



Pubs Code
Adjudicator

CONSULTATION

Investigation & Enforcement
Guidance

AUGUST 2016

Contents

Consultation on Investigation & Enforcement Guidance.....	3
1. How to respond	5
2. Confidentiality and data protection	6
3. Help with queries.....	6
4. The proposals	7
5. Impact	21
6. Public Sector Equality Duty	21
7. What happens next?	22
Annex A: Consultation principles.....	23
Annex B: List of individuals/organisations consulted	24

Consultation on Investigation & Enforcement Guidance

The office of the Pubs Code Adjudicator (the PCA) was created by Part 4 of the Small Business, Enterprise and Employment Act 2015 (the Act)[1] (as amended by section 40 of the Enterprise Act 2016) (the Act). The PCA is a corporation sole and an independent office-holder carrying out functions on behalf of the Crown. The PCA is appointed by the Secretary of State, and Paul Newby took up the role of the first PCA on 2nd May 2016.

The PCA role is to encourage and enforce compliance with the new statutory Pubs Code which came into force on 21st July 2016[2]. The Code has two over-arching principles [3]:

Fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants;

Tied pub tenants should be no worse off than they would be if they were not subject to any product or service tie.

The 'pub-owning businesses' (POB or POBs) to which the Code applies are pub companies that own 500 or more tied pubs in England and Wales[2]. At the time that the Code was introduced there were six such companies, collectively operating around 12,000 tied tenancies:

- Admiral Taverns Ltd
- Enterprise Inns PLC
- Greene King PLC
- Marston's PLC
- Punch Taverns PLC
- Star Pubs and Bars (Heineken UK)

The PCA has a statutory duty to arbitrate (or appoint another person to arbitrate) disputes referred to the PCA under the Code; and also a power to investigate where the PCA has reasonable grounds to suspect that there has been a breach of the Code. If the Pubs Code has been breached, the PCA may take one of a number of enforcement actions – including the imposition of a financial penalty.

[1] Section 41 and Schedules 1 – 3

[2] The Pubs Code etc. Regulations 2016 (2016 No.802)

This consultation sets out the guidance that the office of the PCA intends to follow when considering whether to carry out an investigation, and the approach it will take on penalties and enforcement. In more detail the guidance covers;

The criteria that it intends to adopt in deciding whether to carry out investigations;

The practices and procedures it intends to adopt in carrying out investigations;

The criteria that it intends to adopt in choosing whether to use its enforcement powers, and which ones; and

The criteria that it intends to adopt in deciding the amount of any financial penalty.

Thank you for taking time to read and respond to this consultation.

We look forward to hearing from you.

1. How to respond

1. This consultation will begin on 19 August 2016 and will run until 30 September 2016.
2. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.
3. You can reply to this consultation online at <https://www.gov.uk/government/organisations/pubs-code-adjudicator>
4. The form can be submitted online or by email or by letter to:

The Pubs Code Adjudicator

Lower Ground Floor

Victoria Square House

Victoria Square

Birmingham

B2 4AJ

Email: office@pca.gsi.gov.uk

5. A list of those organisations and individuals consulted is in Annex B. We would welcome suggestions of others who may wish to be involved in this consultation process.

2. Confidentiality and data protection

6. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
7. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

3. Help with queries

8. Questions about the policy issues raised in the document can be addressed to

The Pubs Code Adjudicator

Lower Ground Floor

Victoria Square House

Victoria Square Birmingham

B2 4AJ

Email: office@pca.gsi.gov.uk

The consultation principles are in Annex A.

4. The proposals

Investigations

Chapter 1: Criteria for Commencing an Investigation

Duty of the PCA

1.1 The PCA may carry out an investigation if the PCA has reasonable grounds to suspect that a POB has either failed to comply with the Pubs Code; or has failed to follow a recommendation previously made to it by the PCA under section 56 of the Act.

1.2 'Reasonable grounds for suspicion' might be derived by the PCA from a wide range of sources. These may include, but are not be restricted to, evidence from complaints made by tenants (tied or untied) or their representatives; evidence from trade and professional associations and other third parties; from other POBs (within the remit of the Code or otherwise); from whistle-blowers; or from information that is otherwise in the public domain.

