



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 don't think the code has worked at all well. It has been difficult to navigate, the pub company has been evasive and slow to respond to simple requests, they have sort to thwart the code by making it as onerous as possible for tenants seeking to use the new legislation. Including making non compliant offers, more than double (almost triple) rent requests, using dilapidations where none would be necessary if the vehicle for MRO was a DoV. The dilapidations in my case were [Redacted], I was advised that I needed to spend £116k to a building that had been fully decorated within the same year as the report, that includes the exterior and the whole of the inside including the residential areas.

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: If the pubs code was written less ambiguously it would be able to deliver the fair and lawful dealing principals, as it stands there is nothing fair about the approach the pub company and it's lawyers have adopted. Afterall the code came into being due to 4 select committee findings and a failure for the industry to self regulate. The pub companies had already proved that they were not going to approach this legislation from a fair stance. The use of dilapidations and new leases with the inherent costs is not fair especially when the tenants subject to those costs have been on £15k per year or less as published by the CAMRA report in 2014, so where do they think this money is going to come from? It's clear to me that the pub companies have been unfairly putting financial barriers in the way to prevent MRO take up. The PCA has done little to help in this regard, it has failed to investigate the clear breaches of the fairness corner stone of the legislation in based upon, even after Margot James had said in parliament that there had been "a clear case of gaming of the code by pub owning businesses"

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: No worse off than free of tie was another corner stone of the legislation which has been circumnavigated by the pub companies. To try to insist on pre payment meters for energy, a two year block on sale of the business (when we have already been in the business for [Redacted] years!) the proposed rent at almost triple what it currently is. I could list

loads more onerous terms that were suggested by my pub co all of which would not be found in a standard commercial free of tie lease.

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: As it is secondary legislation it can be adjusted without the need for sign off from the SOS. This means that the recurring issues being fought out on a case by case basis adjudicated (arbitrated) by the PCA could all be fixed over night, the same could also be used to close the many loop holes and grey areas present in the code to prevent gaming of the legislation. The PCA also needs to be held to account for the way in which he and his office have allowed three years to go by with the pubcos able to divide the tenants and tie them up in legal battles they have they often don't have the resource to fight. He has done no investigations in the clear gaming of the code. He has not adjudicated a single issue to set a precedent so that other tenants could have a clear understanding of their rights. The PCA should also be held to account for the length of time each referral has taken to go through the system, the fact that he has not taken on more resources to deal with the back log of cases. The fact that he has gone against his own industry body CiARB on cases and allowed JR to take place when the code has the CiARB rules baked into it which says the finding are final and not challengeable in court.

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: See question 4 – in relation to his powers I'm not sure he has the right powers, but the ones he does have he has not used so I think it's a moot point.

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: see above

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 terrible at enforcing, fining and advising (recent rescinded advice note is a clear example of how poorly he has done his job) In fact it's quite clear that [Redacted] . The rent backdating issue exposed by [Redacted] which led to the rescinded advice note should lead to a change in the legislation in relation to MRO by new lease or DoV. With DoV the existing back dating rights are protected by the original lease, but with a new lease they are not, that is a clear case of 'worse off' due to the way the legislation is written and enforced.

Question 6

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

Comments: Again, this is a moot point as the PCA has the ability to fine the pub companies but has yet to do it even in the face of clear gaming of the code.

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: See above

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: Nothing further to add

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: Nothing further to add

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.

Nothing further to add