



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: I feel that the Pubs Code has been ineffective due to the obstruction and unwillingness of Pubco's to comply with the intended legislation. As a tenant that has just got a new free of tie MRO 5 year lease we faced unreasonable and lengthy delays both by the Pubcos and the ineffective Pubs Code Adjudicator. We made our MRO submission on 22nd July 2016 and it has taken nearly 3 years to actually get our new lease – and the pubcos have had the benefit of the tie for these 3 years with no remedy for the lost profit that we have lost due to the excessive and unreasonable delays. It took 9 months for the PCA to decide that [Redacted] should give us a MRO which is disgraceful when it should have been a quick yes or no situation. We must have been one of the first and it still took 9 months for the first referral. The second referral took the PCA another 9 months to decide that [Redacted] had issued a non-compliant MRO lease – still no recompense for the loss hence the pubco have no incentive to comply with the legislation as they have nothing to lose by extending the delays. The low MRO take up, in itself, shows that it is ineffective and has not delivered the will of Parliament. The errors that have been evident in implementation of the Code which resulted in the PCA withdrawing a Statutory Advice Note after it was issued 2 years previously has meant that tenants have been misled and many may have given up on MRO and we nearly did with the massive delay and cost to our business.

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 was designed to protect tenants from the large pubcos and to protect community pubs. It was clear in our case that Pubcos cannot be left unregulated to treat tenants fairly and lawfully and many community pubs in our local area have been shut and sold for development due to lack of support from the pubcos. The omissions and loopholes in the code including the failure to prescribe detailed procedures that have meant that pubcos have been able to game the code and exploit tenants and the PCA has let it happen [Redacted].

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: I believe that the Pubs Code is consistent with these principles but it's the limitations of the Code and the fact that there is no strong control over the Pubcos that has

let to its ineffectiveness. The MRO vehicle should be prescribed and there should be some penalty to stop pubcos using massive delay tactics as for us it was 3 years! I also feel that the MRO rent valuation process should be reviewed and cases looked at individually and there should be a wider pool of valuers that do not have conflicted interests. Our valuer even advertises on his website that the majority of his work is undertaken for pubcos. In the 4 years 7 months and 4 days since our failed valuation in [Redacted] where [Redacted] tried to raise the rent to a point that we would have been running an unprofitable business, the pub has had 5 different rent estimations ranging from £22,500 to £90,000 rental value all from surveyors who are qualified surveyors but to varying degrees must have different conflicting interests.

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: The tenant should be able to have the option to refer their cases to the courts as the PCA arbitration has been unacceptably lengthy despite asking our MP (Mrs May) for help in bringing the issues to the attention of the Secretary of State. The PCA has not made definitive resolutions or precedents that a Court would have done and has proved that he has made fundamental errors in understanding the legal position on rent dispute clauses prior to the withdrawal of the PCA Statutory Advice Note in July 2019. The Pubcos still have the right to appeal the PCA process to court which renders the whole thing pointless and costly and a tied tenant would not be able to fund any litigation in response to the financial might of the pubcos. If there was a low cost option to take the issue straight to Court as they could with other rental disputes then it would be more effective and precedents would be set. The PCA does have very poor relations with tenant representatives and dismiss their views and action to remedy these should be taken. There should be a directive on backdating of MRO prescribed in the Code to prevent the excessive delay that both us and others have faced due to the unwillingness of [Redacted] to willingly comply with the Code. Most tied agreements and commercial leases have these rent review clauses and it is therefore uncommon for this to be omitted and should be directed in the Code. Pubcos have been allowed to propose the same unreasonable terms to tenant after tenant and have been allowed to do this. Decisions from the PCA have also been unclear even when we won and the decision was that the terms were unreasonable

- the PCA would not share what they thought were unreasonable and left everyone guessing which ones were unreasonable which was very unhelpful when coming to negotiations with Pubcos, when they have legal teams available to help them.

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 PCA should have the powers but maybe doesn't use them effectively. The PCA has the power to refer unfair business practices to the Secretary of State but the PCA has had so many evidenced cases but has chosen not to refer any to the SOS. We have also raised some directly with the SOS through our MP Mrs May but they still have chosen not to intervene. The PCA should not have exclusive power in resolving disputes and there should be a low cost judicial route to solve disputes, [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: The PCA has handled the issue of the amount of saleable contents of beer in a barrel well but even this has taken too long to help many tenants negotiate their rent reviews. Rent reviews have been based on 72 pints in a barrel and that is [Redacted] and nothing has been done to prevent this for many years.

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: The PCA has been ineffective in almost every way. He has issued incorrect advice in the now withdrawn statutory advice note on rent dispute clauses, length delays by the PCA have led to our case taking 3 years to be concluded all have inflicted unacceptable costs to our business. The withdrawal of the advice note and lack of acknowledgement of the scale of the problem that this has caused has damaged both his credibility and effectiveness of the whole PCA process. The lack of advice or guidance to tenants is unhelpful and the decisions have taken far too long. Each of our referral took over 9 months to be completed where they should have been very clear cut and taken less than 1 month. Its disappointing to hear that the PCA is returning money to the Pubcos because they haven't undertaken any reviews – this is due to ineffectiveness of the PCA not because they haven't got any reasons to do so as they have been given so many cases but have chosen not to take any action.

Question 6

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

Comments: Im not sure of the full range of costs, fees and financial penalties but feel that £200 is a lot for a tied tenant to find.

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: I am not aware fully of these costs etc.

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

² <https://www.legislation.gov.uk/ukxi/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: In my opinion the impact is more on the tenants, communities and particularly the small beer suppliers that ineffective regulation on Pubco activities with regard to severing the tie. Pubcos are not willing to self-regulate themselves as it's a closed market and they are the much more dominant partner in a very unsatisfying tenanted relationship. Pubcos have acted unlawfully nor fairly and have been allowed to do this under the eye of the ineffective PCA office. The PCA have no idea of the struggles of running an tenanted pub and their unwillingness to direct a DOV has meant that a new 5 year lease was inflicted on us and the associated costs in substantive legal costs and stamp duty – that should never have been due – with the DPCA stating that stamp duty of “£2,000 was nothing”. The wide raging rental assessments – 5 of which were done by Chartered surveyors ranged from £24000 to £90000 and the current value that we had no choice to accept, we feel was very unfair and possibly conflicted surveyor, as the panel of people to choose from is limited in choice and possibly allowed conflicts of interests to occur.

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>

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

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.](#)