

Enterprise Inns Plc -v- Broad Green Tavern Limited (1) Daniel Joseph Dempsey
(2)

Summary

- **The tenant had their own flow monitoring system installed in the pub but objected to Vianet's iDraught being installed.**
- **One of the tenant's arguments was that the equipment was unlawful under Section 17 of the Weights & Measures Act 1985.**
- **Judge found that the equipment is not 'in use for trade' and is not covered by the Weights & Measures Act 1985.**

Unique Pub Properties Limited ('the landlord') let Premises known as the Broad Green Tavern, Croydon to Broad Green Tavern Limited.

The landlord wished to install Vianet's iDraught system in the public house. The tenant objected to the installation on the grounds that:-

- The obligation in the lease to allow access to the landlord did not cover flow monitoring equipment for the purpose of monitoring compliance with the tie.
- The right of entry did not cover the installation of equipment which is unlawful.
- The right to install equipment did not cover equipment that would interfere substantially with reasonable operation of a public house.
- The tenant required the landlord to prove that the equipment satisfied the requirements for electrical safety and food hygiene.

The tenant had installed their own flow monitoring system from a company called Searflo which they used for stocktaking and staff training purposes. They claimed not

to object to the installation of flow monitors per se, but they had a particular objection to the installation of any product manufactured by Vianet. They claimed to have had poor experiences with Vianet's products in the past.

The Judge rejected the tenant's arguments that the flow monitors were not of the type of equipment the landlord was entitled to install under the lease.

The main substance of the case centred on whether the equipment was covered by the Weights & Measures Act 1985. It was put to the Judge by the tenant's barrister that the equipment was in 'use for trade' because there were transactions with which it was used in connection with or with a view to. The transactions the tenant's barrister identified were:-

- a. The sale of beer and cider to customers.
- b. The purchase and sale of beer and cider from third parties in breach of the tie.
- c. The raising of a damages claim by the landlord against the tenant for breaches of the tie.

The Judge analysed each argument and rejected them. The Judge referred to the authority of the Onifas case on the issue of the Weights & Measures Act and effectively agreed with His Honour Judge Behrens. The Judge concluded *'Accordingly I conclude that BGTL and Mr Dempsey have no arguable defence which seeks to rely on the provisions of Section 7 and 17 W&MA.'*

The Judge went on to conclude that he could see no argument to support any allegation that the landlord's decision to install the equipment would substantially interfere with the operation of the tenant's business or that the landlord's decision to install was arbitrary, capricious or unreasonable.