



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 checked="" 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: As my own case is still live, the process seems very slow, and the POB seem to be trying to break individual resolve by the sheer volume of paperwork being generated. I am now dealing with a BDM from off of my geographical area, their Solicitor, my own BDM (who can not discuss the process) and an independent Arbitrator.

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: Failing miserably to redress any of the balance, I have been at my current site for 20 years and have witnessed first-hand the comings and goings within the POB that I am involved with. The leopards have shown little appetite for changing their spots, and still drag their heels over even the smallest of things. In the last 24 months I have had to deal with 3 different BDMs regarding a rent review. I have had "without prejudice" tagged correspondence. I have had verbal offers from one BDM that were never confirmed in writing.

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 have my accounts going back 20 years, we negotiated a new lease at renewal in 2014 and the POB initial rent bid was £[Redacted]pa, we settled and agreed the terms of the new lease at £[Redacted]pa. Their assessment of the rent was farcical at best and just pie in the sky at worst. That said, if we had not stuck it out we would more than likely have gone to the wall during that process.

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: Maybe the PCA could actually issue some fines on the POBs and publish more set in stone guidance, even now the POB's/their legal advisors are reading between an awful lot of lines. To wit when is a DOV a new agreement or a new agreement by consensus.

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: very slow out of the blocks , I think he probably has enough powers, but also think he has been weak in the use of those powers

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: Publishing some completed cases and the issue of clear guidance notes are about all I can see to attest to what has been done well. I think that fining for the repeat offenders, thus ensuring that the same old things don't keep coming into his office might be a way forward.

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: See previous comments. Non Compliance issues really should be straight forward to deal with, as by their very nature they either do or they don't comply. Arbitrating disputes under the code, I would suggest is going to get bigger and bigger, because the POBs seem to be getting around the ethos of the Code just by dragging it out. Surely after almost five years we might have seen a test case?

Question 6

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

Comments: Maybe they should, however, if the initial cost of referral to a TPT was too much then the PCA might not get many takers. If the POBs believe that their huge legal bills are necessary for them to stay in the game then that is surely up to them. From my own(ongoing experience of a referral) I know that financially it has cost myself several hundreds of pounds and an awful lot of time. As for my POB their legal bill is now running to thousands. The ironic thing is, that my current tied rent and wet rent through the tie are probably worth less than the fight they are putting up, which begs the question of whether there will ever be parity between what we earn from our site and what they earn from our site. Perhaps the "no worse off" should read "no better off?"

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

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: Without full disclosure of successful referrals, then we are still beset by the POBs smoke and mirrors attitude. We need more clarity and the use of NDAs to be scrapped. The PCA really do need to start wielding a bigger stick. If the POBs want to be commercial property landlords then let them, but only if they fulfil their legal obligations in a fair dealing approach to their tenants first. The pub industry is still in a lot of jeopardy, we need a fairer business rate system, all of the hospitality sector benefit from a fairer VAT regime, and given a fairer purchase price for stock and more realistic rents, for some truly poorly invested buildings, everyone would benefit. We may even see a return to growth in the on trade.

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.](#)