

Written Submission on behalf of Ei Group for the Department of Business, Energy & Industrial Strategy – Statutory Review Pubs Code and Pubs Code Adjudicator

Contents Page

	<u>Page</u>
Executive Summary	2
Ei Group Plc (EIG)	3
Market Context of the Statutory Review	3
Tied Pub Model	4
Low level of capital for a publican to begin a business	
Lower risk	
Promote Priority Investment	
Other benefits	
Main Observations of the last three years as a Regulated Business	5
Willing Tenant and Willing Pub Company	
Complexities of the Code Introduction	
Consequences for Lower Turnover Businesses	
Inconsistent MRO Guidance and Awards	
MRO agreements vs FoT agreements	
Europe Economics Independent Report	9
Review Questions	10
Appendix 1 - Enquires to the PCA	20
Appendix 2 - Significant Support provided to the tied pub tenants	21
Appendix 3 – Summary Europe Economics Independent Report	22
Appendix 4 - Pub Specific Examples	24

Executive Summary

As one of Britain's leading Pub Owning Businesses (POBs), EIG welcomes the opportunity to respond to this consultation. This document sets out in some detail our approach to both the Code itself and the specific questions and challenges raised by the review. Our main points and recommendations are as follows.

- EIG is committed to the Pubs Code. We believe that it is largely working to provide greater clarity for new and existing tenants in most areas. We do not believe that the Code itself requires any sort of radical change, although we do propose some minor amendments to improve the Code for the benefit of the Tied Pub Tenant (TPT).
- We believe that awareness of the Code is good, although the policy and media debate focuses primarily on one aspect – Market Rent Only (MRO). A large proportion of MRO requests with EIG are not referred to the PCA and are concluded quickly – 65% are concluded within six months and 85% are concluded within twelve months.
- We would like to see the following changes to the implementation of the Code, in order to benefit tenants, POBs and – crucially – the consumer:
 - Accreditation of individual POBs MRO agreements. This would provide clarity, simplify the process and reduce costs.
 - The production of consistent guidance and a set of 'golden threads' setting clear expectations based on precedent for both POBs and publicans; alongside more overall consistency of approach from the PCA.
 - A minimum standard for tenants' advisors, comprising independent professional accreditation and professional indemnity insurance.
 - An agreed panel of external arbitrators to be set up by the PCA
 - A focus from the PCA on improved timescales, reduced costs and a commercially pragmatic approach would allow tenants to access the benefits of all parts of the Pubs Code and ensure that the principles of the Pubs Code are met.
- We fully endorse Europe Economics' report into the Code, and in particular its key finding that Government needs to give greater direction to the PCA to ensure better clarity and understanding on key Code issues, rather than making major changes to the Code itself at this stage.

EI Group Plc (EIG)

EIG is a publicly listed company based in the UK We employ 1,350 people across England and Wales, both in our Pub Support Centre in Solihull, West Midlands and across our managed pubs.

As at 31st March 2019, EIG and its subsidiaries owned 4,057 largely freehold pubs, of which 3,555 are occupied under tied lease or tenancy arrangements and are subject to regulation by the Pubs Code. EI Group Plc, and its subsidiaries, are 'Pub-owning businesses' for the Pubs Code as defined by s69(1) (a) of the Small Business, Enterprise and Employment Act 2015.

EIG has a clear strategy to ensure that all pubs are used to their maximum potential under which ever business model suits the specific pub. EIG run a successful Commercial free-of-tie pub estate with over 400 pubs during the period of the review. The clear strategy helps maximise the consumer offer, encourages significant capital investment into the pub estate, and in a number of instances has saved previously under-performing pubs from becoming unsustainable and subsequently being sold, with the consequential risk of conversion to alternative uses by new owners.

On the 18th July 2019, a proposed all-cash acquisition of Ei Group by Stonegate was made under 2.7 of the Takeover Code. The proposed acquisition has been unanimously recommended by the board of EIG, and is subject to a shareholder vote and regulatory approval. Should the proposed acquisition take place, EIG's Publican Partnership's tenants will continue to benefit from the rights afforded to them by the Pubs Code.

