



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: Badly. (See answers to Q4)

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: It isn't. (See answers to Q 4)

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: It doesn't work (see answers to Q4)

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: It needs re-writing to simplify the process for tenants, and make the playing field more level. The Pubco's have deep pockets and can throw their weight around and tenants don't have those resources. I think how the adjudication process works should be reviewed. I don't know who pays for the adjudicator but in our experience the whole process appeared to be biased in favour of the Pubco's.

- We found it very difficult to apply for a free of tie arrangement with [Redacted].
- [Redacted] do not offer any assistance. I understand, as that would not be in their best interests.
- We looked at their website and the links for guidance.
- It is a strictly timed process. Notice has to be given prior to an 'event' date in the lease and there are tight deadlines.
- [Redacted] have a 'special' e-mail address which is not their normal address which takes some finding.
- We e-mailed our regional manager in the normal way we communicate with [Redacted] and backed up this email by post.

- [Redacted] said that we didn't have a valid claim. The e-mail didn't comply with their rules and the 'letter got lost in the post'.
- We appealed to the Adjudicator, who upheld [Redacted] decision.
- We appointed appropriate valuers in [Redacted] who prepared a valuation for us to negotiate our ongoing rent, which was to remain on a tied basis. [Redacted] disagreed with the valuers assessment and sent along their own valuer to say what they required.
- Eventually we agreed to a significant increase in rent for the next three years and remained tied.
- This was not a good result for us and didn't make the Pub Code look like it worked at all in our case.

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: No. Our experience suggests not.

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: We are not really qualified to comment on this over and above what we have said earlier.

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: Our experience suggested to us that the PCA was very poor in all four of these areas ie. No discussions were had between ourselves and the PCA and the decision they made appeared to be full and final.

Question 6

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

Comments: In so far as [Redacted] paid the fee of the PCA in our case, this may seem fair to the tenant. It does perhaps make you wonder though, in so far as : “ Who pays the paymaster?”

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: No additional views to air here.

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: I think that as a 'tied' pub operator it is becoming increasingly more difficult to remain in a good position going forward, unless some redistribution of income from Pubco's to tenants occurs.

The Pubco's prices to their tenants are not sustainable. It is quite hard to understand how much difference in prices exist between buying on 'the open market' and buying from the Pubco. The tied pubs will continue to struggle and close, and this has perhaps been influenced by [Redacted] and others who are pursuing the managed house model. My concern here is this model will lead to a further lack of competition, and more worryingly, a lack of customer choice and a lowering of standards as a consequence.

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: If the current 'tied' issues remain unchallenged, and as the Pubco's move to a managed house business model then tenants will no longer exist, All pubs will be owned by Pubco's which is a real concern and probable outcome.

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.

One imagines that the current relationship between Pubco's and tenants acts against and outside current fair competition regulations.. Any method of adjudication which supports the continuance of such a system needs a rigorous overhaul. I believe this is what the PCA requires.

Recent news regarding the likely [Redacted] only increases the risk of us losing the tenanted public houses.