



Pubs Code and Pubs Code Adjudicator: statutory review

Response form

The consultation is available at: www.gov.uk/government/consultations/pubs-code-and-pubs-code-adjudicator-statutory-review

The closing date for responses is 22 July 2019.

Please return completed forms to:

Pubs Code Review Team
Department for Business, Energy and Industrial Strategy
1st Floor, Orchard 3, 1 Victoria Street, London SW1H 0ET

Email: PCAreview@beis.gov.uk

Personal / Confidential information

Please be aware that we intend 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 the 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 department.

I want my response to be treated as confidential

Comments: [Click here to enter text.](#)

About You

[Redacted]

	Respondent type
<input checked="" type="checkbox"/>	Tied pub tenants
<input type="checkbox"/>	Non-tied tenants (please indicate, if you have previously been a tied tenant and when)
<input type="checkbox"/>	Pub-owning businesses with 500 or more tied pubs in England and Wales
<input type="checkbox"/>	Other pub owning businesses (please describe, including number of tied pubs in England and Wales)
<input type="checkbox"/>	Tenant representative group
<input type="checkbox"/>	Trade associations
<input type="checkbox"/>	Consumer group
<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Consultant/adviser
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Surveyors
<input type="checkbox"/>	Other (please describe)

Questions

Part A: The Pubs Code

Question 1

How well do you think the Pubs Code has operated between 21 July 2016 and 31 March 2019? What evidence do you have to support your view?

Comments:

The pubs code adjudicator, Paul Newby, who arbitrates MRO disputes between publicans and pubcos, has rightly been criticised for acting too slowly, failing to highlight unfair business practices and simply not applying the code properly.

Many feel that the supposedly independent assessors who set the market rent are anything but.

Question 2

To what extent do you think the Pubs Code is consistent with the principle of fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants? What evidence do you have to support your view?

Comments:

The complexity of the regulations – not to mention pushback from deep-pocketed pubcos – could be why there have been so few MRO applications – and even fewer that resulted in a market-rent deal.

You're immediately put off when you're told your rent is going to double and the terms are going to cost you loads of money, It's absolutely designed to put you off.

[Redacted] have many tenants on lease agreements that pay less than 50K per annum in their rental lease agreements. How many of these, smaller business are on or have been offered MRO agreements? As is their right.

[Redacted] doesn't like and hasn't include any of these smaller tenants/leases into its business model for MRO as it undervalues its own wider estates and business models.

Evidence is hard to find, but the facts remain the same.

Question 3

To what extent do you think the Pubs Code is consistent with 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. What evidence do you have to support your view?

Comments:

Market Rent Only (MRO) proposals should be reasonable and common in the whole free-of-tie market – they are very rare, especially at [Redacted] where I understand they don't like MRO in there estate that fall below 50k rent per annum.

Its very difficult for a person, to asses [Redacted] or any other estate groups of pubs to see the percentage of pubs that are under 50k per year and have been granted MRO.

Question 4

What, if anything, do you think needs to change to make the Pubs Code operate more effectively and/or better support the principles?

Comments:

Release information on pub estates and MRO decisions,

Release market comparable rent agreements with similar businesses within the tied estates

Market Rent Only (MRO) proposals should be reasonable and common in the free-of-tie market

Enforce or reiterated to all pub companies that an MRO proposal does not have to be by way of a new agreement.

[Redacted] must have to agree to MRO lease agreements on sites, no matter the size or rental income.

Part B: The Pubs Code Adjudicator

Question 5

How effective do you think the Pubs Code Adjudicator has been between 2 May 2016 to 31 March 2019 in enforcing the Pubs Code?

Please comment in particular on:

a) Whether the PCA has sufficient and proper powers to enforce the Code effectively.

Comments:

“The review into the pubs code must be an honest one, which means accepting the reality, which is that there is no genuine MRO option available to tenants and this must be rectified or it will be clear that the government have and never had any intention to deliver on promises made to parliament.” [Redacted]

b) How effective the PCA has been in exercising his powers. What has been done well and what do you think could be done differently.

Comments:

To date, 1,194 Market Rent Only (MRO) trigger events have resulted in only 27 pubs moving to a free-of-tie outcome.

- November 2018, [Redacted] – propel info website

c) How effective the PCA has been in enforcing the Code. In particular, how effective has the PCA been in undertaking the following:

- giving advice and guidance;**
- investigating non-compliance with the Code;**
- where non-compliance is found, requiring publication of information, imposing financial penalties or making enforceable recommendations; and**
- arbitrating disputes under the Code.**

Comments:

It is a waste of time calling –

My rent review was delayed by my business development manager from [Redacted], from march 2015,

Firstly with a flippant and unsustainable rent increase proposals,

Secondly due to imminent first release of the pub code,

Further delayed by the second or final release of the pub code,

Delayed again by BDM failure to release any comparable rent agreements that had been requested in May 2016

During this time my near neighbour, [Redacted] train station, was re-sighted much further away and nearer to other business, I requested MRO option be included in my rental discussions several times, due to this being a trigger effect, under the new pub code. We were turned down on each occasion by [Redacted].