Market Context of the Statutory Review

Overall the Pubs Code is working well, the vast majority of concerns and noise relates to the interpretations of the one part of the Pubs Code concerning MRO. With this background it is worth considering the market context in which the Statutory Review is being undertaken. Publicans and pub consumers have never been under so much pressure – publicans face increased costs of labour, business rates and alcohol duty; consumers are under pressure both financially but also with a vast plethora of other leisure options available to them. This is further exacerbated by supermarket loss-leading alcohol pricing and the growth in home delivery food services which promote entertainment at home. Social media, streaming services, casual dining, experiential events and many other leisure opportunities continue to challenge the pub market for consumer's social time and discretionary expenditure.

A number of campaign groups continue to incorrectly link the closure of pubs with the failure of the tied model and blame POBs and the PCA for these continuing closures.

The Office for National Statistics "Economies of Ale" report in November 2018 concluded:

"Most pubs in the UK are small, independently owned businesses – and it is mainly these kinds of pub that have closed over the last decade. But the number of independently-owned larger pubs is steadily rising.

"Meanwhile, small pub chains, which are often regional, family-owned businesses, have also switched their focus away from small pubs towards medium and large bars.

"And at the same time, the large "pubcos" (nationwide companies with 250 or more outlets) have almost completely abandoned small pubs, disposing of lots of them in the early 2000s, concentrating instead on their bigger bars."

Larger well-invested pubs continue to be successful, while those on the margins of the estate feel the worst of the consumer changes. EIG had approximately 95 pubs closed as at 31st March 2019, and we expect to open half of these closed sites. Therefore 99% of the EIG estate was open and trading or about to open and trade. **The Government's own original impact assessment states:**

“The decline [in pub numbers] is widely recognised to be due to a range of factors, including changing cultural habits, increased taxation, the rise of low-cost selling at supermarkets and the smoking ban.

“Some campaigners argue the tie plays a factor, but pub numbers do not support this.”

EIG continues to invest in our pub estate to benefit publicans, pub consumers and the communities that they serve – in the four years to 30th September 2019 we will have invested over £315m in our pub estate, which ensures that the interests of both EIG and publicans are aligned. At its simplest - successful EIG publicans equals success for EIG. We would strongly argue that, against this challenging economic and social backdrop, the tied pub model has helped to ensure a healthy and prosperous pub sector.

Tied Pub Model

In amongst all of the issues around the MRO section of the Pubs Code and Pubs Code generally, it is easy to forget that the tied pub model provides significant benefits to new and existing tenants.

Simply put, the tied business model offers a unique opportunity for entrepreneurs interested in running a small business that would not be available in any other form.

Low level of capital to begin a business

A tied tenant needs only a low level of capital to start their business. A typical tied tenant can begin with as little as £5,000 in capital, whereas for a typical franchise or new start up would require capital of £100,000 or more. On-going capital costs are also low, which aids cash flow. For example: rent deposits can be built up; rent is paid weekly, two-weekly or monthly, not quarterly in advance; and repair liabilities can sit with the pub company. There is also assistance with buying fixtures and fittings, as well as credit terms for stock.

Lower risk

The business model also allows for a lower fixed property rent, in return for the tied ‘wet rent’. The effect is to make a higher proportion of the total ‘rent’ paid variable – it decreases if beer sales decrease. As a result, a tied tenant has a lower level of risk compared to a free-of-tie (FoT) occupier, whose rent would be based entirely on a fixed cost. The Office of Fair Trading concluded in its 2010 report into the market that: “as per prior analyses in this sector, the higher beer prices charged by tied lessees are offset by lower dry rent and business benefits”.

This is of particular benefit to tenants in economic conditions where beer sales are declining – in effect, the risk of lower sales is shared between the pub company and the tenant. In the current market context, this is invaluable.

Promote Priority Investment

The tied model encourages the Pub Owning Business to invest significant sums of money, and to do so at critical times in the pub's lifecycle to ensure the sustainability of what is usually the local community pub. EIG will have invested over £200m in its leased and tenanted estate during the four years to 30th September 2019.

Other benefits

Tied tenants receive significant support from their pub company. A list of benefits for tied tenants is provided in Appendix 2 of this document.

Main Observations of the last three years as a Regulated Business

Willing Tenant and Willing Pub Company

Our overall experience is that the Code is substantially working, providing additional protections, information and clarity for all tied tenants and notwithstanding some issues in the application the MRO process is delivering the principles of fair and lawful dealing and the tied tenant being no worse off than the free-of-tie tenant.

