share of the economic benefits arising from the business.

We also welcome the recognition that the problems have arisen in respect of FRI leases, where this balance has been particularly distorted; we would emphasise, however, that that this imbalance arises irrespective of the length of the FRI lease. It is right, therefore, that measures to address this commercial imbalance are directed at FRI leases, but we would caution against a blanket approach. It would appear that the proposals in the Government's response would see non-FRI leases and tenancies subject only to the existing Framework Code, not even benefitting from minor clarifications and tightening in the areas identified by BII/BIIBAS as matters of concern. It is our view that, where possible, the Code should be strengthened for all pub agreements and that the number of additional controls for FRI leases should be genuinely exceptional and granted on the basis of the nature of the agreement.

Whilst we therefore welcome the recognition that the Industry Framework Code needs strengthening, we do not believe the initial BBPA proposals go far enough to achieve the Ministerial objective of rebalancing risk and reward. In our view revision should be substantive and urgently pursued. In our evidence to the Select Committee we made clear that many of the problems in respect of compliance were exacerbated by the poor drafting and the vague and woolly provisions of the Code and the paucity of the commitments given. If the Framework Code is to become the legally binding document, then it is vital that it is comprehensively re-written to include specific, measureable commitments and expanded to include the more intransigent aspects of the relationship which continue cause the biggest problems.

As a general comment we would note that many of the problems have arisen as a result of the Framework Code simply requiring companies to make their policies clear in certain areas—we had hoped that the Framework Code would move away from this approach and set clear requirements. Failure to do so will hamper lessees seeking legal redress through the courts and render meaningless efforts to make the Industry Code legally binding.

These unilateral proposals, whilst helpful clarifications and restatements of what had supposedly been committed to in 2009, do not in and of themselves substantively change the nature of the relationship. They can, therefore, only be a starting point for reform and *ALMR* would only be able to give them a cautious welcome in the context of broader, more substantive discussions. Our commentary on them is attached.

We note that BBPA is proposing a series of other areas which would be subject to discussion and consultation. These appear extremely vague and weak and the descriptions provided do not allow us to assess whether these would meet some or all of the *ALMR*s concerns. We are also extremely concerned that no timetable or proposed consultation/mediation mechanism for addressing these and other substantive commercial issues is included in the paper.

We are surprised that the Government has provided no indicative timetable for this additional, substantive consultation process nor, indeed, what will happen if the industry cannot reach agreement on the nature and scope of this proposed package of reforms. The paper clearly states that initial reforms should be agreed and implemented by December 2011 but again no reference is made as to when the new arrangements will become effective nor what will happen if the BBPA fails to meet this timetable. The very short timeframe between publication of the response and implementation of the key provisions suggests that the proposed consultation with stakeholders will be short and perfunctory, rather than allowing for meaningful dialogue.

In summary, these proposals provide greater clarity and certainty in a number of key areas these but will not address our fundamental concern about FRI leases—namely the fair share of the commercial and economic benefit arising from the operation of the premises. An alternative mechanism for addressing such concerns or facilitating individual negotiations about the nature and degree of product ties and exclusive purchasing agreements, guest beer provisions etc will be required. As noted earlier, our belief is that the sooner we can move away from unilateral proposals submitted by one side towards joint working on a genuine industry solution, the better. We should be happy to work with other stakeholders to develop an alternative Code which better meets the concerns and aspirations of lessees.

*Sanctions and Enforcement*

We are particularly concerned that the proposals make no reference to effective sanctions and penalties to give a new self-regulatory regime teeth and to act as an effective deterrent. The proposed changes do not go far enough in this direction. Indeed, lessees will be effectively penalised for making a complaint under the new charging regime for PICAS.

We welcome the proposals for a regular re-accreditation process but if the Industry Framework Code is to become incorporated into all agreements and capable of being relied upon by all, then it is questionable whether a regular if limited administrative process such as is proposed would deliver meaningful results.

We note that in the last Select Committee inquiry the accreditation process was not in doubt, it was company enforcement of Code requirements which was questioned and the BBPA/IPC Survey showed widespread non-compliance. This would not be addressed by reaccreditation. The accreditation process simply provides a check that the company code includes and correctly transcribes all the elements of the Industry Framework Code into company literature.

Re-accreditation is not a check of fairness of lease terms, nor is it a health check of compliance with the Codes' provisions. We would very much welcome a regular health check but do not believe simple re-accreditation at three-yearly intervals will deliver this. Moreover, the proposals as drafted suggest a timeframe for the first health check of June 2016—which we believe to be too far in advance—and would only apply to BBPA members and Greene King. We accept that commitments cannot be given on behalf of all operators, but question what would happen if a major landlord was to emerge outside this structure—or indeed resign their membership.

The *ALMR* has proposed a system of annual statements of compliance and spot checks to be directed at a random selection of lease negotiations and a review of rental valuation calculations within them. This proposal has been taken forward in part in the Government's response, but it does not refer specifically to rental calculations. These changes will only be helpful if they are precisely drafted and directed.

## Conclusion

We should be happy to provide additional information on any aspect of this submission or the Government's proposal.

*Commentary on BBPA Proposals for Code Reform*

- *Upward Only Rent Reviews—no change:* this makes no change to the status quo. The existing Code states that UORR clauses in existing leases should not be enforced, but this is not binding on successors in title and, given the current state of the pub market, remains a matter of concern. Existing lessees want to see such clauses removed from their leases by Deed of Variation and at a reasonable cost. This should apply to all agreements, not just FRI.
- *Waiver policies—no change:* this is simply a formalisation of what should be happening at present. The Framework Code should include clear commitments that companies should not initiate substantive discussions unless these are met and documentary evidence requirements met. This should apply to all agreements, not just FRI.
- *Timetable for pre-entry training—minor change to reflect existing good practice:* the issue here is not the content of the code but its enforcement. The existing code already requires PEAT and professional advice, but the BBPA/IPC Survey showed it was not being enforced. This should apply to all agreements, not just FRI.
- *Timetable for information—minor change to reflect existing good practice:* this is helpful in ensuring that prospective lessees and those approaching rent review have timely information; the degree to which this makes a material change will be dependent on the timetable proposed and changes being made to the information disclosure and justification requirements. We have proposed an industry standard P&L to assist in this.
- *Insurance—semantic change only:* the impact of this will be dependent on restrictions being placed on the unnecessary and unrealistic requirements imposed on like-for-like comparisons which mean claims of price matching are undermined. We have many examples of lessees being faced with impossible demand eg insurer to be Standard and Poor AAA rated, and all averaging clauses to be removed being particular hurdles. It is also common for clauses and cover values to be in excess of the norm. One of our members who tried to price match found that his preferred insurer was acceptable for the Church of England, but not the pub company. Any change in this area must be accompanied by a protocol on what is and is not a reasonable like for like requirement.
- *AWP Machines—no change:* this simply restates the existing requirements for Company Codes and does nothing to address the fundamental concerns raised by the Select Committee, BIIBAS and lessee groups. As an absolute minimum, the Framework Code must translate the clear commitments given by the BBPA to two successive Select Committees to only share machine income once. We have submitted alternative proposals to address this core issue of concern for lessees. Whilst we accept that more substantive change to this operation of the AWP tie may be limited to certain types of agreement, we are not clear why such a limited proposal for change should be restricted to FRI leases.

— *RICS Guidance—no change:* again, whilst this helpfully clarifies the existing Framework Code it is not a substantive change in policy or position. We welcome the requirement for all rent assessments to be signed off by an RICS qualified member. This will allow a separate and alternative disciplinary mechanism if the rent assessment is found not to follow Guidance. We note, however, that all the major pub companies stated at the Select Committee hearing in June 2011 that this was already practice. We are not sure why this need be limited to FRI leases only.

— *Rents and complaints:* these timetables should be included in the Framework Code. If the Framework Code is to be the primary and legally binding document which lessees can rely on it must be clear and specific, setting out industry minimum timetables which all are aware of. Again, we question why this should be limited to FRI leases.

— *Rents:* we are not clear what is being proposed here which would be different to the existing wording of the Framework Code. This new commitment may have the potential to be helpful and to minimise the manipulation of rental valuation variables. We would need to understand what is intended and would be happy to work with industry partners to ensure that this delivered meaningful change. Our original proposals for reform were more specific in this area.

— *Professional Advice—no change:* we would need to see specific proposals to determine whether this would be a meaningful change as existing lessees are already required to take professional advice. The issue is not the wording of the Code but rather pub company enforcement of it and non-compliance identified by the BBPA/IPC Survey.

— *Dilapidations—minor change to reflect existing good practice:* it is important that a protocol on dilapidations and general exit processes be included in the Framework Code and this is not simply left to company codes as currently proposed. This does not go far enough to address lessee concerns and we have already tabled our own proposals for further reform.

— *BDM Training—minor change to reflect existing good practice:* we support proposals to continuously invest in training and development of staff. Given the *ALMR's* expertise in recognising and rewarding the best BDM through its Operations Managers Awards, we would welcome the opportunity to work with industry partners in this area.

— *Price lists—new code requirement:* as this is a proposal put forward to *ALMR* we support it as a mechanism for delivering greater transparency and would welcome the opportunity to work with the BBPA and other industry stakeholders to develop it, but would not that it will only deliver meaningful change if accompanied by other measures.

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

I wish to clarify a number of points raised during the Minister's evidence to the Select Committee. An unfortunate impression was given that the Minister had negotiated with *ALMR* and delivered against *ALMR* expectations. This was far from the case, as I hope the attached letter makes clear.

The *ALMR* and IPC did liaise with officials before and after the publication of the Select Committee's Report. Two meetings were held at which it was made clear that lessees wanted reform in four key areas: the Code to be made indisputably legally binding; a new, strengthened and genuine industry Code addressing lessee concerns; enhanced enforcement and compliance activity; and, independent redress. We made clear at all times that the most effective mechanism for delivering this remained the speedy implementation of the Select Committee recommendations. Officials rejected this as the basis for ongoing dialogue and stated that the Government would not be willing to consult on the content of a Code.

Subsequently, the *ALMR* provided commentary, information and operational insight to officials throughout this period. This was dialogue, and at no time did we believe we were in a period of negotiation. Indeed, we had no sight of the Government's package of proposals until they were published.