1.3 The PCA will take a targeted and proportionate approach and prioritise complaints and evidence that it receives in order to decide whether to initiate, when to initiate and whether to continue any particular investigation.

1.4 The PCA will use the following prioritisation principles in pursuing a targeted and proportionate approach to investigations:

- Impact;
- Strategic importance;
- Risks and benefits;
- Resources.

Impact

1.5 The PCA will consider both the extent of the impact on individual tenants; and the number of tenants who are affected, both directly and indirectly.

1.6 The PCA will arbitrate referrals made to it in relation to alleged breaches of the Code. This is likely to be the most appropriate approach to resolving complaints from individual tenants.

1.7 The greater the impact of the alleged breach, the more likely the PCA is to initiate an investigation, or to continue an investigation. The PCA will consider the total likely impact on tenants when deciding whether or not to initiate an investigation; and will be more likely to do so where the alleged breach of the Code is likely to have an impact on a greater number of tenants.

1.8 Where a complaint relates to an alleged breach of the Code that is likely to affect a relatively small number of tenants, the PCA would be likely to initiate an investigation:

- where the impact on each of the affected tenants is serious; or
- where the impact is considered likely to go on to affect an increased number of tenants without PCA intervention.

1.9 An allegation of a one-off breach of the Code – unless it is claimed to have had an impact on a very large number of tenants – would be less likely to lead the PCA to commence an immediate investigation. The PCA would expect to deal with such cases in the first instance by way of early discussions with the POB.

Strategic importance

1.10 The PCA will consider whether initiating an investigation will further its statutory obligations and uphold two core Pubs Code principles (the ‘fairness and no worse off principles’), namely:

The principle of fair and lawful dealing by POBs in relation to their tied tenants; and

The principle that tied pub tenants should not be worse off than they would be if they were not subject to any product or service tie.

1.11 The PCA will consider if the complaint appears to give rise to a likely pattern of behaviour leading to breaches the Pubs Code.

1.12 The PCA will be more likely to commence an investigation where there are reasonable grounds to suspect a pattern of breaches, intentional or otherwise, designed to frustrate or otherwise have the effect of frustrating the principles underpinning the Code.

1.13 Where the alleged breach of the Code appears to the PCA to be an isolated, inadvertent breach or the result of issues relating to the interpretation of the Code, the PCA may elect to proceed in the first instance by discussing the matter with the relevant POB concerned.

1.14 The PCA may also consider whether an investigation is likely to have any deterrent effect by encouraging wider compliance with the Code in the future.

Risks and benefits

1.15 Before initiating an investigation, the PCA will consider the likely effectiveness of the potential outcomes. These may not be restricted to formal enforcement remedies following a finding by the PCA of a breach of the Code; but may also include the effect of providing clarification of the Code.

1.16 When deciding whether to initiate or continue an investigation, the PCA will consider the likelihood of the investigation resulting in the ending of practices that breach the Code; and that will therefore reinforce adherence to the fairness and no worse off principles.

Resources

1.17 The PCA will only investigate or continue to investigate, and take action as a result of an investigation, where the PCA is satisfied that it is proportionate to do so.

1.18 Cost will not be the final determinant in deciding what action the PCA may take. The PCA may take action where the PCA assesses that the likely impact of the case on tied tenants, its strategic significance and the risks of not acting make an investigation an appropriate use of the PCA's time and resources, even where that may be resource-intensive. Conversely, the PCA may decide not to initiate or not to continue with an investigation where the impact, significance and risk are not considered to (or no longer) warrant the allocation of resources.

1.19 The PCA will not simply look at the likely costs of the investigation itself; but will look to balance this consideration against the opportunity costs – in the form of savings on future demands on its time and resources from further complaints and referrals for arbitration on the same or similar matters when considering whether to investigate or continue to investigate.

Chapter 2: Investigation Process

Requiring the provision of information

2.1 Once a formal investigation is opened, the PCA has statutory powers to require a person to provide documents or other information that is in their possession or control.^[1] This may include a requirement to provide information orally.^[2]

2.2 The PCA has a duty to keep this information confidential in line with schedules 14 and 15 of the Enterprise Act 2002.