Perhaps unsurprisingly, the MRO process is working best where both parties are willing and well advised. The statistics below show the number of MRO notices which have been accepted by EIG and the timescales in which they were completed – either withdrawn, or a new tied deal completed or an MRO agreement completed.

Table 1 Shows the Timescales of MRO process completions

	Approved	Rejected	Total
0-6 months	175	42	217
6-12 months	52	1	53
12 months +	40	0	40
Total	267	43	310

175 (65%) of the 267 accepted claims were completed in less than six months, and 85% were completed within twelve months. It can clearly be seen that the MRO process can work. On that basis we have undertaken some further analysis on a sample of cases to understand where some of the blockages lay in the process.

It is the view of EIG that, ideally, the entire MRO process including a PCA referral should be concluded within six months, if not before, and certainly before the date of the tied rent event which triggers the process in the first instance. Where delays occur, these have been due to a lack of clarity in the regulations, or in a number of cases a misconception by tenant advisors of what can be achieved. We are working hard to play our part in expediting matters where we can. We have appended a number of anonymised examples of delayed processes to this response, in order to provide a sense of where the blockages and time constraints lie within the process (Appendix 4).

Due to the rapid nature of the implementation of the Code, all sides have taken some time to get to grips with the best way of understanding and operating within the regulations. However, moving forward, we believe that six months is a realistic timescale.

Complexities of the Code Introduction

EIG has been, and continues to be, committed to the Pubs Code both in spirit and through facilitating its interpretation. The basis of regulation and the structured commitments that it brings provide both POBs and their publicans with a good basis on which to do business.

As with most new legislation, the introduction of MRO was always going to provide challenges, as it seeks to introduce a statutory process in the middle of the Landlord & Tenant Act 1954 protection, the commercial relationship and existing contractual terms. The requirements of the MRO process

include input from experts, amendments to draft agreements, commonality and many other issues which can serve to delay the decision making process. However, EIG believes that the majority of issues have now been dealt with via arbitrations and decisions made through referrals and that there is now greater clarity around the MRO agreement process. It is worth noting, however, that in some instances and specific cases, greater clarity and **more substantive conclusions and guidance from the PCA are urgently sought by all parties.**

There is also the financial cost of the new regulatory system to consider. We would note that the cost of the PCA office since the inception of the regulations has increased significantly, whilst the output and impact in significant areas has not met some of the expectations of those using the PCA office.

Consequences for Lower Turnover Businesses

In the initial stages of implementation, there has been a risk that the complexity of the regulations and need for specialist advice may have made parts of the Pubs Code less accessible for publicans without capital or cash reserve. In a number of instances this has simply made wealthy multiple publicans wealthier – this is particularly relevant to EIG as we have a higher quality estate which is south-east and London orientated and has the highest proportion of long term leases. As a consequence of this higher quality and larger estate, EIG has seen the highest numbers of cases at arbitration and has also been targeted by some of the more unscrupulous and unqualified MRO ‘advisors’.

To enable a more accessible Pubs Code available to publicans of all regulated POBs, the process for using Pubs Code rights should be made simpler. It is possible that publicans who run businesses with a lower profit opportunity may be put off from using the Pubs Code or wanting to pursue an MRO agreement due both to the cost of advice and complexity of the current system.

However, it may also be the case that the increased risks associated with a commercial free-of-tie agreement may simply lead TPTs in lower turnover businesses to conclude that a tied agreement better suits their financial and personal circumstances, as well as their future prospects.

Inconsistent MRO Guidance and Awards

As has been highlighted by the Europe Economics report, the Pubs Code is not merely about the MRO option, although MRO has been and continues to be a significant focus for the office of the PCA since the start of the Code. Due to EIG’s scale and high quality estate, EIG has seen the most activity in this area and we have a number of observations.

Initially the PCA discussed providing ‘golden threads’ to enable direction and decision-making for publicans and POBs. It is understood that these were initially difficult to produce as there was a lack of arbitration awards on which to base golden threads. However, three years on there is clearly evidence from cases which can produce substantive guidance to tenants and POBs alike. The office of the PCA has appended to arbitration awards standard appendices explaining their approach to a number of issues. However the appendices are still in general terms and do not go into specifics of the types of clauses and forms of tenancy that are common or reasonable.