As a PIRRS Board member, we were contacted by BBPA about their proposals for PICAS and we understand that this was at the request of the Department. Again, this was dialogue not negotiation. We copied officials and Minister into our commentary on the PICAS proposals making clear our unwillingness to engage and dissatisfaction at their proposed outcome. Furthermore, we confirm that these were BBPA/BIS proposals we were commenting on, not the product of negotiation.

We reiterated all these points when we finally met the Minister on Monday 21 November. At that stage, the Department's response to the Select Committee had been written and we were informed in general terms of its contents. We stated at that meeting that we were unable to support or endorse these proposals and raised specific concerns about the paucity of the proposed reforms and the gaps in the plans to make the BBPA Code legally binding.

We did say to the Minister and BBPA that we would be willing to enter dialogue in 2012 to see if we could agree a process to develop a genuine industry code and new industry regulatory structure. An initial meeting has been confirmed for 13 January but we wait to see a proposed programme of negotiations at a pan-industry level.

There appears to have been a headlong rush to reach a solution by December 2011, and this has precluded full and genuine consultation. This haste has seen helpful commentary wrongly portrayed as participation in negotiation and the unrealistic timescale has made it impossible to agree meaningful reform in the timescale.

*9 December 2011*

### Letter to Edward Davey MP, Parliamentary Under Secretary of State, from the Association of Licensed Multiple Retailers

As you will be aware, the *ALMR* has been liaising with the BBPA and other industry stakeholders following the publication of the Business Innovation and Skills Select Committee Report on Pub Companies; and we have kept your officials fully briefed on developments.

Our preferred approach would have been to work collaboratively with all partners together to present a fully worked up series of proposals, but this has not been possible and dialogue has proceeded bilaterally and the BBPA has unilaterally submitted proposed reforms which address some, but not all of the key commercial and political issues.

As a result there are a number of positive ideas on the table—presented individually by different interest group—which hold out the prospect of delivering meaningful change. Much more work is required to flesh these out and fill in critical details to determine whether, taken as a whole, they are an adequate and appropriate response to the Select Committee recommendations. We do not believe the BBPA proposals as presently drafted deliver this; they fail to deliver a legally binding Code and no substantive reform is proposed to rebalance the commercial risk and reward in the relationship.

The BBPA has made clear that it will not meet again to discuss further reform until after the Government has responded to the Select Committee report. Given the timescales involved, we therefore see no option but to proceed to a formal consultation on the content of a new Industry Code of Practice and a mechanism for ensuring it is legally enforceable—as recommended by the Committee.[2]

A formal consultation at this stage would send a clear signal to all sides and give the industry time to reach agreement on the content of a new Industry Code. We had hoped that this could have been achieved ahead of a Ministerial announcement but the paucity of proposals put forward by the pub companies and their failure to share it other than with identified individuals has hampered further progress. We therefore urge you to respond positively to the Committee recommendation to consult in this area.

We would welcome the opportunity to meet with you formally to expand on the points contained in this letter.

*9 December 2011*

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

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

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

I enclose a copy of a letter[3] I received from Sceptre Leisure, they claim they will be sending a copy of the same letter to the BIS Committee, Sceptre Leisure are the second largest supplier of amusement machines to the Pubcos.

The reason for my writing is to point out that the facts stated in their letter are just plain false. To prove my case I also enclose a copy of a letter[4] I have sent to "Coin Slot" for publication stating the facts as they are. Coin Slot is the trade paper for the coin machine industry. All this doesn't really matter now but I would like to keep the record straight.

All the submissions made by Bapto to all the Pubco enquiries have been the truth and were necessary were backed up by the factual evidence.

The threatening and bullying tone of the letter from Sceptre sums up the attitude of the Pubco suppliers and indeed the Pubcos themselves, in their letter Sceptre do not dispute any of our evidence it seems to be just a case of shoot the messenger, no doubt encouraged by the Pubcos, or I am being too cynical?

The Government response to the BISC report regarding the machine tie is sickening every report since 2004 has stated that the "machine tie be removed" to implement this recommendation all that was needed was that the tenant did not need the "approval" of the Pubco as to who supplied his amusement equipment as long as the supplier has a gaming board certificate and is legally entitled to do so.

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[2] The position of the previous Goverment—endorsed by the current Government—was that if we so recommended it would consult on how to put the Code on a statutory footing. It is now time for the Government to act on that undertaking . . . the Government has to set out the timetable for that consultation and begin the process as a matter of urgency (*Select Committee Report* September 2011).

[3] Not printed here.

[4] Not printed here.

By doing this you create a market that is transparent, competitive and benefits thousands of tenants and lessees and enables smaller machine suppliers to expand their businesses give a better service and create jobs.

In 2004 the Pubcos said they would not accept the removal of the machine tie and in 2011 it would appear they have got their way.

Thank you for all the time and effort you have put into this issue and I would like to wish you all the best in the future.

*30 November 2011*

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**Written evidence from the British Beer & Pub Association**

The British Beer and Pub Association (BBPA) welcomes this opportunity to comment on the Government's response to the Select Committee's Report into Pub Companies.

The industry has learned much during the operation of the Framework Code over the last 18 months and has taken note of the criticisms made by the Select Committee. We have welcomed the help and guidance provided by BIS officials to ensure that the improvements we have identified can be delivered effectively and speedily.

The BBPA has worked with lawyers to ensure that the Industry Framework Code is legally binding on all our members with tied estates. All new lease or tenancy agreements will reference the Framework Code. For existing agreements the same legal status will be conferred by way of a supplementary agreement.

The Government has identified the difference between short tenancies operated mainly by Family owned breweries and longer Fully Repairing and Insuring leases (FRI). In particular the BBPA welcomes the Government's support for the principle of the Tie. We continue to believe that the Tie provides a low cost entry into running your own business which is unique and in the vast majority of cases works well.

The BBPA will work with its existing partners (BII and FLVA) to enhance the Framework Code to create more transparency and provide new clauses which will mainly apply to these FRI leases. We have looked at a range of issues to tackle which can be incorporated quickly and work has already started.

This includes:

Waiver Policies: certainty on timetables for the provision of pre-entry training; timetable for providing information; insurance and price matching; clarity on how AWP machine income is distributed; timetables for complying with complaints; clearer guidance on the need to take professional advice; further clarity on dilapidations; commitment to BDM training or exemption under a quantified waiver scheme; and the publication of a wholesale price list.

There are a number of other commercially sensitive issues which we are committed to consider before the end of the year including the AWP tie; improvements to the rental negotiation process; the enhancement of PIRRS and a consistent approach on shadow P & L statements.

The larger members of the BBPA with FRI leases will be committing to an annual statement of compliance and the accreditation body will have the ability to conduct spot checks on code compliance.

PIRRS already offers a low cost arbitration service for rent disputes. The new PICAS (Pub Independent Conciliation and Arbitration Service) will offer formal arbitration on any other complaint against the code and company practices. The cost will be minimal and there will an ability for costs and compensation to be awarded to the successful complainant if a company is found in breach. We are working to establish PICAS by the end of the year and to have appropriate professionals willing to act as independent arbitrators or mediators in place by the end of February 2012.

The BII is to establish a new Pub Advisory Service to be funded by corporate members of the BII.

We hope that the Select Committee will acknowledge the significant additional progress the industry has made and continues to make in both addressing the concerns raised in their Report and meeting the Government's challenging commitment to ensure a self-regulatory framework delivers a more transparent and effective pub sector.

As ever, the BBPA would be very happy to meet with the Select Committee to discuss any of the above.

*Brigid Simmonds OBE*
Chief Executive

and signed by the following members of the BBPA:

James Arkell
Chairman
Arkell's Brewery

Richard Bailey
Chief Executive Officer
Daniel Thwaites plc

James Clarke
Managing Director
Jonathan Paveley
Chairman
Hook Norton Brewery

Ralph Findlay
Chief Executive
Marston's plc

Paul Wells
Managing Director
Charles Wells Ltd

William Lees-Jones
Managing Director
J W Lees & Co

Stefan Orlowski
UK Managing Director
Heineken UK Ltd

Jonathan Paveley
Executive Chairman
Admiral Taverns

Peter Robinson
Chairman
Frederic Robinson

James Staughton
Managing Director
St Austell Brewery

Ted Tuppen CBE
Chief Executive
Enterprise Inns

Michael Turner
Chairman
Fuller Smith & Turner

Roger Whiteside
Chief Executive Officer
Punch Taverns

Jonathan Neame
Chief Executive
Shepherd Neame Ltd

Lloyd Stephens
Managing Director
Wadworth & Co

*1 December 2011*

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**Written evidence submitted by the British Institute of Innkeeping (BII)**

COMMENTS ON BBPA PROPOSALS

The BII has welcomed in principle the new proposals. We believe they have the potential to develop further the already useful code and code monitoring arrangements. From our experience of operating BIIBAS to date we can see they need considerable work. BII is prepared to help with this development work.

We are absolutely clear however, that the new arrangements must be robust. We believe the BIIBAS activity to date has been robust and are proud of what has been achieved in a short space of time. It has required a strength and clarity of purpose that will not necessarily be easy to replicate. Simply involving some new people, from whatever background, will not be enough on its own. Proper transparent and impartial processes will be required. We will work with BBPA and others as requested and as appropriate. It's worth noting that BBPA have not played a significant role in the BIIBAS process to date.

The BII audit committee are quite clear that if the arrangements are not robust, we will not be able to accredit company codes, or sign up to the new industry code. In that event we may need to make alternative monitoring arrangements.

However, in principle, we are happy to stand back from the monitoring role, as it is costly and time consuming and carries some reputational risk that has dismayed some senior members. Equally, some senior members feel that it could be construed as an attempt to dilute the rigour and strength of purpose BII has shown.

The PIRRS board would need to agree to any changes. This agreement has not been sought, nor is it automatic. It does however contain a useful cross section. The issue might be, the PIRRS board does not have to make difficult decisions on individual cases as the independent experts make these. The potentially partisan nature of that board might make problematic the practical process of forming judgments where there are usually a number of shades of grey. Additionally, the volume of work for this group would be considerable. BII therefore recommends a strong admin function that minimises as far as possible committee workload. BII performs this function for PIRRS and has engaged a legally trained administrator to conduct this whilst it is still a BII responsibility.