2.3 The PCA may require any person to provide documents or other information in their possession or control. The PCA is not limited to approaching only the POBs suspected of breaching the Code; and may request documents or information from relevant third parties such as the complainant(s), other POBs, professional advisers, and trade and professional bodies.

2.4 The term 'document' includes, but is not limited to, all of the following – in both paper and digital form:

- tenancy agreements and licences (both tied and free of tie) and variations to such tenancy agreements and licences;
- rent proposals and rent schedules;
- statements of the nature of the tie;
- other contractual agreements between a tenant and their pub-owning businesses;
- records of conversations between tenants and representatives of their pub-owning businesses;
- invoices and delivery notes;
- other financial documents, such as sales projections and business plans; and
- other trade or business information.

2.5 The notice will also explain the possible consequences for failing to comply.^[3]

2.6 The PCA may also use its powers to require the production of information that is not already in recorded form. For example, the PCA may ask for information about informal or unrecorded meetings and contacts between a tenant and their Business Development Manager; or may ask a person to provide information about a particular aspect of the

¹ Paragraph 19(1) of Schedule 1 to the Small Business, Enterprise and Employment Act 2015

² Paragraph 19(4) of Schedule 1 to the Act

³ Paragraph 19(6) of Schedule 1 to the Act

sector based on their knowledge and experience or the knowledge and experience of their staff.

Form of the request

2.7 Whenever the PCA requests information from any person, it will provide a written notice (Disclosure Notice), specifying:

- the power under which the information is requested;
- who is required to provide the information;
- what information is required;
- to whom the information is to be provided;
- in what form it is to be communicated (e.g. post, e-mail);
- where it is to be provided;
- when, or the time by which, it is to be provided; and
- the form in which it is to be provided.

2.8 A person may receive a Disclosure Notice for the production of documents or information on more than one occasion during the course of the same investigation.

2.9 If an individual is required to attend a particular place, the PCA will offer to pay the necessary travel expenses [4].

Deadlines for providing information

2.10 Delays in the provision of information can have a significant impact on overall timescales. The PCA, therefore, expects an individual to respond to a Disclosure Notice in the timeframe specified in the request.

2.11 When specifying the time limit for the production of documents or information, the PCA will consider:

- the amount and the complexity of the information required;
- the resources that might be available to the individual, organisation or company concerned;
- the urgency of the case; and

⁴ Paragraph 19(7) of Schedule 1 to the Small Business, Enterprise and Employment Act 2015

- the overall public policy justification for speed of action.

Proportionality of requests:

2.12 In specifying documents or information in a Disclosure Notice, the PCA will not seek more documents or information than the PCA believes is necessary for the investigation.

Failure to comply with a Disclosure Notice

2.13 It is an offence intentionally to fail to provide documents or information following a formal request by the PCA [5] which can lead to a fine if convicted.

2.14 It is also an offence, which can lead to a fine if convicted, to knowingly provide false information in response to a disclosure notice by the PCA.[6]

2.15 It is a defence for a person charged with intentionally failing to comply with a Disclosure Notice to prove that there was a reasonable excuse for the person's failure.

Timescales for investigations

2.16 The PCA is not legally required to complete investigations within a specific period of time.

2.17 The PCA is sensitive, however, to the impact that a lengthy investigation could have – in terms of cost, business uncertainty and the prolonging of unfair practices – on both the tenants and the POB concerned. The PCA will therefore endeavour to complete investigations as soon as reasonably practicable in the light of all the circumstances.

Costs of investigations

2.18 The PCA may require one or more POBs to pay some or all of the costs of the investigation if the PCA is satisfied that they have failed to comply with the Pubs Code or failed to follow a recommendation [7]. These costs are recoverable by the PCA as a debt.

2.19 A complainant whose complaint is found to be vexatious or wholly without merit may also be required to pay some or all of the costs of the resulting investigation [8]. While this power is designed to deter false complaints, the fact that a complaint does not ultimately result in a finding that the Code has been breached does not automatically mean that it will be considered by the PCA to have been vexatious or without merit.

