



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: Absolutely awfully. The Code is open to too much interpretation and PubCos are continuing to exploit this ambiguity with no direction from the adjudicators office. Having recently been through the MRO process, we found that our (and what I think the Code was intending) interpretation of 'no worse off than a non-tied tenant' and that of our POB were entirely different and the adjudicator has continued to let POBs get away with their interpretation.

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. During our MRO case, we informed the PCA of what we thought was a clear case of unfair business practice. The point being that we were told (and have it in writing from our POB) that they have the right to ignore and amend the agreed business plan that we put forwards when we took on our pub, as it suited their needs to try and increase our rent. When I put this to the PCA I was told we should be informing the BEIS. I did this and received back a letter from them informing me that our case should be referred to the PCA as they have the power to investigate such matters. After going round this circle 2 further times – we gave up.

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 isn't. See my previous comments above.

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: They must become more effective. We issued our s26 notice in March 2018 requesting MRO. In April 2019 we eventually negotiated a new tied lease with our POB as the case was dragging on and, when asked for an estimated timescale for completion from the PCA, we heard absolutely nothing. What made matters even worse was after officially closing our claim, we received a copy of the costs letter from the PCA who advised that

the POB would be responsible for paying their costs which, in over a year, amounted to just 15 hours. In addition, the PCA must address the multiple instances of ambiguity within the Code so that POBs can no longer exploit these loopholes.

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: There seems to be a great deal of uncertainty on just what powers the PCA has. They don't seem to be able to enforce compliance with the Code by POBs and, as in our case, the threat of POBs almost ignoring any ruling laid down by the PCA and instead insisting that they are happy to pursue rulings against them through the courts means that the majority of tenants (us included) relent and stay tied as we don't have the financial reserves to take on court battles.

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: I must admit that I haven't got any positive comments on the effectiveness or efficiency of the PCA. Disproportionate amount of time spent doing nothing (15 hours work billed in a year), not proactive in dealing with queries raised about Code content, definitely not taking POBs to task when clear and obvious flouting of the Code is brought to their attention.

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: In our case, the PCA has been completely ineffective (see responses to previous questions for details). It is unclear to us whether it is the office itself or those in charge of it (Mr Newby and Ms Dickie) but to us the £200 fee we paid got us absolutely nothing. Had this been a business, we would have been demanding our money back.

Question 6

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

Comments: I find it incredulous that the tenant is asked to pay £200 up front without any indication of whether the PCA will do an effective job. Surely, if the PCA finds in the tenants favour then the POB should be responsible for all costs and any restitution payments due to the tenant. Only if the tenants case fails should they be required to pay anything.

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: The Code as it stands today needs to be fully reviewed as it's not fit for purpose in it's current state. It is ambiguous in many vital areas which POBs are capitalising on and the tenant, unless they hire an industry savvy lawyer, faces paying huge legal fees in contesting the POBs viewpoint – which the majority of tied tenants just can't afford.

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: Whilst negotiating our new tied lease, we were offered several different beer pricing options. However, unless we stayed on our existing pricing the POB would increase the rent we would have to pay, thus any savings on buying products under the tie would immediately be lost in an increase in rent. It did however demonstrate that the POB were making substantial profits on the beer we buy as well as retaining all of the monies we pay in rent – so they were in a ‘no lose’ position. There needs to be a full overhaul of how income POBs make is re-distributed with their tenants (who incidentally are generally on a full repair and maintenance lease). My argument with our POB has always been that if they reduced their profit margins on the beer that we have to buy and offered fair rents for their properties, there would be little need for tenants to pursue going free of tie at all. The POBs are just too greedy and therefore driving tenants to go free of tie. POBs are all too keen to pass on price rises from brewers but not to pass on the much trumpeted ‘buying power’ they all state they have.

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: We have also suffered at the hands of the surveyors employed by our POB. The schedule of dilapidations they complied some 10 months prior to our lease end was, at their own admission, a 'finger in the air' exercise of what works **might** be required when our lease ended. This resulted in an estimated cost of works in excess of £30k which was completely bogus. Similarly with the expert witness our POB engaged to attend our review hearing. He came from a firm which deals exclusively with POBs and more importantly admitted that over 80% of their work came from our POB. There must be more impartiality of any external firms as no-one who derives the majority of their income from a POB is going to find against them.

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.](#)