



Pub Companies (Pubcos) and tied tenants

FSB Policy Paper

Over the past year 2,377 pubs have closed. We are now watching more than 50 pubs closing each week – that is over seven pubs a day.¹ If pubs are not saved now, the next generation will not be able to visit a traditional pub - a British institution.

FSBs Recommendations

1. Abolish the tie where it does not work giving tied tenants a chance to make a fair profit.
2. Initiate an Ombudsman for tied publicans who will support and advise tenants in the event of conflict that cannot be resolved between the tenant and the Pubco.
3. Enforce fully transparent rent reviews through a statutory code, allowing tenants to understand on what basis rents are calculated.

Introduction

The UK pub market is made up of 57,500 pubs, almost 40,000 of which are tied². The whole leisure industry including restaurant, night-clubs, hotels and private members clubs brings the number of outlets to 150,000. However, this report only deals with the pub sector and predominantly the tied pubs in that sector.

The tie is a contract between a Pub company (Pubco) and a tenant which obliges the tenant not only to pay rent to the Pubco but also to buy all tied products such as beer, wine, spirits and Amusement with Prize (AWP) machines. By contrast a free house pub can buy their beers, wines and spirits from any wholesaler on the open market and therefore browse around for the best deals. The tied contract is designed to give tenants certain discounts, but these are calculated without transparency and are dependent on sales volumes. It is therefore often the case that a tied tenant pays more for their products than a free house – despite discounts.

The pub sector is of great importance to the UK market as a whole. Over 80 per cent of pubs are small businesses run by tenants, lessees and owners and over 600,000 people rely on pubs for their employment, yet 24,000 people working in pubs lost their job over the past year.³

¹ British Beer and Pub Association (BBPA), www.beerandpub.com

² "Pub Companies – Seventh Report of Session 2008-09", Business and Enterprise Select Committee, page 9

³ British Beer and Pub Association (BBPA), www.beerandpub.com



The FSB believes that the tie is the principal reason for the number of pubs shutting down on a weekly basis, and that it must be reformed.

The FSB represents approximately 4,600 publicans, 62 per cent of which are tied and 38 per cent of which are untied. This report is based on two surveys, one carried out in October 2008 and a second survey carried out in July 2009.

Since the publication of the Business and Enterprise Select Committee Report into Pubcos in May 2009 there has been significant activity in the sector.

The following steps have been taken. The Association of Licensed Multiple Retailers (ALMR) has initiated a mediation panel; the Campaign for Real Ale (CAMRA) has lodged a super complaint with the OFT; the Government has decided to bring forward the publication of its 'Land Agreements Exclusion and Revocation Order' consultation, which was launched in July 2009 as opposed to late autumn 2009; and the European Union has opened a consultation on the Block Exemption for the UK beer tie under European Competition Law.

1. Tied vs. Untied

The FSB's surveys show that different issues affect publicans in the tied and the untied trade.

For example, 58 per cent of tied publicans say that the level of business support is a problem for their business and that they do not receive anywhere near the amount of support promised by the Pubco upon entering a tied lease. A further 69 per cent of tied publicans say that team-work between the tenant and Pubco is a problem for their business and that once the contract is signed they are left to their own devices despite their contractual agreement.

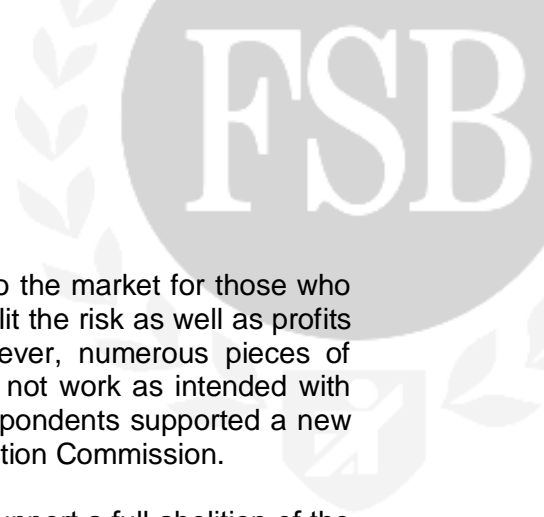
At the opposite end, 95 per cent of untied publicans say that increased alcohol tax is a problem for their business, 59 per cent state that the smoking ban is an issue and 95 per cent of untied publicans say that cheap alcohol at supermarkets is a problem for their business. A further 84 per cent of say that the current recession is a problem.