2.20 Where the PCA requires a POB or other person to pay investigation costs, it will provide them with a Costs Notice specifying:

- the grounds for imposing the requirement;

⁵ Paragraph 20(1) of Schedule 1 to the Act

⁶ Paragraph 21 of Schedule 1 to the Act

⁷ Section 59(1) of the Act

⁸ Section 59(2) of the Act

- how much is to be paid;
- by when the costs are to be paid; and
- how they are to be paid.

2.21 A person subject to a Costs Notice may appeal to the High Court in England and Wales against the decision to impose costs or the amount to which it relates [9].

Investigation reports

2.22 The PCA must publish a report on the outcome of an investigation [10].

2.23 The investigation report must contain:

- any findings by the PCA;
- any action that the PCA has taken or proposes to take as a consequence; and
- the reasons for those findings and any action taken or proposed.

2.24 The investigation report will not necessarily identify the POB concerned. Where a POB is to be identified, it will be given a reasonable opportunity to comment on the report in draft form before it is published.

2.25 Any complainants will not be identified in the report without their consent.

⁹ Section 59(4) of the Small Business, Enterprise and Employment Act 2015

¹⁰ Section 54 of the Act

Enforcement Powers

Chapter 3: Enforcement Options

3.1 Where, following an investigation, the PCA is satisfied that a POB has breached the Pubs Code, the PCA will consider enforcement action and may take one or more of the following enforcement measures:

- make recommendations to the pub-owning business or businesses concerned;
- require the pub-owning business or businesses concerned to publish information; or
- impose a financial penalty on the pub-owning business or businesses concerned up to a maximum amount equal to 1 percent of their total UK turnover.

(See Chapter 4 for further details)

The PCA's approach to enforcement

3.2 In all cases, the PCA's decision on the most appropriate form of enforcement will be guided by the Macrory Principles on Regulatory Sanctions.

The Macrory principles

3.3 The Macrory principles recognise the importance of giving independent regulators the flexibility to impose the sanction that they believe is most appropriate in the particular circumstances of any given case. They provide a framework within which regulators may make those judgements.

3.4 There are six principles – that a sanction should:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and the regulatory issue;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance where appropriate – although this does not extend in relation to the Pubs Code to the awarding of compensation to tenants; and
- aim to deter future non-compliance.

3.5 In applying the Macrory Principles, the PCA will pursue sanctions that are proportionate to the nature and seriousness of the breach. The PCA will therefore take an escalatory approach to the exercising of its regulatory and enforcement powers to secure compliance with the Pubs Code.

Decisions on enforcement options

3.6 When considering its enforcement options, the PCA will consider how to ensure the breach is not continued or repeated; and that POBs understand their compliance obligations. The PCA will also consider whether future compliance with the Pubs Code can most effectively be secured through informal interventions with POBs.

3.7 In taking an escalatory approach, a serious or persistent breach of the Code is more likely to lead to the imposition of a financial penalty. Where the PCA finds that there has been a serious breach of the Pubs Code the PCA will be more likely to take formal enforcement action. The PCA will have particular regard to the Macrory Principles on proportionality and deterrence.

3.8 In deciding what enforcement action is most proportionate in a particular case, the PCA will consider:

- the seriousness of the breach – including:
 - whether the breach is deliberate; as a result of negligence; or inadvertent;
 - whether it relates to the fairness and no worse off principles underpinning the Pubs Code;
 - the breadth of the breach – in terms of the number of tenants affected;
 - the depth of the breach – in terms of the impact suffered by each tenant;
- the most effective way to ensure compliance with the Pubs Code and therefore likely to elicit fewer complaints in the future– including the likelihood that the enforcement option chosen will actively deter similar breaches in the future;
- the likelihood of the enforcement option successfully restoring the tied relationship to what it would have been without the breach (although this does not include awarding compensation to tenants).

Informal interventions

3.9 Where the PCA considers it appropriate, and that it will lead to a more effective outcome, the PCA will seek to pursue informal regulatory action with a POB – if the PCA considers that this is the most effective and appropriate way of quickly changing behaviour, eliminating the benefits of non-compliance, and therefore giving effect to the fairness and no worse off principles.

3.10 Informal regulatory action may include discussions with a POB; providing them with clear advice on their Code obligations; and publication of further guidance on the Code and the PCA's approach to its enforcement.