We have not been consulted on funding the PAS arrangements. BII has no budget for this just now. BBPA has proposed that this comes from corporate memberships. We have not had this discussion with our corporate members, not all of whom run tied estates. Equally, not all tied landlords are corporate members. This commitment therefore needs further work.

A further point that requires clarification is the relationship between company and industry codes. The industry code is necessarily broad, and therefore, in its current or similar format, is not a suitable basis for monitoring company activity. So either the industry code must become much more detailed, so as to allow companies to be held accountable for specific commitments, or, company codes must develop further. We see the latter as the more fruitful route as it avoids "cartel" charges, and allows a proper market to emerge where landlords compete for tenants. We believe this has started to happen, and would deeply regret regressing to a broad and therefore unmeasurable base. We have had mixed messages about whether or not PICAS will monitor company codes. BIIBAS was set up to accredit these and these will continue to be our focus. We support the proposal to make the code(s) legal. Again we seek some clarity on whether this is industry, or company or both. The risk is again that if just the industry code, the terms will be insufficiently tight as to allow legal challenge.

In the next stage we expect to receive invitations to work on these proposals to minimise our concerns and ensure we build on the good work to date. We have agreed that we would work with all relevant parties in this process.

We offer these comments in the hope that they will be useful in the wider task of sharpening the whole code process, and to reassure our members that we have not "lost interest" in the whole process, as has been suggested.

*4 December 2011*

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**Written evidence submitted by the Fair Pint Campaign**

Fair Pint Campaign would like to thank the Business, Innovations and Skills Committee for the opportunity to be able to submit evidence with reference to the Government Response.

SUMMARY

1. Fair Pint Campaign Members are disappointed with the Government response published last week.

2. There is no agreed "industry" code just a BBPA created code that was rejected at mediation, this confers more onerous obligations on tenants.

3. The "other reforms" that the Department negotiated from the pubcos and brewers are NOT new most already exist and did so before 2008.

4. The response neither delivers none of the campaigners requirements or committee recommendations—no government regulation, no regulator no free-of-tie, open market rent option.

5. The existing BBPA code made enforceable is meaningless without the material provisions required for real reform.

6. Making the existing code legally binding despite being unacceptable to all Independent Pub Confederation members (IPC) is an irresponsible and rash decision.

7. A new mediation service must be independent.

8. It is said the pubcos have agreed to strengthen their Codes of Practice in a range of critical areas, for example, on rent assessments, they must now comply with the independent guidance from the Royal Institute of Chartered Surveyors, the existing BBPA code says this already as do the company codes—this is not progress.

9. The issue of the tie is complex. Mr Daveys statement does not tackle the problems that concern licensees. He has yet to meet them and establish their problems.

10. The tie does interfere with competition and has the effect of influencing price to the customer amongst other things. The consumer is suffering.

11. If the issue is only an issue of fairness in the relationship between the pubcos and brewery landlords, and their tenants and lessees, licensees must rely on the benefits of being tied to outweigh the disadvantages. That re balancing relies almost entirely on the RICS rent valuation guidance which in which confusion over interpretation in the response has been identified.

12. The real problem remains the abuse of a dominant position, regardless of the agreement terms. The appropriate code once established should apply to tenancies and leases.

13. Tenancies typically are short, non assignable and outside the security provisions of the Landlord and Tenants Act 1954 Pt II. These agreements are of little interest or value to any individual seeking to build

a business of value as they offer no secure future and any efforts to build goodwill are not transferable, therefore valueless.

14. Enterprise Inns and Punch Taverns are already offering tenancies giving them opportunity to circumvent regulation once more.

15. We consider the BIS Ministers have been subjected to an elaborate and well executed scam resulting in them believing they have offered something of substance when in fact they may have destroyed the process of reform on the very eve of its fruition.

16. The IPC were not consulted on the response leading to a one sided and empty outcome.

17. We have been offered an imbalanced package, that destabilises an already faltering sector and does nothing to address abuse, bullying and intimidation or licensee profitability, both of which were the cornerstones of Select Committee Inquiries inception.

18. Uncertainty now reigns once more, the glimmer of hope so many tenants and lessees clung to is extinguished and, for the sake of a few days inconvenient appearances at hearings, the pub company gravy train remains firmly on the tracks.

### Recommendations

19. The rushed legalisation of the inadequate BBPA code be cancelled.

20. IPC be consulted on new reforms and existing provisions that will add substance and material changes to the BBPA framework code.

21. The new reforms become legally enforceable are independently regulated and include a free-of-tie, open market rent option and guest beer right in accordance with the IPC manifesto.

22. Royal Institute of Chartered Surveyors, guidance is reconsidered and amended to avoid future misinterpretation.

23. IPC are consulted throughout the process of code reform.

24. Government issue a clear statement that measures are intended to ensure the balance of risk and reward is readdressed fairly and that if working correctly the tied licensees should be no worse off than if they were free of tie.

25. The industry code, once established, should apply to tenancies and leases.

### Introduction

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

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

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

29. We believe that the agreement between the BBPA, BII and FLVA to a Code Framework is a totally inadequate response to the problems highlighted by the Select Committees, and shows unwillingness by the industry to consider change which would rebalance the relationship between tied tenants and pubcos in any significant way. This reluctance to make material changes has been further proven by the findings of the 2011 Select Committee and is borne out by its recommendations which we wholly support.

30. The major pub owning companies have shown that they are unwilling to take any steps to significantly alter the balance of risk and reward between landlords and tied tenants and have used the time offered to simply seek ways to circumvent reform under a veil of apparent compliance. That Government now proposes allowing more time seems a miscarriage of justice.

31. We believe that the Government response is an attempt to quickly clear the desk of a long and drawn out dispute by a series of ill considered measures and the failure to engage with any other groups representing the other side to the dispute make the outcome biased and unjustifiable.

32. We consider it a major flaw in the Governments response that the rebalancing of risk and reward, acknowledged by them as uneven, is almost entirely reliant on the Royal Institution of Chartered Surveyors (RICS) valuation guidance. Also recognised is the massive rift in RICS guidance interpretation, this is not

simply by non-valuers but also between the very panellists who wrote the new guidance. Parties representing pub company interests denying entirely that the principle, that the tied tenant should be no worse off than if they were free of tie, even exists within guidance, while even the RICS representative giving evidence confirmed the principle was now enshrined in the wording.

33. The tied model in its current form does not work and remains in urgent need of reform. The industry needs an enforceable code, containing material and substantive reforms and capable of legal redress if breached. The RICS guidance urgently needs amendment to avoid misuse and deliberate misinterpretation.

34. Ed Daveys Announcement

35. The response announcement last week on pubs has been badly received by all but the parties benefiting from the historic abuse of the tied model and the naïve.

36. The pubcos have until Christmas to make their Codes of Practice legally binding, their codes being the ones created by them following the failure of mediation containing no material or substantive changes and offering licensees very little in exchange for further onerous terms on their existing agreements. Mr Davey claims tenants and lessees can now enforce their rights, those rights are so inconsequential few will bother to even waste their time. This has been borne out from the BII's statements, indicating most complaints fall outside the remit of code breaches.

37. Mr Davey has been duped into thinking that supposed "other reforms" that the Department negotiated from the pubcos and brewers are new, upward only rent reviews have been ignored for years and simply replaced with inflationary increases.

38. Mr Davey has cited a pub in his constituency that is flourishing, indeed thriving, this same pub, The Lamb, was a Punch Taverns pub having churned tenants through to bankruptcy before finally being bought freehold by the last tenant. Since going free of tie the pubs fortunes have changed and Mr Davey has acknowledged with his own blog the now apparent success in a fair and competitive environment having being released from the tie agreement.

39. The response purports to have delivered only half of what the campaigners for licensees and consumers have sought. Mr Davey considers the campaigners sought two things, first, government regulation of the pub industry, with a new regulator to enforce it; and second, either an end to the tie entirely or a free-of-tie, open market rent option to be legally required to be available to all tenants and lessees. Whilst being factually untrue, abolition of the tie has not been sought for a good few years now, we wonder which half he claims he has delivered. We have no government regulation or enforcement and no free of tie option.

40. It is claimed a self-regulatory regime "so much stronger than the past" has been delivered, the past offered nothing and twice nothing is still nothing. However the code is made enforceable it is meaningless without the material provisions required for real reform. These provisions have been demanded by campaigners and recommended time after time by Select Committees for the last seven years.

41. Making the existing code legally binding despite being unacceptable to all Independent Pub Confederation members (IPC) is an irresponsible and rash decision. There is no "industry" Code of Practice just a BBPA one.

42. A new mediation service would be welcome but it must be independent and with such heavy BBPA involvement we consider it difficult to see how a conflict can be avoided.

43. It is said the pubcos have agreed to strengthen their Codes of Practice in a range of critical areas, for example, on rent assessments, they must now comply with the independent guidance from the Royal Institute of Chartered Surveyors, the existing BBPA code says this already as do the company codes but RICS guidance is ineffectual as confusion over interpretation still exists. Being bound to a guidance that is capable of misinterpretation is no concession.

44. A new Pub Advisory Service will be established, to support and advise would-be lessees and tenants, to make sure they know what they are letting themselves in for. Essentially this should include a simple shadow profit and loss calculation for the individual tenant demonstrating their likely earnings and showing the volatility of small changes in costs and tied product prices. Effectively a health warning for tied agreements.

45. The British Beer and Pub Association and other players on the landlord side, should have no problem in introducing, at speed, a package that they have formulated and addresses none of the areas of concern.

46. The issue of the tie is complex and has been considered at length (over seven years) by the select committees. Peter Luffs committee suggested a compromise that being an option which would truly test the fairness of tied agreements. Contrary to Mr Daveys statement he is not tackling the problems that concern licensees rather the ones he is told by the BBPA that concern licensees.

47. The tie does interfere with competition, the very fact that groups like JD Wetherspoon and now smaller companies like Amber Pub Company can sell beer at a fraction of the price in a tied house demonstrates the lack of fair competition. Tied pubs, representing the majority in the UK, set the price for tied products like beer, most free of tie operators take the tied lead, hence prices to consumers, with a few exceptions, appearing

to be relatively competitive. The difference is that the tied operator is barely making a profit the free of tie operator substantial gains.