Having discussing my problems with [Redacted] to the PCA, many times during this rent revue period, the PCA never invested or acted my information.

My experience is that they, the PCA, could only give impartial advice, much of which they could not or would not comment further on.

I know there was no evidence collected on my case or ever acted upon, even when they know or suspected, a breach of the code.

Question 6

Do you think the regulations relating to costs, fees and financial penalties should be amended? If so, how and why?

Comments:

Hard working Publican are left facing the prospect of spending huge sums on legal advice and hours of time on protracted negotiations.

Part C: Pubs Code Regulations

Question 7

There are two sets of regulations that relate to the Pubs Code: The Pubs Code etc Regulations 2016¹ and the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016².

You may have commented on some of these provisions in response to questions in parts A and B of this consultation³, but please provide any additional views on the regulations. If you think changes are needed to the regulations, please explain why and how you think they should be changed.

Comments:

¹ <https://www.legislation.gov.uk/uksi/2016/790/contents/made>

² <https://www.legislation.gov.uk/uksi/2016/802/contents/made>

³ Some elements of the Regulations are covered by review provisions in the SBEE Act 2015, for example, Parts 2 to 10 of the Pubs Code etc Regulations 2016 make up the Pubs Code and must be reviewed under s.46 review provision in the SBEE Act. The review of the Adjudicator set out in s.65 of the SBEE Act states that the review may consider whether it would be desirable to amend regulations about costs, fees and financial penalties.

Part D: Impact Assessment and other information

Question 8

The review will consider the key assumptions made in the Impact Assessments⁴ which were published alongside the legislation and regulations. This will include wider impacts, non-monetised impacts or unintended consequences of the changes made. Specifically, we plan to consider any related impact on:

- costs to businesses and potential pub closures;
- redistribution of income from pub companies to tenants;
- changes in industry structure or ownership status; and
- wider industry trends such as employment and investment.

We welcome any evidence to support the analysis of these areas, or if there are any other elements of the Impact Assessments you think we should consider revisiting as part of this review.

Comments:

Pub groups, especially [Redacted] have stopped extending leases. This has had an immediate effect on the current value of the lease and therefore the licensees' business.

Previously through negotiation at the time of rent review, it was common to negotiate an increase in the length of the lease, often by 5 to 10 years, securing the licensees future and ensuring that the business and leases value, be carried forward towards potential future buyers. This also gave security to the leases business and kept good landlords in good pubs, knowing their business carried value and a good potential for resale.

Having found at my latest rent review that [Redacted] no longer offer negotiated increases in the length of the tied lease, they say, due to the pub code regulations. As leases that are for 5 years or less, have a vastly different market value to leases that have 10, 15 or 20 year remaining on the lease.

⁴ <https://www.parliament.uk/documents/impact-assessments/IA15-002.pdf>
<https://www.legislation.gov.uk/ukdsi/2016/9780111146330/impacts>
<https://www.legislation.gov.uk/ukdsi/2016/9780111146323/impacts>

Therefore many tenants with [Redacted], and probably other pub company's, are being forced to sell up immediate or see there hard work and business value drop until they have only 5 years remaining on the lease,

I have to now consider whether its best to sell the business with a 11-year lease remaining or slowly see the business value dwindle as the lease time runs out. this is not a great return on building and keeping the business growing.

Part E: Other comments

Question 9

Please add any points that you feel you have not been able to make in response to the earlier questions.

Comments:

Pubs are closing because pub co know that licensees are requiring to work long hours for less than minimum wage!!

Pub groups are constantly using the BPA - British beer and pub associations "running a pub guide" and the ALMA - Association of Licenced Multiple Retailers "benchmarking success", as a guide to running a successful public house, basing rent reviews and business models on the BPA and ALMA analysis of yearly statistical reports, in different trading styles.

These models do not include a manager or an assistant manager's salary in the yearly costs of running the premises or even cover minimum wage for the hours and duration that the business model is open.

[Redacted] business development manager at the time of rent review make assumptions that the Tenants are expected to work 40+ hrs per week to fore fill this role.

Pubco expect leases to earn an a return or income on their investment from a split in the share of profits at the end of the financial year, with the remaining split going to the pub company, but these profits are coming from an unmanaged public house, meaning that the lease has to daily manage the business for no wages, often working over 40+ hours per week within the business for less than the national minimum wage.

This means that most pub groups know that there Tenants work for far below the national minimum wages, and if a pub makes low or no profit, they work for nothing.

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

[Click here to enter text.](#)