The seriousness of the breach

3.11 When considering the seriousness of the breach, the PCA will look at both the nature of the breach in the context of the Pubs Code; and the scale of the harm that the breach has caused in relation to tenants.

3.12 Breaches of the Code of which the POB was, or ought reasonably to have been, are more likely to be regarded by the PCA as serious. In addition, the PCA is also more likely to consider breaches that could reasonably have been avoided as more serious. The PCA will also take into account the extent of the co-operation by the POB with the investigation.

3.13 The PCA is more likely to regard as particularly serious breaches of the Code that have or were intended to have the effect of frustrating the fairness and no worse off principles.

3.14 When considering the scale of the breach, the PCA will take into account not only the actual harm caused but also the harm that it was capable of causing.

3.15 When considering the impact of the breach on tenants, the PCA will assess both the number of tenants or groups of tenants that were or could have been affected; and the extent of the impact on individual tenants or groups of tenants.

Future compliance and deterrence

3.16 The PCA will have particular regard to the level of enforcement necessary to ensure that the breach does not continue; and that it is not repeated by the POB in relation to which the investigation related. The PCA will also take into account the likelihood of enforcement action in one case having a deterrent effect on other POBs; and its capacity to incentivise compliance with the Pubs Code more generally.

Chapter 4: Statutory Sanctions

4.1 The PCA's enforcement powers are set out in sections 55 to 58 of the Act and are summarised below. The powers are available where, following an investigation, the PCA is satisfied that a POB has failed to comply with the Pubs Code, or failed to follow a recommendation previously made by the PCA. The PCA may use these powers individually or in combination where different types of sanction are considered to best achieve effective compliance with the Code in a particular case.

4.2 Where an investigation concerns two or more POBs, the PCA may also decide to take different enforcement action in respect of different businesses; or to take enforcement action against some, but not all, of those businesses [11].

Recommendations

4.3 The PCA may make a recommendation to a POB recommending what the POB should do in order to comply with the Pubs Code and specifying the time by which they should do it [12].

4.4 Where the PCA makes a recommendation, it will monitor whether the recommendation has been followed [13].

4.5 For the purposes of this monitoring, the PCA may require a POB to produce documents or any other information in their possession or control. The PCA may specify:

- who is required to provide the information;
- what information is required;
- to whom the information is to be provided;
- in what form it is to be communicated (e.g. post, e-mail);
- where it is to be provided (and if an individual is required to attend a particular place, the PCA will offer to pay the necessary travel expenses);
- when, or the time by which, it is to be provided; and
- the form in which it is to be provided.

4.6 Failure to respond may be taken into account in considering whether the PCA has reasonable grounds to suspect that the POB has failed to follow a recommendation and whether to initiate a further investigation.

Effect of non-compliance

¹¹ Section 55(2) of the Small Business, Enterprise and Employment Act 2015

¹² Section 56(1) of the Small Business, Enterprise and Employment Act 2015

¹³ Section 56(2) of the Small Business, Enterprise and Employment Act 2015

4.7 The Act does not expressly provide for a sanction to be imposed on a POB that fails to comply with a recommendation.

4.8 Failure to comply with a recommendation may, however, be grounds to commence a new investigation [14]. Should a further investigation reveal that a POB has failed to comply with a recommendation, the PCA is likely to consider this to be very serious. The PCA would take further enforcement action that reflects the seriousness of such a finding.

Publication of information

4.9 The PCA may require a POB to publish information. In particular, this sanction may be considered where publication is likely to lead to future compliance with the Code and where the information to be published can be taken into account by those dealing with the POB.

4.10 Enforcement by way of publication of information will take the form of a Publication Notice from the PCA to a POB specifying [15]:

- the information that is to be published;
- how it is to be published – for example:
 - the media in which it is to be published;
 - the length of time for which it is to be published;
 - the manner in which it must be published – including size and prominence; and
- the date by which it must be published.

4.11 The PCA might, for example, require publication by way of any or all of the following:

- a press release;
- the POB's website or in its annual report;
- a newspaper advertisement;
- an open letter to any relevant trade or professional bodies.