The office of the PCA has issued general advice regarding MRO under s.60 of the 2015 Act, but has chosen not to consult on or issue formal guidance under s.61 of the 2015 Act.

There is a suggestion that the office of the PCA will be producing an update of the Regulatory Compliance Handbook to deal with the MRO tenancy in more detail. **We would encourage Government to guide the PCA office to consult on more specific guidance as a matter of urgency.**

This would provide much-needed greater clarity to all sides, and given the number of arbitration decisions that have now been taken, it is clear there is enough information and insight to allow such guidance to be drawn up, consulted upon and issued by the PCA. If this guidance and clarity is not forthcoming, tenants and POBs are at risk of wasting time and money pursuing arguments and positions which have already been the subject of expert evidence in prior arbitrations and which have been resolved.

The advice and awards from PCA and DPCA arbitrations continue to be inconsistent, which provides a significant challenge to POBs and publicans alike. We set out some examples of this inconsistency below:

- The recent advice around Regulation 28, and the withdrawal of the previous advice regarding Calderbank letters and tied rent reviews, continues to leave both tenants and POBs in a policy position which is unclear and open to question. The recent advice, in EIG's view, undermines a fundamental principle of the Code: The advice states that if a tenant stays tied they will incur any rent increase during the MRO process, but if they take the MRO option they will not incur such a rent liability. It is a principle of the legislation that the tenant should be in a position to compare their terms with free of tie terms on a fair basis. The interpretation of Regulation 28 by the office of the PCA means that there is an unintended consequences to taking MRO, which has nothing to do with the fairness of tied terms.
Further the tied pub tenant can choose to complete the MRO process, and then do nothing, sitting on a potentially lower tied rent and not implement the MRO. EIG has a live example of this where the tenant is unhappy with the assessed IA award, and refusing to engage in their tied rent review.
- The vehicle or documentation for the tenant to achieve MRO has been considered in arbitrations by the PCA and the DPCA. In most cases where the arbitrator has found that a new lease is an acceptable means of delivery. In cases where the SDLT will be substantial (the exact figure has not been defined) the arbitrations have indicated that a deed of variation (DOV) of the existing lease should be provided. The arbitrations have concluded that the DOV **cannot** be the 'minimum only' type sought by campaigners. EIG have proposed a practical solution, a form of DOV, which replaces the existing tied terms with the standard FoT terms. This is a simpler, cheaper and safer approach than preparing a bespoke DOV in each case. Tenants have raised concerns that this type of DOV (which we term a 'DOV by reference') could be treated by HMRC as a new lease and therefore incur SDLT. We have provided our own expert counsel's advice to the office of the PCA to allay such concerns. The office of the PCA has received independent tax counsel advice to the same effect. The office of the PCA was invited, but has not agreed, to share the advice it has received with other tenants. This is an example where EIG have sought a practical and cost-effective remedy to speed up the MRO process, but this has not been actioned. **We would ask Government to encourage the PCA's office to consult and then give formal guidance on this point, which would speed up the process and reduce costs for all parties.**

- The terms of the new MRO agreement have been subject to arbitration proceedings and discussed at length during meetings with the PCA, Code Compliance Officers and EIG directly. Unfortunately, the PCA office have chosen not to take into account both significant expert opinion and numerical evidence from hundreds of transactions that have been presented by EIG. **We would suggest that the PCA office has a real opportunity to set a tone for what are common terms in the free of tie leasehold pub market, which would ease the burden for tenants and POBs.** This has been requested by both sides. EIG has also suggested that expert reports on commonality in one case be shared with the tenant in another case, but the DPCA rejected that approach. Instead the office of the PCA has made the process of identifying common and reasonable terms more difficult, by adopting a vague approach which varies with the circumstances of each particular cases and takes into account the terms of the existing lease.

- We would also encourage Government to require the office of the PCA to implement a very simple solution to this issue. **We recommend that the office of the PCA approves a form of agreement, or more than one form of agreement, with each of the POBs separately** – this would ensure that TPT's could be confident of receiving a simple and MRO-compliant solution, whilst ensuring that there was a competitive difference between the regulated pub companies.

The above provides a small illustration of a significant number of opportunities that there are for the office of the PCA to add greater value to all sides in the process, as well as create efficiencies in the current process for MRO tied pub tenants who wish to consider an MRO option.