48. There is choice and a wide variety of beers are widely available but at a falsely inflated price, the OFT failed to recognise this. The consumer is suffering as a result and voting with their feet being forced away from pubs and into the open arms of operators who are prepared to share the profits derived from their buying power like Wetherspoons and supermarkets.

49. If we were to accept the issue is not competition and is only an issue of fairness in the relationship between the pubcos and brewery landlords, and their tenants and lessees, commercial relationships, it follows that licensees must rely on the benefits of being tied to outweigh the disadvantages. Rents should be lowered to countervail higher tied product prices, this is not the case at present and it is seen as a fundamental flaw in the Government response that re balancing relies almost entirely on the RICS rent valuation guidance which is still being abused and was acknowledged to be suffering confusion over interpretation in the response.

50. There are far fewer brewery tenancies than pubco leases and therefore there have been fewer reported abuses of the power the agreement affords. This should not be confused with a constantly benevolent relationship. Evidence suggested by Neil Robertson of the BII indicates that the churn rate (business failure rate) amongst some brewers is even higher than the rate amongst pub companies. The real problem is the abuse of a dominant position regardless of the agreement terms. Those operating tied tenanted or leased estates properly should have no reluctance to committing to a genuine code ensuring the behaviour they purport to offer is capable of legal redress if breached.

51. There has been plenty of evidence submitted of abusive brewery behaviour to the previous committees all be it proportionally less than that found amongst the bigger pub companies. Tenancies typically are short, non assignable and outside the security provisions of the Landlord and Tenants Act 1954 Pt II. These agreements are of little interest or value to any individual seeking to build a business of value as they offer no secure future and any efforts to build goodwill are not transferable.

52. By directing the Government response to leases rather than tenancies, any abusers of the tied lease model will simply seek to convert their agreements over time to tied tenanted models. Enterprise Inns and Punch Taverns are already ahead of this game and offer tenancies giving them even more control over their licensees than their lease agreements did.

53. We do not consider the response is a sell out. We consider the BIS Ministers have been subjected to an elaborate and well executed scam resulting in them believing they have offered something when in fact they may have destroyed the process of reform on the very eve of its fruition.

54. The IPC were not consulted on the response despite intensive behind the scenes discussion with those representing the pub companies and brewers, leading to a one sided and immaterial outcome. The response indicates that some members of IPC have committed to participating in the new Pubs Independent Conciliation and Arbitration Service (PICAS) until the response publication last week the GMV were not even aware of its existence.

55. As a result, we have a totally imbalanced package, that destabilises an already faltering sector and does nothing to address the abuse of licensees or licensee profitability both of which were the cornerstones of Select Committee Inquiries inception.

56. Uncertainty now reigns once more, the glimmer of hope so many tenants and lessees clung to is extinguished and, for the sake of a few days inconvenient appearances at hearings, the pub company gravy train remains firmly on the tracks.

57. Conclusion

58. Stop the process of legalising the BBPA code, issue a timetable for consultation and reform, appoint an independent overseer to report to Government on progress. Ensure all subjects are capable of being debated between the parties and that Independent Pub Confederation are permitted the courtesy of participating in the consultation process.

*30 November 2011*

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**Further written evidence submitted by Fair Pint Campaign**

I am writing to you ahead of the Committee's evidence session with the Minister for Consumer Affairs, Ed Davey, where he will give evidence on the Government's response to your Select Committee's report on Pub Companies.

We hope you share our concerns and that you will do everything you can to persuade the Minister that he needs to review his decision. As the leading tenants' voice in the debate we are particularly concerned that we have not been consulted and our view has not been represented. The Government's response is a totally inadequate response to the problems affecting the sector identified by the multiple reports on the tied pub sector which have been published by the Committee and its predecessors since 2004.

In response to the Select Committee's report published in 2009, all three main political parties promised intervention to help tied pub businesses benefit from fairness in their tied relationships with the companies who own their pubs if the industry was not able to make meaningful change on a voluntary basis.

Your Committee's report published earlier this year made it clear that voluntary codes of practice drawn up by the BBPA, the representative voice of the pub owning companies and brewers had done little to solve the problems faced by tied publicans. In light of this, we are bitterly disappointed by the decision of the Government to renege on these manifesto commitments and come up with a response that is clearly driven by the interests of pub owning companies rather than tied lessees and tenants.

The pub sector employs tens of thousands of people in the UK and plays an important role in our economy. Individual pub businesses rather than the pub owning companies (who employ relatively few people to manage their tied estates) create the vast majority of the employment in the sector. In the context of the current economic situation, it seems nonsensical for the Government to have considered the interests of these large property interests more important than the problems faced by individual pub businesses.

The Government's proposal to make the existing industry codes of practice legally binding is clearly in the interest of the pub companies rather than lessees and tenants. The codes are BBPA and pub company creations which tenant representatives have made clear are unacceptable. As they stand, they seem to confer onerous terms on their licensees and offer very little in return. Making these legally binding will risk making the problems faced by tied lessees and tenants worse than even the current situation.

Many of the improvements that the Government believes it has negotiated with the BBPA and pub companies are already agreed practices. Examples include price matching on insurance, which has happened for many years but still denies publicans access to meaningful competition in insurance as they can't take their business elsewhere. The Government has agreed clarity in the treatment of machine income which is accepted practice and is already in the codes of practice. Meaningful change would have been ending the machine tie, something that every select committee report since 2004 has called for. The Government response also highlighted as an improvement the non-enforcement of upward only rent reviews which was something agreed by the industry years ago as was the fact that rent review assessments must comply with RICS guidance, which is something which is simply commonsense and is already included in codes of practice.

In their response, the Government has focused on fully repairing and insuring leases, but it is clear that the abuses in the system are not confined to FRI leases and abuses do occur under tenancies as well as leasehold agreements. The risk is that a code of practice that solely focuses on FRI leases will simply lead to pub companies transferring their property to tenancies rather than longer FRI leases.

We believe that tenant as well as pub company representatives must agree any code of practice and this code of practice should be put on a statutory footing. We also believe the tied model needs to justify its fairness by allowing lessees or tenants of companies owning more than 500 pubs the freedom to sell free of tie guest beers and the option to choose to switch to a free of tie agreement with a rent set by an open market review.

Fair Pint believe that the Government's response offers no solution to the ongoing problems faced by the industry and in many cases will make things worse by making codes of practice which introduce new onerous restrictions on leases legally binding. The focus on FRI leases will encourage pub companies into offering alternative brewery type tenancies, usually short, non-assignable, unprotected agreements that will do nothing to encourage new entrepreneurial flair and investment into a failing industry.

The Government has at best been deceived, and at worst duped. We fear that the upshot of the Government's response is for them to offer-up a series of empty promises which will do nothing for the plight that so many tied tenants find themselves in. We hope that our voice and our views can be heard by the Minister and his decision can be reviewed sooner rather than later.

*5 December 2011*

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**Written evidence submitted by the Federation of Licensed Victuallers Association**

The following is the Federation of Licensed Victuallers Associations comments on the Government Response as requested in your announcement 91. It should be read in conjunction with our original submission to the Committee regarding PubCo's.

### Executive Summary

The FLVA broadly supports the Governments response especially with regard to the decision to move forward via a legally binding Industry Framework Code of Practice (IFC) in place of legislation but makes the point that this document needs to move away from the *de-minimus* basis of previous codes and needs to be far more substantive, precise and provide benefit now and in the future to all sectors of trade. This is essential if the codes are to be used as the basis for financial recompense via the PICAS model.

Within our previous submission to the Committee (copy attached for ease of reference) we support a re-balanced beer tie so welcome the response in that respect.

OBSERVATIONS ON THE GOVERNMENTS RESPONSE

1. *Ref point 13 in Governments response re benchmarking*

The provision of the BBPA benchmarking cost data is welcomed however whilst it is noted within the body of that document that there are omissions (entertainment and provision of media sports viewing) it doesn't give any guidance as to the level of expense which these elements may comprise, which is a very significant sum, and as such these statistics require an element of professional interpretation without which the stats could be accused of being misleading.

2. *Ref point 14 in Governments response regarding progress*

We concur that progress must be rapid especially in areas of legality and dispute resolution but we feel that the opportunity to get the whole mechanism correct should allow sufficient time for all parties to explore resolutions in order that the resultant IFC is precisely that, an industry framework not just representative of part of that industry.

3. *Ref Governments response regarding "the beer tie"*

We support the government's response with regard to the beer and refer back to our original submission with regard to the tie, points 23–27 and especially point 28 which calls for a more balanced and equitable split of the profitability brought about through the existence of the tied model.

4. *Ref Governments response to Brulines*

This is an area which requires much work in the strengthened IFC to protect the right of the landlord to have lease terms agreed to whilst providing safeguards for the tenant in respect of misinterpretation/error.

5. *Ref Governments response to Self regulation*

We are in agreement with the key elements as detailed in point 41 (i)–(v) and are working closely with industry colleagues to implement these but we are concerned in respect of the phrase "collateral contract" we believe that this should be brought about via binding collateral deeds in existing leases ensuring continued adherence by the PubCo and any successors in title in the event of a sale.

6. *Ref Governments response to PUBS Advisory Service*

Point 61 is agreed with, however much more input is required in respect of the provision of this advice as it needs to be far more embracing and needs to form part of the ongoing discussions of all industry partners not purely a "telephone directory" of third parties. We see the FLVA as central to this process and facility as a tenant's representative body as opposed to the BII industry role of Tenants educational body.

7. *Timescales for improvement*

The 14 specific areas of immediate improvements are, subject to final detail, agreed with. However we would wish to see a more firm commitment beyond "discussing" areas of further improvements complete with timescales regarding implementation. This is an area where we have already given a commitment to work with industry colleagues to enable these reforms to be implemented.

In summary we acknowledge that much of the Government proposals satisfy the demands of our original submission to the BISC enquiry, but we are concerned that the finished article of the IFC, PICAS, or PAS will be open to manipulation by the PubCos. There must be significant input into this process by tenant/lessee bodies otherwise the result will be a PubCo/BBPA led vehicle which will ultimately solve nothing.

*1 December 2011*

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**Written evidence submitted by the Federation of Small Businesses**

The Federation of Small Businesses (FSB) welcomes the opportunity to respond to this call for evidence.

