



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: Whilst originally drawn up in line with the principles as laid out in Question 2 below, the actual implementation of the Pubs Code was then flawed from the start [Redacted] The Pubs Code has then continued to operate in a highly inefficient manner, thus actually aiding the POBs in obstructing its proper & true implementation. This would seem to be further upheld by a highly inefficient PCA also not correctly implementing the code, evidence of one such example being as per the recent [Redacted] case resulting in the withdrawal of the Statutory Advice Note without offering anything else by way of further clarification or rectification.

My own personal experience of the Pubs Code was one of complete obfuscation, with my application repeatedly being refused, no doubt until either I gave up (as actually happened) or my application fell outside of the extremely complicated timescales. Ironically, my aborted case would subsequently have probably been classed as successful by the PCA with, in their eyes, an agreement having been made, albeit a failed MRO application & with no help or even input from them.

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: That the Pubs Code had to be drawn up at all is clear evidence that the POBs could not be trusted to treat their tenants fairly without regulation. It would now seem however that their unfair tactics have now just been partly switched over to circumventing and finding every loophole within said code instead. That the ineffective PCA turns a blind eye to this whilst also dragging out & causing lengthy delays to any arbitrations just puts everything back squarely in the POBs hands and therefore, as they once again hold all the cards, results in more of the same revised but nonetheless unfair terms.

My experience leaves me with the impression the Pubs Code is so far down the opposite end of the scale from '... the principle of fair and lawful dealing' that it has to be in the pockets of the POBs it is supposed to protect us from. That I could not even get my application accepted (and this even with independent expert advice) due mainly to supposed technicalities that were never properly explained, demonstrates how far off their moral compass is.

The Pubs Code is allowing the POBs free rein to continue to bend it to their own ends without the moral constraints of using it for the main purpose it was drawn up. This not

being just my view but also that of the Rt Hon Greg Clark MP who [Redacted] agreed to refer my complaint against them to the Parliamentary and Health Ombudsman. That this was not upheld seems to be just even more indicative of the scale of the problem, a view again shared by my above local MP who, whilst not able to actually do anything further, requested permission to forward full details onto the Minister who oversees Pub Code policy, Richard Harrington MP.

The more cynical of us may even consider the (possible timely) proposed buyout of the [Redacted] by the [Redacted] as just another method with which to circumvent the code further or at least continue with the delaying tactics..

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: That there are so few successful applications should indicate that the Pubs Code is not consistent with this principle. After being bullied by the POBs advising that we should not go down the MRO route, along with their extortionate MRO rent valuations, we then seemingly get similar tactics from the Pubs Code in trying to stymie our applications.

Having written this extremely complicated code, designed I'm sure to put off all but the most dedicated, it should at the very least be monitored to ensure that the POBs follow it. My own experience of my POBs Regional Managers understanding of it, falls a long way short of the relevant Part 9 of the Code regulation 41 (2) (b) "support and guidance".

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: Make it **truly** independent & simplify the convoluted application restrictions that I am convinced has resulted in much fewer applications due to tenants not understanding how and when to actually complete and submit the forms.

Act on the results of this review to close any loopholes identified and actually apply some restrictions onto the POBs to remove the perceived bias that they are only applied to us tenants. Make them have to adhere to the codes principles by applying it fairly and not just concentrating more on how to get around it. A big part of this would be in reducing their scope for obstructive & delaying tactics, whilst also reviewing their unfair & excessive MRO rent review processes, designed purely to stop tenants from taking this route at all.

Based on my own experience, it would be nice to see some clarification as to correct usage of an application based on Regulation 50, allowing any new agreement to be via a simple Deed of Variation (DOV) and not seen as 'circumventing the code' as was the case with my application. Whether I inadvertently filled in the confusing application form incorrectly (whilst also not being allowed to amend it should that have been the case) or the Pubs Code primarily acting solely with the POBs interests, a new agreement does not

necessarily mean the more detrimental route of a new lease. This would also act to simplify the amount of input that the PCA would have to make, thus speeding up the whole process & allowing them to easily clear up any backlog.

Whilst each application has to be judged on its own merits, a more open & accessible approach to those successfully completed would help make the code seem less cloak & daggers. Also, there must be some areas of negotiation that are common between differing cases that with a more openness, having been successfully resolved could be easily applied to others, thus helping to speed up these cases.

More general openness by the Pubs Code as a whole would also be an improvement, whilst only currently being able to contact via the (mostly unhelpful) generic office email. Possibly with the reinstatement of the position of the previously [Redacted].

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: As previously mentioned, the PCA [Redacted] and does not seem to understand the code he is supposed to be enforcing, with his recent back down & removal of an advice note. With this and the previously mentioned deficits, it seems highly unlikely that the PCA can ever be effective, whilst having to concentrate more on [Redacted] the POBs.

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: Not actually aware of anything the PCA has actually achieved, especially with his preference for any dealings to be completely separate and 'Confidential between parties'. [Redacted], who act as quasi-arbitrators, without any direct contact details of his own.

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 my case, whilst not actually getting to deal with the PCA, his office do not offer any advice or guidance at all.

Not aware of any non-compliance investigations, regardless of whether they resulted in any fines or enforcements.

Not really aware of any dispute arbitration either, unless you include the latest investigation of [Redacted], which smacks of being the lesser of two evils rather than getting involved in the real issue of MRO avoidance.

Question 6

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

Comments: Not aware of the full range of costs, fees & penalties but do think the original application fee should be refunded where the application is seemingly not accepted just because the PCA will only allow it under the POB preferred route.

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: Not aware that there were two sets of regulations. The first one was complicated enough & confused even the independent experts as how to best follow. Some clarification as to the application timescales would be most beneficial as they sometimes appear to contradict each other.

No comment as to the second set.

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: The beer tie system seemingly worked fairly well when the pubs were owned by breweries who had an invested interest in the products sold. The Beer Orders put paid to this and was the catalyst that gave us the current POBs who have little interest in the actual trade and are more just property based. Many pubs have closed since, some admittedly deserved so but a lot of others from these POB's dubious practices. The Pubs Code was thus drafted to counter this but the might of these POBs has grown too great and the code has been [Redacted]. The costs are great in both loss of pubs and the effects on local communities, with those surviving pubs still struggling with unfair competition. In the case of my own pub, there is no control set on the levels of "wet-rent" (i.e. the markup on tied drinks) the POBs can charge, with my own running at about the same as my normal rent again. I am therefore effectively twice my agreed rent.

The POBs still grow richer at the expense of their tenants and now, due to the possible conditions that an effective Pub Code could enforce, they are evolving their tactics. Whilst outwardly seeming to embrace the Pubs Code they are in reality using all of its weaknesses, along with their own delaying tactics, to remodel their businesses. An effective Pubs Code should also be aware of & help tackle such practices as these POBs refusing renewal of leases in order to take back pubs under a managed arm.

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: Please also see other attached document MRO.docx by way of further evidence of the unfair handling of my own dealings with the Pubs Code & how it left me feeling at the time.

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.