4.12 If the POB does not publish the information, the PCA may bring civil proceedings in the courts in England and Wales to obtain an injunction or court order to compel compliance [16].

¹⁴ Section 53(1)(b) of the Small Business, Enterprise and Employment Act 2015

¹⁵ Section 57(2) of the Small Business, Enterprise and Employment Act 2015

Financial penalties

4.13 The PCA will use this power to impose a financial penalty on a POB to reflect the seriousness of the breach of the Pubs Code.

4.14 The PCA may take into account whether:

- the POB acted deliberately or was wilfully negligent;
- the breach relates to the fairness and no worse off principles underpinning the Pubs Code;
- the breach affects a large number of tenants; or has a disproportionately adverse impact on the affected tenants.

4.15 The PCA may choose to issue a financial penalty where it considers that it will constitute a serious and effective deterrent – both to the specific POB concerned and to any other POB – against future activities that may constitute a breach the Pubs Code.

Amount of the penalty

4.16 The PCA may impose a financial penalty up to a maximum of 1 percent of the 'POBs' annual turnover [17]. The pub-owning group is defined as the POB (as defined in section 69 of the Act) and its group undertakings (which has the meaning given by section 1161 of the Companies Act 2006).

4.17 The PCA will calculate the appropriate level of a financial penalty by applying the following steps.

- assessing an initial amount based on the seriousness of the breach of the Pubs Code (or failure to follow a recommendation);
- Adjusting the initial amount to take account of any aggravating factors, such as:
 - the extent to which the breach or failure was intentional;
 - whether there had been repeated or multiple breaches or failures;
 - whether the breach continued following receipt of a recommendation from the PCA;
 - where the breach was considered to be the result of negligence on the part of the POB, and the extent to which it could reasonably have been avoided.

¹⁶ Section 57(3) of the Small Business, Enterprise and Employment Act 2015

¹⁷ Section 58(1) of the Small Business, Enterprise and Employment Act 2015; regulations 5 & 6 of The Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016

- Adjustments for any mitigating factors, such as:
 - the extent of the POB's co-operation with the investigation;
 - the speed with which the POB acted to remedy the breach or failure.
- Any further relevant adjustments for example considerations of deterrence and proportionality.

Notification of the financial penalty

4.18 Where the PCA decides to impose a financial penalty, it must provide the POB with a written notice (Penalty Notice) specifying [18]:

- the grounds for imposing the penalty;
- the amount of the penalty;
- the period within which it must be paid; and
- how it must be paid.

4.19 The PCA will additionally explain in the Penalty Notice:

- the nature of the breach of the Pubs Code or failure for which the penalty is being imposed;
- the seriousness of the breach or failure;
- the extent of the impact of the breach on tenants; and
- the reasons why the PCA has therefore decided that other enforcement options are inadequate.

4.20 A POB may appeal against the imposition of a financial penalty or its amount to the High Court in England and Wales [19].

4.21 Financial penalties are recoverable by the PCA as a debt [20]. They will be paid into the Consolidated Fund [21]. They will not be used to fund the PCA's activities.

¹⁸ Section 58(2) of the Small Business, Enterprise and Employment Act 2015

¹⁹ Section 53(3) of the Act

²⁰ Section 53(4) of the Act

²¹ Section 53(5) of the Act

5. Impact

This consultation fulfils the PCA's statutory obligations (in the Act) to consult appropriate persons in advance of publishing guidance about how it will exercise its statutory functions to investigate alleged breaches of the Pubs Code; and to take enforcement action in respect of any breaches.

The impact of the introduction of the legislation to provide for a statutory Pubs Code, including investigation and enforcement provisions, was assessed by the Department for Business, Innovation and Skills (BIS) during the passage of the Bill (now Act).

The BIS impact assessment on the Pubs Code and Adjudicator (BIS0395) can be viewed at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408449/bis-15-64-pubs-statutory-code-and-adjudicator-final-stage-impact-assessment.pdf

6. Public Sector Equality Duty

No particular impacts arise in respect of this consultation and draft guidance on persons with protected characteristics. The PCA will, in exercising its investigation and enforcement functions, have regard to the Public Sector Equality Duty set out in section 149 of the Equality Act 2010.