As you will know, the FSB is the UK's leading business organisation. It exists to protect and promote the interests of the self-employed and all those who run their own business. The FSB is non-party political, and with in excess of 200,000 members, it is also the largest organisation representing micro and small sized businesses in the UK. As you will also know, we are founding members of the Independent Pub Confederation (IPC).

It will come as no surprise to the Committee that the FSB is extremely disappointed with the Government's response to the Committee's latest report on pub companies which proposes the implementation of a self-regulatory package of reforms. In our response to this evidence call, we will focus solely on the Government's response and will not repeat evidence we have already submitted to the Committee.

While there are some elements of the announced package of reforms that are welcome, such as the abolition of upward only rent reviews, given the history of some of the key players representing pub companies, we remain skeptical the process will:

(a) be affordable for tenants and lessees;

(b) be truly independent; and

(c) deliver the reforms envisaged in the Government's response.

Given that the Government response states that it agrees with the Committee that "insufficient progress has been made by the industry in its self-regulation since the previous investigation",[5] we remain concerned that these reforms will do little to change the status quo.

We are especially concerned that the British Beer and Pub Association (BBPA) have committed to ensure that the Industry Framework Code will be legally binding by the end of 2011. Given that the Government's response was recently published and the holiday season arriving soon, the assumption could be made that these key industry changes are being rushed through without the scrutiny they deserve.

The Federation of Small Businesses believes that the implementation of these changes could easily be delayed until the Spring. This would ensure that all parties would have adequate time to meet with the BBPA and other industry stakeholders to have sight of and debate the new Code, and discuss to whom it should apply.

The FSB would like to make the fundamental point that as an organisation, we have not yet seen the new proposals. This adds to our concern that our views have not been sufficiently addressed, and the new Code subject to sufficient scrutiny. We further note that page 11 of the response states: "Following intensive discussions with Government, the industry has now made a commitment that it will implement a range of substantive reforms". The FSB would question the intensity and frequency of these discussions with all parties. It calls on Government to produce details of the organisations it had contact with between the publication of the Committee's report and the Government response, and the frequency, timing, and length of these discussions as well as the subject matter.

We also agree that there may be some confusion in the understanding of what is meant by long term (FRI) leases and traditional tenancies. We note that Government's response is essentially targeted at the FRI sector. However, we are worried that this confusion has not enabled a full and clear understanding of the problems. We therefore would welcome the opportunity to gather further evidence, specifically addressing both these categories. A Government consultation on the way forward could easily address this confusion, instead of the de facto situation we have received.

We note that the Government's response states that the tie plays an important role, especially for safeguarding the future of Britain's smaller breweries. As you will know, we agree with this: we are not calling for the abolition of the tie, simply its reform. Furthermore, our proposals if implemented would only impact upon those pub companies which have over 500 outlets. It is a shame that this has not been reflected in the Government response.

We are also disappointed by the Government's response on Brulines. Page nine of the response states:

> 30. The Committee's report noted that "*there is obviously still a dispute over flow monitoring equipment and its use in accusations of buying out which the Framework has failed to address. In addition there is still confusion over whether it can be proved to be 'in use for trade' and therefore covered by the Weights and Measures Act 1985.*"
>
> 31. The Government can confirm that because this equipment is not in use for trade, it does not fall within the remit of the Weights and Measures Act 1985.

In our view, this response simply brushes the concerns of tied publicans under the carpet, without taking stock and addressing what is a very challenging issue.

We hope that our concerns will be reflected in the Committee's oral evidence session with the Minister next week.

*1 December 2011*

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[5] Government Response to the House of Commons Business, Innovation and Skills Committee's Tenth Report of Session 2010–2012: Pub Companies

**Written evidence submitted by the Forum of Private Business**

The Forum of Private Business is a not-for-profit organisation which supports micro and small businesses throughout the UK. We provide our members with a range of services, including representation of their views to decision-makers in Westminster, Cardiff, Holyrood and Brussels.

The Forum previously wrote to this Committee in July of this year, ahead of the publication of its Report into Pub Companies, in order to share the experiences of our members. We do not wish to repeat points that have already been made nor do we wish to provide a long list of the many failings of self-regulation of the pub industry. Instead, we would like to express our disappointment at the Government's response to this Committee's Report on Pub Companies and we urge the Committee to recommend that the Government go further to reform the pub industry, and in particular the issue of the beer tie. We recommend that the Government consult openly on introducing:

- a statutory code of practice that upholds the principle that a tied tenant no worse off than a free of tie tenant
- a truly independent adjudicator to oversee this code
- a free of tie option for all new licence holders
- the right to a guest beer for tied tenants

These recommendations are much in line with suggestions that this Committee made to the Government in its report. However, the Government failed to take many of these suggestions on board.

Since 2004, there have been three parliamentary select committee inquiries into the pub industry yet no substantial action has been taken by the Government. The third report in 2010 delivered a final ultimatum to the industry that they must reform effectively within eighteen months. The Government promised that if this reform failed it would legislate and implement a statutory code of practice for the industry. This reform has indeed been left wanting yet once again, the Government has advocated self-regulation of the industry—an approach that has proved ineffective time and time again with pub companies continually failing to address the problems that many landlords throughout the country face.

While we welcome aspects of the Government's response and its acknowledgement that the pub industry is facing huge challenges, we do not agree with its conclusions on how these challenges should be faced. The Government argues strongly against legislating against mistreatment of landlords by pub companies, arguing that legislation should be the last resort. Self-regulation has consistently failed to address the issues and it is time to face the last resort. There is no alternative. Our members have repeatedly reported heavy handed and unfair treatment by pub companies and the power that these companies have over individual tenants and lessees has not been reduced by the introduction of the voluntary Industry Framework Code.

The Government has proposed a strengthening of this code, however, until the code can be properly enforced this proposal is of little use. The Government's proposals for a Pub Independent Conciliation and Arbitration Service (PICAS) to be set up under the umbrella of PIRRS and a three-yearly reaccreditation process for Company Codes fall far short of the sort of adjudicator we have been calling for. Moreover, the British Beer and Pub Association's involvement in this service is worrying. The BBPA, which largely represents the pub companies who have resisted reform for so long, were heavily involved in negotiations with the Government on reform of the pub industry. Last minute lobbying by this organisation has led to the Government's weak proposals on reform. This is categorically unfair and the Government should immediately launch a consultation which would allow representations from a more diverse range of stakeholders.

The Government's response to the select committee report has failed to address the beer tie issue. The Government claims that there "is little evidence to indicate tied pubs are more likely to close" yet research from the Campaign for Real Ale (CAMRA) shows that more tied pubs are closing than free of tie pubs. And the IPPR recently published a document entitled "Tied Down: the impact of the beer tie on Britain's pubs" which found that tied publicans are more likely to earn less and face more financial difficulties, and they blame this on the beer tie. The Government argues that as the OFT concluded there were no competition issues adversely affecting consumers it was not up to the Government to regulate in this area. The concern is not with how the beer tie affects consumers but rather how it affects publicans. As I am sure the Committee is aware, tied pubs have to buy all their beer and most or all other drinks from the pub company which owns the premises, usually at a higher cost than they would on the free market. The relationships between pub companies and their tenants have become increasingly difficult as pub company beer prices have increased in the worsening economic climate. This incontrovertibly puts the publican at a competitive disadvantage, regardless of the beer ties impact on the consumer. Tied landlords are trapped in unfavourable contracts and struggle to control costs their costs and this adversely affects their business. Tinkering with other aspects of pub industry reform is ineffective if not coupled with significant action on the beer tie.

To conclude, the pub industry faces serious challenges. The slowdown in consumer spending and high levels of unemployment in recent years mean that more and more people are tightening their purse strings and staying at home instead of going to the local pub. The price of beer in pubs has risen rapidly over the past few years yet the price of alcohol in supermarkets has remained low. Pubs are squeezed from all sides yet their hands are tied. The Forum strongly recommends that the Government hold a public consultation on reform of the pub industry and that it seriously considers introducing: a statutory code of practice enforced by an independent

adjudicator and that ensures that tied tenants are no worse off that free of tie tenants; a free of tie option for all new licence holders; and the right to a guest beer for all tied landlords.

*1 December 2011*

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**Written evidence from the Independent Pub Confederation (IPC)**

In 2010, the Business Innovation and Skills Select Committee and two Government Departments issued the pub industry with an ultimatum—deliver real and meaningful reform to change the commercial relationship between landlord and lessee, or face statutory intervention. As the voice of thousands of hard-pressed tied lessees, we were disappointed that this warning had not been heeded by the pub owning companies acting on their own initiative. We were further disappointed that the Government response published last Thursday (24 November 20011) reneged on their commitment to act appropriately. Rather than act upon the BIS Select Committee recommendations based, on overwhelming evidence, gathered over almost seven years, by two separate committees, after four hearings, the Government chose to work with the BBPA to develop alternative actions.

Given the complexities of the issues it is regrettable that IPC were not party to the negotiations prior to the response being issued.

Even the OFT's 2009–10 Report on the sector found clear evidence that this was resulting in consumer detriment. It failed to give a clean bill of health to the contractual relationship between the national pub companies and their lessees. The *ALMR's Benchmarking Report* provides evidence of its impact—lower investment per premises, lower gross margins and an under-performing market segment—and the fact that it is no longer adequately offset by lower rents. Industry efforts to address these problems have side-stepped these issues altogether. The Governments response has done nothing to alter this environment.

Urgent action was required and promised to ensure the Committee's recommendations and Ministerial expectations are taken seriously and acted upon. Unfortunately, this has not been forthcoming as a result of voluntary self-regulation and is being permitted to escape if the Government "solution" is allowed to continue unaltered.

Despite unprecedented political pressure, the BBPA and the major national pub companies have not delivered sufficiently against the Committee's recommendations and political expectations and we remain unconvinced that the Government response will promote the sufficient reforms expected.

The substantive commitments given to the Committee have never been delivered and even some of the modest promises set out in the Framework Code remain unmet. Crucially, the national pub companies have not built on the Framework Code's *de minimus* provisions in respect of free of tie options, guest beer and AWP income.

Without consultation with the expert and practical knowledge, embraced within the Independent Pub Confederation, Government has accepted a series of empty promises by the very parties found guilty of manipulation and neglect.