Pubcos take the majority of their revenue from the beer tie and less from the rent on their property. The two largest Pubcos, Punch Taverns and Enterprise Inns, together own roughly a quarter (approximately 15,000) of Britain's pubs.⁴ Both have seen their share values fall by 90 per cent since the summer of 2008, leaving them with little room to reallocate finances and help struggling tenants. Punch Taverns, for example, now has barely £300 million of equity compared to overwhelming debts of £4.5 billion. When a business fails, which over the past three years has been the case in 37 per cent of Punch's Estate, the Pubco keeps the deposit and moves on to the next tenant.

By virtue of its loose parameters (such as discount, rents, and business support being dependent on takings, location and sometimes the relationship between the Pubco and the tied tenant) the tie has allowed for ad hoc practices and arrangements that are biased against the tenant. This was proven by the Business and Enterprise Select Committee Report.⁵

⁴ *Pub Companies – Seventh Report of Session 2008-09*, Business and Enterprise Select Committee, page 9

⁵ *"Pub Companies – Seventh Report of Session 2008-09"*, Business and Enterprise Select Committee, page 8



The argument in favour of the tie is that it offers a cheap entry to the market for those who have no means of buying their own pub. The tie is intended to split the risk as well as profits of running the pub between the tenant and the Pubco. However, numerous pieces of evidence and research by the FSB, shows that the model does not work as intended with Pubcos taking the majority share of the profit. 69 per cent of respondents supported a new thorough investigation of the beer and pub market by the Competition Commission.

Nearly three quarters (73 per cent) of FSB's publican members support a full abolition of the tie. Though a complete and immediate removal of the tie may not be possible due to market circumstances, the tied model must be urgently reviewed.

2. Ombudsman for the tied trade

As a tied publican there is currently nowhere to turn for help in case of dispute with the Pubco. The only alternative is to try and negotiate with your Business Relation Manager (BRM), employed by the Pubco, or for the publican to pursue the legal route.

An independent ombudsman would be able to advise publicans and help resolve disputes. Nearly three in five survey respondents support the creation of an independent ombudsman to assist and advise tied publicans in conflict resolution cases.

The ombudsman would function as a cheap and independent arbitration service built on a clear statutory code of conduct or through the power of statutory instruments.

Over half (53 per cent) of survey respondents supports a statutory code for Pubcos.

3. Transparency in how rents are set

The current lack of transparency in how rents are set and reviewed is a major problem for the tied pub sector. 77 per cent of tied publicans say that the transparency in rent reviews is a problem for their business. The arbitrary manner in which rents are set makes it difficult for tenants to dispute and they lose out as a result.

As many as 75 per cent of FSB members support the Business and Enterprise Select Committee's suggestion that tied publicans should be able to opt out of the tie at the signing of a contract or at each subsequent rent review.⁶

All rental valuations must be carried out by using sound accounting practices – based on how the pub is performing; currently this is not the case as rent is calculated on projected performance. Instead the profit of a pub should be on the basis of both capital and rental valuation by using factual figures based on fair maintainable trade.

Tenants must, through transparency, be given the chance to assess whether or not they are being treated fairly. Rents should be reasonable and sustainable and not leave the tenant in a bankrupt position where it is impossible to make ends meet despite having good sales figures on barrelage.

⁶ *Pub Companies – Seventh Report of Session 2008-09*, Business and Enterprise Select Committee, page 52



Conclusion

For the reasons outlined above the FSB is calling for:

- The tie to be abolished where it does not work giving tied tenants a chance to make a fair profit.
- The creation of an Ombudsman for tied publicans who will support and advise tenants in the event of conflict that cannot be resolved between the tenant and the Pubco.
- Fully transparent rent reviews to be enforced through a statutory code, allowing tenants to understand on what basis rents are set.

Key statistics

87 per cent of tied publicans say that the tie is a problem for their business.

Three in four of all FSB publican members support abolition of the tie

56 per cent supports the initiation of an independent ombudsman to support tied publicans in conflict resolution cases.

77 per cent of tied publicans say that the transparency in rent reviews is a problem for their business

69 per cent supports a new thorough investigation of the beer/pub market by the competition commission

53 per cent supports a statutory code for Pubcos.

75 per cent supports the opportunity to opt out of the tie at the signing of a new contract or at each subsequent rent review.

69 per cent supports a new thorough investigation of the beer/pub market by the Competition Commission

For further information

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