



## **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](http://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  
1<sup>st</sup> Floor, Orchard 3, 1 Victoria Street, London SW1H 0ET

Email: [PCAreview@beis.gov.uk](mailto: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: It doesn't seem to have done what was intended; the Pubcos appear to have been able to get around the problems presented by the MRO option by suggesting rents based on a theoretical market rather than the actual market in any given geography. Additionally, there seem to be too many different ways of interpreting both the spirit and letter of the Pubs Code, leading to avoidable disputes

#### 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 Code doesn't seem to go far enough in ensuring Pubcos are accountable and act fairly. There seem to be too many stories of disputes in the trade press, versus zero positive accounts

#### 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: Its very hard to compare because its impossible to know what a market rent would be in that same building if it was free trade or some other type of business. To ensure a tenant is not worse off therefore, it is reasonable to assume that as long as the tenant pays the same amount of additional rent as they make in improved margin then the status quo will be maintained. This obviously begs the question of why anyone would do it at all in that case? Is it not reasonable that a landlord should maximise their opportunity, provided that the tenant was willing and had made their own appraisal of the opportunity offered?

#### 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: Many tenants assume the MRO option will be equivalent to their tied rent but minus the tie, which is why many people who ask for the MRO option are crying foul. The tenants forget that these are agreements they all willingly signed up to having made their own independent assessment of what they were signing up for. If they sign an agreement

then decide they don't like the terms, why should this be the pubco;s fault? It isn't. I believe the Code should offer better clarity to tenants in particular about what its purpose is and to offer guidance about what tenants should be looking out for in the first place. It isn't enough to agree one set of terms then complain when things go wrong. A bad deal attracts a bad tenant.

## **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: based solely on reading the trade press, it seems the PCA has been fairly toothless and the conflicts of interest highlighted early on should have been acted on decisively instead of ignored

**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: as above

**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: Advice and guidance seems to have been poor; most tenants do not understand the Code and what it means to them

### **Question 6**

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

Comments: I don't know enough to answer

## Part C: Pubs Code Regulations

### Question 7

**There are two sets of regulations that relate to the Pubs Code: The Pubs Code etc Regulations 2016<sup>1</sup> and the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016<sup>2</sup>.**

**You may have commented on some of these provisions in response to questions in parts A and B of this consultation<sup>3</sup>, 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: [Click here to enter text.](#)

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

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

<sup>3</sup> 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 Assessments<sup>4</sup> 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:

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<sup>4</sup> <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>

## 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: A poor deal attracts a poor tenant. Pubco's should focus more on "real world" deals and what's right for the pub than theoretical models based on notional "perfect world" scenarios. As an area manager for [Redacted] during the Credit Crunch in 2008, we were tasked with preventing business failure "at any cost". Although we gave away millions in rent concessions and extra discount, businesses were prevented from failing and thus [Redacted] itself escaped business failure. It seems there is not enough knowledge, skills and experience within the pubco sector today to effectively create and manage mutually beneficial rents and discounts to ensure longevity. This is not a new problem but there seems to be a complacent approach among the L&T companies I know best ([Redacted]) which almost sets people up to fail in pursuit of the best deal for the Pubco, not the tenant. My FMT rent assessment to determine my renewal rent (I did not ask for the MRO option as I knew [Redacted] would make it prohibitive) was unsustainable should a potential tenant only achieve the turnover forecast. Wages and almost all other costs were out of kilter with the real world and the business, with an FMT tenant, would almost certainly have failed. For example, the FMT assessment did not allow sufficient wages to open the business every day. [Redacted] response was to tell me the numbers had been "fudged" and that the deal I had been offered was a "one off" and the FMT scenario would be changed (upwards) should I reject it. This was a step back to the bad old days of greedy pubcos and although I didn't pursue the various breaches of the

Code made by [Redacted], the fact of them remains.... A very similar thing happened when I signed my original agreement five years previously; my wife was handed a blank "instruction to solicitor" form and asked to sign it and the BDM would "fill in the blanks later", these blanks included the rent, discount, investment details, ingoing concession, free stock agreed; everything. If I was not an experienced Area Manager for a Pubco, I would not be able to manage my relationship with them effectively as openness and transparency are still quite difficult to find . . . On the plus side, [Redacted] have invested in the exterior of my pub as part of their letting process and this means in addition to the original refurbishment in 2013, my pub has been painted outside a further two times. This is exceptional in my experience and means we can continue into our seventh year of continuous growth; they are investing in my increased volumes . . . Furthermore we have a very good relationship with our BDM but in my experience this is not always the case. Too many area managers have been recruited for jobs they are not capable of and so they try to protect their salaries, cars and holidays as a priority, with their tenants coming a distant second. [Redacted] and general incompetence are still rife; I have witnessed this extensively both as an area manager and a tenant. To conclude, the L&T sector is a very good way of operating with low start up costs and lower risks. If you are a good operator you can make a lot of money, as we have, but there is always the nervousness around review/renewal time that the BDM will turn out to be an idiot looking for a quick win for the Pubco, willing to sacrifice a good longstanding operator in favour of a better deal with a worse operator who many only last a year or so....

**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.

Unless you have direct experience of the Code it has been difficult to complete this form. It is also quite difficult to project a positive view of one's experience using the framework of this survey as if you have had cause to consult the PCA it is not for positive reasons is it?