In giving evidence to the Select Committee in December 2009, the BBPA pledged to ensure that members "earned the tie". The Government response removes that pledge. A free of tie option with an open market rent ensures that any tied agreements are compared with a fair free of tie alternative and therefore, to be maintained the tied agreements themselves would have to at least be perceived equally fair by licensees. The tie would need to be earned by companies operating the model not forced upon their licensees.

Voluntary self-regulation has always failed to deliver substantive and meaningful reform in this sector. Tied licensees need a stronger Code which sets out minimum legal obligations on contractual obligations. They need a more effective Code which is capable of proactive policing and enforcement and with access to independent redress when things go wrong. It has always been maintained that this code can not be the creation of the parties who have been found to be acting improperly and should be industry agreed.

Only a Statutory Code can deliver this by setting out a clear, unambiguous and enforceable requirement for all pub owning companies with an estate of more than 500 pubs to provide a free of tie option, accompanied by an open market rent, and a guest beer option for tied tenants. Only then will the root cause of the problems inherent in the commercial relationship—first identified in 2004 by the Trade & Industry Select Committee—be finally resolved. The Governments response destabilises an already fragile sector and we would urge the Committee and Government to consider our recommendations with a view to putting them into effect as soon as possible.

*Simon Clarke*

*30 November 2011*

EXECUTIVE SUMMARY

*Suggested Recommendations*

- The proposal to rush through any code to be legally binding should be postponed until IPC have been consulted on content.
- A free of tie option, with open market rent, capable of third party referral if the parties cannot agree (subject to the 500 *de minimus* proviso outlined later).
- A guest beer right to be offered by all pub owning companies with more than 500 tied tenanted or leased pubs to tied licensees.
- RICS guidance to be urgently reviewed to clarify interpretation.
- Flow monitoring to be either prescribed if used to calculate fines or be supported by physical evidence.
- The Industry Framework Code needs to be substantially strengthened.
- Full cross party and industry participant consultation before a code is agreed.
- The final industry agreed code to be made indisputably legally binding.
- We understand codes will be applicable to all lease and tenancy agreements but that codes addressing leases will be subject to further provisions.
- Total and unreserved removal of the AWP tie.

1. INTRODUCTION

2. The Independent Pub Confederation (IPC) as one side of the industry's long standing dispute does not accept the Government response as a solution and were not party to it. The Governments implication that their response is an industry agreed one is factually inaccurate. IPC were not formally consulted as an umbrella body despite our requests.

3. We consider the Government response to be at best naïve and one sided as it fails at the first hurdle to resolve the issue of primacy, that being the rebalancing of risk and reward allowing licensees once more the opportunity to earn a decent living and build a profitable business.

4. The Independent Pub Confederation wholly endorse the BIS committees final report and recommendations.

5. Government should not be guided by the BBPA and they, and the industry in the future, need to be guided by a board representing all the industries interests. The BBPA have kept a tight grip on the steering wheel for too long and only through the select committee process has it been established, and apparently overlooked by Government, that they do not represent the industry and can not be trusted to self regulate effectively and to the satisfaction of the industry as a whole.

6. *Summary*

- The Industry Framework Code needs to be substantially strengthened only after full cross party and industry participant consultation and then made legally binding.
- A Pub Independent Conciliation Advisory Service (PICAS) to be set up to provide mediation and arbitration.
- A three-yearly re accreditation process for company Codes, achieved through examination of annual compliance reports and spot-checks—is a welcome development this must be undertaken by an independent body.
- A new independent Pubs Advisory Service (PAS) established to provide free advice to all prospective and current tenants and lessees is also a welcome development.

Suggested recommendations

- The proposal to rush through any code to be legally binding should be postponed until IPC have been consulted on content.
- A free of tie option, with open market rent, capable of third party referral if the parties can not agree (subject to the 500 *de minimus* proviso outlined later).
- A guest beer right to be offered by all pub owning companies with more than 500 tied tenanted or leased pubs to tied licensees.
- RICS guidance to be urgently reviewed to clarify interpretation.
- Flow monitoring to be either prescribed if used to calculate fines or be supported by physical evidence.
- The Industry Framework Code needs to be substantially strengthened.
- Full cross party and industry participant consultation.
- The final industry agreed code to be made indisputably legally binding.
- Total and unreserved removal of the AWP tie.

7. Background

8. Ed Davey and Vince Cable gave assurances to stick to the previous Government's policy to relax the beer tie and to set a timetable to act if the industry did not reform itself. Those plans included a tie/non tie option, a guest beer option for those tenants that opt for a beer tie and that Government would monitor progress for one year and intervene to introduce a non-tie option and legislate for a Beer Order to allow guest beers if these flexibilities are not introduced.

9. The Liberal Democrats *Giving Pubs back to Communities'* 2010 manifesto, stated they would seek to introduce a statutory code of practice to uphold the principle that the tied tenant should be no worse off than if free of tie. A guest beer, and a genuine choice to opt out of the tie. (Appendix 1.)

10. The Conservative Party gave similar assurances that they too supported the idea that should the industry fail to deliver self-regulation by June 2011, the Government of the day should end up consulting on putting the Code of Practice on a statutory basis.

11. Government committed to acting upon the Business Innovation and Skills Select Committee report and that if the committee so recommended, Government would consult on how to put an industry code on a statutory footing.

12. The BIS committee final report, published in September 2011, recommended the Government commence consultation for an industry code on a statutory footing.

13. Considering that Ministers clearly agreed to the plan put in place by BIS in March 2010, to legislate and rebalance the industry if the pubcos failed to reform, the subsequent response from the Government now sends entirely mixed messages, being a U turn on their previous commitments, policies and manifestos.

14. The Government have subsequently published their response having claimed to have met with the "industry". We consider it utterly inappropriate that Ministers have been negotiating with one side of this long standing dispute, and have not met with the majority of industry organisations about the content of the codes of practice. At no point were members of the licensee and consumer umbrella group Independent Pub Confederation permitted a meeting or the opportunity to contribute to the pre response consultation process, despite numerous requests.

15. We consider the proposal to legalise the BBPA's Framework code to be inappropriate as this is not an industry agreed code.

16. Government Response

17. *The Tie*

18. The Government response indicates that there was no definitive evidence in the figures that would justify legislating to abolish the tie. The select committee final report makes no such recommendation and indeed abolition of the tie is not referred to as an option at all in their report. The Government response demonstrates that the Ministers, or those briefing them, have not read or understood the committee reports content. Only a free of tie, with open market rent, option has been requested and recommended and this suggested committee recommendation has been enshrined in the IPC manifesto as an acceptable compromise by the licensee and consumer group members.

19. What was recommended by the committee was that a free of tie option be offered to tied licensees. The purpose of this was to enable tied agreements to be kept "in check" as competitive and fair, effectively a self policing mechanism.

20. The tied model needs to be proven by those operating it that their agreements are competitive and that the benefits of the tied model outweigh its disadvantages, the principle of "countervailing benefits" and demonstrating that the tied licensee is not worse (or better off) than the free of tie licensee. The absence of IPC's suggested free of tie, with open market rent, option, and guest beer right, leaves tied product pricing open to abuse and manipulation and does not ensure that the tied licensee is no worse off than the free of tie licensee.

21. Recommendation

22. A free of tie option with open market rent review to be offered by pub owning companies with more than 500 tied tenanted/leased pubs (thereby excluding the small family brewers IFBB). It matters not that this would take time to implement, a clear commitment to its future implementation would be all that is necessary to renew faith in a beleaguered industry and put the maladministration of the tied model into an evolutionary process for the better.

23. A guest beer right to be offered by all pub owning companies with more than 500 tied tenanted or leased pubs to tied licensees, enabling wider consumer choice and licensees to react to customer demand.

24. Risk and Reward

25. On the basis of paragraph 29 of the response—there is acknowledgement that a question remains relating to balance of risk and reward.

26. Given the response omits any action on tie reform it appears all opportunity to rebalance the risk and reward is dependent on appropriate and effective implementation of the Royal Institution of Chartered Surveyors rent assessment guidance.

27. Royal Institution of Chartered Surveyors (RICS)

28. It is seen as a fundamental weakness in the Government response that so much now relies on the RICS guidance being correctly implemented given that the response concedes there remains a significant confusion around the interpretation of RICS guidance.

29. The following view of the RICS, before guidance was rewritten expressly stated that:

> 30. *"The Forum heard that there was some confusion in the interpretation of the guidance with the paper. For example in the treatment of the valuation of the wet rent, where it is clear to us that most lease agreements require a valuation largely on the terms of the lease. This follows the principle of the tied tenant being no worse off than the non tied tenant; a position which is arrived at with a correct interpretation of RICS guidance."*

*Source:* RICS Pub Industry Forum Report and Recommendations (February 2010).

31. The guidance has since been rewritten and whilst we believe those on the drafting panel knew the meaning of what was agreed, confusion of interpretation still reigns, allowing manipulation. Ted Tuppen effectively demonstrated in the select committee witness hearings that his view and that of Rob May, the Enterprise Inns National Rent Controller, a participant of the RICS working group who redrafted the guidance, fundamentally differed from other working group participants including the IPC and BII representatives, Simon Clarke, David Morgan and Garry Mallen.

32. The IPC understanding of RICS guidance is that if undertaken correctly a rent assessment should result in a tied tenant being no worse (or better) off than the free of tie tenant. The valuation process should quantify the disadvantages of the tie and weigh them against the special commercial or financial advantages (SCORFA's) offered by companies operating the tied model. One of the SCORFA's is a lower rent, to counter inflated tied product prices, and it is the establishment of this rent assessment that needs to be the priority of RICS guidance, incapable of misinterpretation. The principle is that rent is reduced as tied prices increase and vice versa. The quantified cumulative effect of SCORFA's (including a lower rent) should be capable of balancing the quantified effect of higher tied product prices. The revised guidance, sadly, is denying this outcome due to misuse.

33. It is of little comfort that pub companies must adhere to RICS guidance if that guidance is so easily abused. It is imperative that areas of manipulation of RICS guidance are closed.