7. What happens next?

This consultation will close on 30th September 2016.

Following the close of the consultation period, the PCA intends to publish all of the responses received, unless specifically notified otherwise (see 'Confidentially & Data Protection' for full details).

The PCA will publish its response to the consultation as soon as possible setting out the decisions made in light of the consultation, a summary of the views expressed and reasons for the decisions taken.

The document will be published on: <https://www.gov.uk/government/organisations/pubs-code-adjudicator>

Following the consultation, and in accordance with its statutory requirements the PCA will publish on its website its statutory guidance setting out:

- The criteria that it intends to adopt in deciding whether to carry out investigations;
- The practices and procedures it intends to adopt in carrying out investigations;
- The criteria that it intends to adopt in choosing whether to use its enforcement powers, and which ones; and
- The criteria that it intends to adopt in deciding the amount of any financial penalty

Annex A: Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

www.gov.uk/government/publications/consultation-principles-guidance

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

The Pubs Code Adjudicator

Lower Ground Floor

Victoria Square House

Victoria Square Birmingham

B2 4AJ

Annex B: List of individuals/organisations consulted

The PCA has notified the following about this consultation.

Pub-owning businesses with 500 or more tied pubs

Admiral Taverns Ltd

Enterprise Inns Plc

Greene King Plc

Marston's Plc

Punch Taverns Plc

Star Pubs & Bars (Heineken UK)

Interest groups, trade bodies and other organisations

All Party Parliamentary Beer Group

All Party Parliamentary Save the Pub Group

Association of Licensed Multiple Retailers

Brighton and Hove Licensees Association

British Amusement Catering Trade Association

British Association of Pool Table Operators

British Beer and Pub Association

British Chambers of Commerce

British Franchise Association

British Institute of Innkeepers

British Pub Confederation

Campaign for Real Ale

Confederation of British Industry

Fair Deal for Your Local Campaign

Fair Pint Campaign

Federation of Licensed Victuallers Associations

Federation of Small Businesses

Forum of Private Business

GMB Union

Guild of Master Victuallers

Independent Family Brewers of Britain

Independent Pub Confederation

Justice for Licensees

Licensees Supporting Licensees

New River Retail (UK) Limited

Planning for Pubs

Plunkett Foundation / Power to Change

Protect Pubs

Pub is the Hub

Pubs Advisory Service and MRO Advisory Service

Pub Governing Body

Punch Tenants Network

Royal Institution of Chartered Surveyors

Society of Independent Brewers

Society for the Preservation of Beers from the Wood

Annex C: Investigation & Enforcement Guidance response form

PUBS CODE ADJUDICATOR – CONSULTATION ON INVESTIGATIONS AND ENFORCEMENT

RESPONSE FORM

Name:

Organisation (if applicable):

Address:

Email:

Please tick the box below which best describes you as a respondent to this consultation.

	Pub-owning business with 500 or more tied pubs
	Tied tenant
	Interest group, trade body or other organisation
	Other (please describe)

Please be aware that the PCA intends to publish all responses to this consultation.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see section 2 of this consultation document for further information.

If you want information, including personal data, that you provide to be treated as confidential, please explain to us below why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we shall take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the PCA.

I want my response to be treated as confidential

Consultation question 1

Does the draft guidance provide clarity on the criteria the PCA will apply when considering whether to commence or continue an investigation?

Are there any other factors that you think should be taken into account?

Comments:

Consultation question 2

Does the draft guidance sufficiently explain the process that the PCA will follow when conducting an investigation?

If not, how could further clarity be given?

Comments:

Consultation question 3

Does the draft guidance provide clarity on the considerations that the PCA will take into account in the exercise of its enforcement powers?

Are there any other factors that you think should be taken into account?

Comments:

Consultation question 4

Does the draft guidance sufficiently explain the nature of the statutory sanctions available to the PCA?

Does the draft guidance explain clearly how the PCA intends to apply these sanctions?

If not, how could the guidance provide clarity?

Comments:

Please use this space for any general comments that you may have.

Please use this space to explain why you consider the information you have provided to be confidential.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply



© Crown copyright 2016

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication available from www.gov.uk/government/organisations/pubs-code-adjudicator