34. Recommendations

35. Government urge the RICS revisit their guidance as a matter of urgency and reword to ensure misinterpretation is avoided

36. All rent assessments, particularly rent review assessments, should be signed off by a RICS qualified individual.

37. The New Code

38. The industry code should be applicable to all agreements, for example, all licensees, tied or free of tie should be entitled to an open and transparent rent review negotiation. Pub companies operate various model agreements including brewery style tenancies and we understand these too would be covered by appropriate code provisions.

39. The industry mediation attempt proved that poor and inadequate code provisions will fail to deliver reform. The Government must recognise that the industry cannot police itself.

40. Recommendation

41. The final industry agreed code to be made legally binding BUT the proposal to rush through any code to be legally binding should be postponed until IPC have been consulted on content.

42. Full cross party and industry participant consultation. IPC members to be consulted on code content, before codes are put on a legal footing.

43. The Industry Framework Code needs to be substantially strengthened.

44. Flow Monitoring

45. The justification used by Government for not getting involved in the flow monitoring dispute, and responding to the Committee recommendations, is that they indicate flow monitoring equipment is not "in use for trade" as defined by section 7 of the Weights and Measures Act 1976. In its benign monitoring application it is accepted the equipment is not "in use for trade".

46. If the flow monitoring equipment is used for the calculation of fines it may be "in use for trade". Brulines themselves, in their Comprehensive Guide to Flow Monitoring, have confirmed this to be their understanding (page 10 2(f)):

> 47. *". . . In regard to section 7, Brulines is confident that the commercial application of its equipment, as utilised by our customers and as described in this guide, is not 'use for trade' ie measurements are not taken directly from the flow meter and applied as fines or levies. . ."*

48. As evidence to the select committee demonstrates, some of Brulines clients do use measurements taken directly from flow meters and apply fines accordingly, thereby potentially using the equipment for a trade use by Brulines own admission. Evidence was submitted to the last committee that an estimate £10 million in fines were imposed last year alone.

49. It follows that equipment in a licensees cellar does not need to be prescribed until the point where an allegation and fine is imposed using measurements from that equipment.

50. Recommendation

51. The Government should confirm that, in circumstances where measurements are taken directly from the flow monitoring system, and applied as fines or levies, then the system should be prescribed or that, in accordance with the BIS select committee summary (2009–10), codes should include a requirement for additional evidence above and beyond the data from flow monitoring equipment in any accusation of buying outside of the tie. Additional evidence must be physical and not just a signed confession from the lessee.

52. Conclusions

53. The response proposed there should be immediate reforms to strengthen the Code by the end of 2011. The second stage is purported to be the more substantive issues, it is imperative a timetable is set for this and that meaningful consultation with IPC and other industry bodies is undertaken. An independent Government representative should be present at these consultations in order to report progress and areas of failed agreement.

54. The immediate reforms agreed between Government and BBPA need to be fully detailed before they are considered appropriate for the industry.

55. Ministers can not just expect this process to proceed without the prospect of Government intervention in the event of failure. It is uncertain how and whether the BBPA will deliver what it claims are concessions Government must retain a watching brief and there should be a review of progress after three months, with the prospect of a twelve month review if deemed necessary by those representing licensee and consumer interests.

56. Government committed to acting upon the Business Innovation and Skills Select Committee report and that if the committee so recommended, Government would consult on how to put an industry code on a statutory footing this must remain as a clear and present danger to those violating the system.

57. The industry does need stability and some anticipation of a secure future. IPC would envisage all pub owning companies will continue to convert estates over to managed houses, turn to short brewery style unprotected tenancies, with no right to renew, and continue their disposal for redevelopment programmes, none of which is helpful to reignite the sector or encourage investment. The right RICS guidance would mean fair, reasonable and competitive tied rents and with it renewed licensee profitability, this would encourage entrepreneurial flair and with it the reinvestment the Government seeks to achieve in their response.

## APPENDIX 1

### LIBERAL DEMOCRAT PUB POLICY—GENERAL ELECTION 2010

"Giving Pubs Back to Communities"

*Liberal Democrat policies to support and save the British pub*

Introduction

The British pub is an important part of this country's history and heritage. Pubs are more than just businesses; they are often the hub of the community as a focus for social, sporting and charitable activity. Pubs are a place for people to mix socially and so play an invaluable role in strengthening our communities and bringing people together.

The pub is crucial to our heritage, history and culture. Pubs sit at the heart of the British tourism industry with tourists and visitors to Britain making 13.2 million visits to our pubs each year[i]. The pub trade as a whole is also a major national industry which employs 540,000 people directly and 380,000 in associated trades[ii].

The pub also provides a sociable and controlled drinking environment which is therefore important in terms of encouraging responsible drinking.

Pubs up and down the country are being closed, for a variety of reasons, often when they don't need to close, and more must be done to address this. Despite the evident decline in the pub industry the Labour Government has neglected to tackle these issues. We propose a series of measures to help reverse the trend and to support and preserve the Great British pub.

1. *Minimum Pricing*

The average price of a pint of beer sold in a pub is around £2.70[iii]. Supermarket deals undercut these prices with offers such as eight 275 ml cans of beer for £4. This has caused a shift in alcohol consumption away from the controlled pub environment towards drinking at home or on the streets. We support a ban on below-cost selling, and are in favour of the principle of minimum pricing, subject to detailed work to establish how it could be used in tackling problems of irresponsible drinking.

2. *Beer Duty*

Beer is an iconic British drink, yet Labour's introduction of the beer duty escalator has increased beer prices and made it harder for pubs to survive. Beer duty has increased by over 20% in only two years[iv]. High levels of beer duty make it more difficult for pubs to survive and increase the likelihood that people will drink at home. We will review the complex, ill-thought-through system of taxation for alcohol to ensure it tackles binge drinking without unfairly penalising responsible drinkers, pubs and important local industries. As part of this we will review the beer duty escalator and also believe that, through the EU, we should explore the possibility a preferential duty for draft beers which are more expensive to both serve and store, something that would help pubs.

3. *Planning/Community Consultation*

Currently the pub has very little protection in planning law allowing companies and developers to close pubs and redevelop them against the wishes of the local community who have very little say. This must change.

Change of Use and Demolition (England and Wales)

Planning permission is not currently required to change a pub into a restaurant, shop or café and it remains legal to close a profitable pub overnight against the wishes of the community.

The community pub should be recognised in planning law by ensuring that any change of use or demolition is subject to the normal planning process. Every attempt for change of use for a pub should involve going through the planning process including a mandatory independent viability test, undertaken by the local authority. This would give local communities a say over the future of their pub and stop profitable pubs being closed.

A right to buy

Where pub owners are seeking to sell pubs, the community and current lessee should have the opportunity to purchase the business as a going concern at fair market price.

Restrictive Covenants

We would like to see a change in planning legislation which would end the use of Restrictive Covenants in the pub trade. These covenants prevent pubs from operating as pubs once they have been sold and should be outlawed.

Sustainable Communities Act (England)

We will implement the Sustainable Communities Act Amendment Bill, which gives local communities the right to propose actions in their area to improve sustainability. This will ensure that the Sustainable Communities Act 2007 is an ongoing process that allows local people to continue to submit proposals to the Government, rather than a one-off process, and so will enable people to take action to protect their community pubs**.**

4. *Reform of the "Beer Tie"*

The operation of the beer tie by large pub companies can be unfair to tenants, harm consumers by inflating the price of a pint and cause pub closures. We would seek to reform the tie in the following ways to rebalance the relationship between the large pub companies and their licensees:

— A new independent statutory code of practice should be imposed to uphold the principle that the tied tenant should be no worse off than if free of tie.

— All tied tenants should be able to buy one guest beer, and tenants should also be given a genuine choice to opt out of the tie. However, any landlord with a brewing capacity and who owns fewer than 500 pubs should be exempt from any regulatory intervention in respect of the beer tie—helping small regional and family brewers.

— Rent calculations should take account of the true costs of running the business and there should be changes to rental valuations and the abolition of Upward Only Rent Review clauses from all lease agreements.

— Tied arrangements for fruit and quiz machines should be removed from all tied arrangements.

The issues facing the leased pub sector should be referred to the Competition Commission who should consider whether there should be a maximum limit on the number of pubs owned by any one pub company, both nationally and in any one region/area.

5. *Fair Rates*

Liberal Democrats will make small company relief automatic and also seek to ensure that the burden is spread more equitably between small and large businesses.

We would retain the mandatory 50% business rate relief scheme available to sole village pubs and encourage local councils to use their discretionary powers to increase this relief to 100%. We also believe that in time a study should be commissioned into the costs and benefits of extending the scheme to other pubs that act as hubs of their local community and can demonstrate this.

6. *Cutting the Red Tape*

Regulations are needed to protect consumers, however they must be proportionate to the situation. The Licensing Act 2003 has created red tape for publicans and the cumulative burden of regulation is especially heavy on small businesses as they lack the economies of scale available to large businesses. We believe that:

— Where possible we should have a "one in one out" policy for regulations to prevent an increase in the regulatory burden for pub owners.

— Follow up post-implementation reviews should also be carried out to check for unintended consequences of regulations. This will ensure that pubs are not placed under unnecessary financial burdens.

7. *Live Music*

Small venues are vitally important to Britain's creative culture. Since the Licensing Act 2003 there has been a decrease in live music in small venues due to the red tape involved in hosting an event. We will cut red tape for putting on live music. We will reintroduce the rule allowing two performers of unamplified music in any licensed premises without the need for an entertainment licence and allow licensed venues for up to 200 people to host live music without the need for an entertainment licence.

(i) Axe the beer tax, *A manifesto for supporting and promoting Britain's beer and pub trade.*

(ii) *Ibid.*

(iii) See http://www.pintprice.com/region.php?/United_Kingdom/

(iv) British Beer and Pub Association, *Budget Beer Tax Hike*—BBPA Statement, 24 March 2010.

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**Written evidence submitted by Justice for Licensees**

Justice for Licensees would like to thank the Business, Innovations and Skills Committee for the opportunity to be able to submit evidence with reference to the Government Response.

BACKGROUND

Justice for Licensees (JFL) is a campaign group, initially borne out of the need to discover whether the questionable practices of the pubcos were prevalent across the companies and the country. JFL, through its campaigning, has in excess of four hundred and thirty thousand members and supporters, these consist of tied licensees, free of tie licensees, managers, ex licensees, employees of the industry and consumers. We are very proud to be one of the founding members of the Independent Pub Confederation (IPC). JFL fully supports the findings and recommendations made in the Business and Enterprise Committee 7th report—Pubcos 2008–09 and the Business, Innovation and Skills Committee reports of 2009–10 and the subsequent 10th report of 2010–12.

SUMMARY

We are disappointed with the government response, we are disappointed and frustrated that they have reneged on their pre-election promises (1 & 2) and with the apparent failure of ministers to engage with all stakeholders.

Tackling the symptoms of the imbalance in power and financial reward for risk taken, without resolving the underlying causes offers only short term relief, ultimately government will have to address the underlying cause. Lack of competitiveness in conjunction with a raft of questionable practices and a certain lack of forward thinking have led to an imbalance in the market resulting in the evidence that the select committees have witnessed. It is, without doubt, the licensees, their customers and the pubs of this land bearing the brunt of the cost.

CONTENT

(i) We welcome the governments clarity in declaring the principles it has followed:

— That the OFT has found no evidence of competition problems that are having a significant adverse impact on consumers and therefore the Government is not minded to intervene in setting the terms of commercial, contractual relationships.

— That legally binding self-regulation can be introduced far more quickly than any statutory solution and can, if devised correctly, be equally effective.

(ii) Competition law has three main elements and in particular:

— Prohibiting agreements or practices that restrict free trading and competition between business.

(iii) It is apparent that the tied model is based upon a prohibitive agreement which restricts free trading. We believe that the OFT and now the Department for Business, Innovations and Skills have failed to account for one of the main elements of competition law and that is competition between business. It would appear that the ability of tenants/lessees to be able to compete in the open market place may well have been overlooked somewhat? Due to over-renting and artificially inflated product lists competition between business has been severely restricted and restriction of competition should not be acceptable to any right thinking individual.

(iv) Using the government's statistics 28,800 pubs operate under the tenanted/leased model which equates to 51.8638573743922% of the market, we believe that it would be ill-conceived to think that the brewers do not over rent or overcharge for their products, we believe that this produces a dominant market share.

(v) It is not beyond the wit of man to realise that in business, any business, costs have to be passed on to the end consumer, to suggest that manipulation of the rental system in conjunction with artificially inflated prices in a dominant market place will not significantly impact adversely on the consumers is questionable to say the least. It is incumbent upon this government to resolve this underlying cause, until this is addressed sufficiently the suffering and misery witnessed will continue and grow exponentially.

(vi) We understand that under European law the tie is legal, however the principles that the government bore in mind in determining the most appropriate course of action was "That the OFT has found no evidence of competition problems that are having a significant adverse impact on consumers" and not the legality of the tie. We believe that there are competition problems between business which will undoubtedly have a significant adverse impact on the consumer and that is incumbent upon this government to resolve this underlying cause. We believe that it is totally unacceptable that this government rely on a principle which is open to question.

(vii) We fully support a quick and effective resolution, people's lives and livelihoods and the wonderful icon that is the Great British pub are at stake here. That said the resolution must be effective and we are not convinced that the proposals put forward will be effective. This government are relying on an Industry Framework Code, written by the very people who have been found to be wanting (3), to prevent the ills that are so apparent (4,5 & 6), we would welcome much further transparency on the following:

— Why does the government think that the majority of stakeholders in this industry(7) refused to endorse the Industry Framework Code?

— Do they not find it questionable that the only bodies to sign up are the bodies that have been highlighted throughout the 4 reports (8)?

— Would this government allow criminals to write the penal reform code and implement said code? What's the difference?

— We would like full transparency of all and every "industry" meeting, telephone call and correspondence which the government has based its decision upon.

We appreciate that we require much further transparency from the government before reaching a final conclusion.

*Conclusion to date*

If conclusions have been drawn on principles that are questionable and on an imbalance of input then those conclusions are open to question and have no right to influence such an important issue.

### The Beer Tie

(i) We are bitterly disappointed that government have failed to take into account business closures when using closure statistics to form their conclusions. There are many business closures that do not reach the criteria for pub closures because the pub does not close because they have a management company or tenant sat by waiting to move in, however that business closes in exactly the same way as if the pub had closed. It is incumbent upon this and any government to do their utmost to get to the truth of the matter, until they address this underlying issue they will be at a disadvantage in securing the correct proposals that will protect the innocent and bring about the fairness and justice that many are striving for to protect the British Pub.

(ii) We are unsure why the minister would appear to believe that this industry is calling for abolition of the tie in its entirety (9), that is not the case at all (10) and would welcome further transparency on how he reached this conclusion.

(iii) We would welcome further transparency why a FOT option with an open market rent review would be so detrimental to the industry when the majority of stakeholders feel it is the way forward and the pubcos have stated quite categorically that the majority of their tenants are indeed happy with the tie and any dissent is due to a vocal minority (11). If it is the case, that the majority are indeed happy, then the pubcos have nothing to worry about as the majority will remain tied, if the pubcos have been somewhat economical with the truth on this issue then what other truths have they been economical with? Perhaps more importantly if there is a level of discontent that means that sufficient number of tenants choose to go FOT as to jeopardise the pubco business, then does this not show the level of discontent within the estates?

(iv) We are pleased that the committees and the government have realised that "significant reforms are needed quickly", we believe whole heartedly that the committees have identified the areas for significant reform but are bitterly disappointed that this government have failed to heed their own Select Committees.

### Conclusion

We believe that the government proposals will fail to significantly address the right balance of risk and reward in the relationship between tenant/lessee and landlord. We have to ask the obvious questions, what is the point of years and mounting costs of endless investigations if the government choose to cherry pick rather than what is right, fair and just? How can the government ever expect to be trusted if they renege on their own promises so easily?

### Brulines

We would welcome full disclosure on exactly how this government reached the conclusion that Brulines equipment is not in use for trade. We are aware of QC opinion which believes that the equipment is in use for trade.

### Rentals

It is apparent that whilst the RICS improved guidelines are to be welcomed, they are open to manipulation. It is imperative that this government ensures that RICS re-word the improved guidelines to prevent manipulation and abuse.

### The Governments Response

We are pleased that the committees and the government have realised that "significant reforms are needed quickly", we believe whole heartedly that the committees have identified the areas for significant reform but are bitterly disappointed that this government have failed to heed their own Select Committees.

- An Industry Framework Code is of no use whatsoever if it fails to address the underlying causes which have brought about years of suffering and misery and years of government investigation and suggestion of resolution.
- PICAS is of no use if it can be manipulated by those with a conflict of interest.
- A three year re-accreditation of codes is of some use if and only if the codes address the underlying causes and any loopholes that may become apparent are closed to prevent further abuse.
- PAS must provide full disclosure on all aspects of this industry, warts and all, failure to do this will not prevent the atrocities that we have witnessed.
- A strengthened Framework Code can only be welcomed if it has the full support of the majority of stakeholders, licensees included!

### Final Conclusion

Whether the government proposals will address the significant reform that all have identified is required will depend entirely on whether this government will ensure that underlying causes are addressed with all due haste.

To date the government have failed to address the underlying causes, they are treating the symptoms and not the disease.

*1 December 2011*

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**Written evidence submitted by LSO Ltd**

Thank you for informing me that we have the opportunity to respond to the Government Response.

I am extremely disappointed. As the report pointed out this is the last in a series of Select Committee reports in which time after time the AWP tie has been recognised as of no benefit to the leaseholders and recommended to be removed. Each time the Landlords ignore the recommendation.

This time the report recommended to government to legislate the scrapping of the AWP tie. There is no reference to this in the Government response. The only reference to AWP is in regard to calculating rent reviews. If there was no tie then machine income would have no relevance to rent reviews as it would be private information retained by the leaseholder. But there is no mention of removal of the AWP tie.

I have already submitted evidence to the select committee before its recent deliberations. However since the publication of the recent sessions and in light of the recommendation to remove the AWP tie I contacted both Punch and Enterprise. At the select committee it became clear that several of the Landlords do offer some Free of AWP tie leases. I asked for details of their existing free of AWP tie pubs in the M25 area so that I might be able to tender individually to supply. I wanted to offer leaseholders true free market options. I was refused any information or indication as to the location of these houses under the auspices of "consumer confidentiality". How is this a positive response to offering leaseholders true free choice? It serves to illustrate the obstacles that the Landlords put up in this process—that was highlighted again in the committee report.

I was also advised by Punch that they had recently reviewed their supplier list and I was not on the approved list. This was revealing, as in February I had approached Punch to be considered for nomination. I was told at that time that they had sufficient suppliers but if a review in the future was made they would keep my details on file. Clearly a review has taken place—but without my knowledge or consideration. This does nothing but reinforce the notion that the tied AWP system is a closed shop—allowing a mechanism to source extra revenue from leaseholders via an exclusive arrangement that benefits only nominated suppliers and the Landlords. To be on the nominated list you have to pay a premium per site to the Landlord. Once nominated you have to use a Landlord recommended rent list to offer leaseholders. This allows an extra sum to be levied by machine suppliers to "cover" the premium paid to the Landlord. So the nominated supplier doesn't lose out but the Landlord gains extra revenue at the expense of leaseholder/tenant as the increased rent supplement collected by the operator funds the premium paid to be on the nominated list. Then of course there is the Landlords share of machine income. In the Free trade where publicans have freedom to choose supplier there is no share and rents are a product of a competitive market place—not a fixed scam. Free trade rents are generally 20% lower than the list system offered by nominated companies. It is also worth remembering that to be able to supply AWP in the UK an organisation has to undergo a rigorous process of application with the Gambling Commission. So any argument that allowing "other" suppliers to supply lowers standards should be taken in that context.

For me personally the scrapping of the tie would open up the market place for me to supply. However I am but a small player so in the greater scheme of things I would have little influence. However the principle of improving freedom of supply for consumers is very important. By removing the tie—the leaseholder would have a wider choice of supplier and be considerably better off financially. The machine supply business is very competitive and this competition drives performance and machine profitability for both supplier and customer. This would impact positively on the business overall and result in making the viability of the pub more secure—which is good for the general community. So this is an important issue for the general consumer.

I would urge the Government to revisit the report from the select committee and add in the legislature to force freedom of tie on AWP.

*Leigh Smith*

*30 November 2011*

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