MRO agreements vs Free of Tie agreements

Due to the complexity of the MRO process and inconsistent approach taken by the PCA and DPCA in arbitration awards, there is now a two tier market appearing within the non-tied, fully-fitted pub leasehold market.

Fully-fitted pubs are unique in their character, ready to trade – these property types are not the same as 'shell' units that some multiple licensed operators occupy and then fit-out as a restaurant or pub. The office of the PCA has chosen not to recognise the significant volume of evidence that finds that the market for untied pubs is relatively small, and that for fully fitted untied pubs is smaller still.

EIG with its Commercial Property division have, in recent years, granted more leases of untied fully fitted pubs than any other landlord of untied pubs, as we actively seek out FoT opportunities within the pub estate. Where there are willing parties EIG has been the fastest growing FoT operator over the last three years with over 200 pubs tied pubs converted to FoT. This is outside of the MRO process. We would encourage the office of the PCA to recognise this as being material and a significant part of this small market.

We are also unaware of any research either by the Government or the PCA into the various aspects of the untied market. We are aware that some tenants and tenant advisors assume that a commercial untied lease is the tied lease with the tie removed. Untied commercial free-of-tie terms are substantially different, particularly in relation to quarterly rent payments, quarter's rent deposit, full repairing and insuring obligations and rent review provisions. The office of the PCA has received substantial quantities of expert evidence on the commercial free-of-tie leasehold pub market, but the office of the PCA through arbitrations have yet to rule conclusively on many of these points.

The office of the PCA has accepted in arbitrations that the form of tenancy EIG sent to tenants under MRO was not specifically created for the MRO option, but was substantially in the same form as that granted to open market lettings by EIG to free-of-tie tenants since 2011. However, in light of arbitrations awards and expert report EIG has modified the contents of our MRO tenancy over the last 3 years, to reflect to directions of the PCA.

There is a danger therefore that through the interpretation of the statutory test of both commonality and reasonableness that is being adopted by the office of the PCA, that the outcomes simply do not reflect the true Market Rent Only option for an untied pub. The 'market' for untied fully-fitted pubs adopts a willing tenant and willing pub company test to produce a FoT Agreement, which is a different test to that adopted by the office of the PCA. An artificial two-tier market is being created where the true market FoT Agreement, with willing parties, is potentially more onerous than the MRO Agreement, based on commonality. The MRO Agreement is potentially on more favourable terms and goes beyond the original principle that the tied tenant should be no worse off than the FoT tenant, which means that the MRO tenant is now potentially better off than the FoT tenant under the office of the PCA's interpretation of the Regulations.

The business opportunity for a FoT agreement with a willing POB and a free-of-tie tenant does not reflect the affordability of the pub, it reflects the competitive market where the tenant's earnings flex around the risk and reward of the opportunity. The MRO option as presented by the office of the PCA does not reflect this, but only reflects affordability for that tenant in situ. We do not believe this was ever the intention of the legislation, or the purpose of the Market Rent Only option.

Price changes to products

There are a number of small unintended consequences from the Pubs Code which EIG believes were not envisaged by Parliament or the Department, but which have direct commercial consequences. These are listed below under Q4, and we suggest some minor amendments to the Pubs Code which would tidy up these anomalies.

Europe Economics Independent Report

The British Beer and Pub Association in conjunction with the regulated POBs have instructed Europe Economics to provide an independent study to reflect on, and investigate, the issues associated with the introduction of the Pubs Code and PCA.

A summary of the report is Appendix 3, and the full report can be found at:
<https://beerandpub.com/policies/property-and-planning/statutory-code-and-pca/>

The overall impact of the Code was highlighted by the Study in the following ways:

- The study finds there is good awareness of, and information about, the Code especially for those tenants coming up to a rent event.
- The report notes that the tied model lowers barriers to entry for those who want to run a pub and helps ongoing investment in the tenanted pub estate.
- The MRO option is improving the negotiating position of tenants in the short term. The transfer of value is difficult to assess as it is intangible and should be treated with caution. However, Europe Economics conclude that the overall impact of the MRO option could have a detrimental effect with lower levels of investment in leased and tenanted pubs.
- Best practice is slowly being achieved. However there are many weaknesses including clarity, what is in and out of scope for the adjudicator and what constitutes a reasonable MRO

agreement. The slow pace of the arbitration process and resulting awards was identified by Europe Economics as a problem.

Europe Economics' key finding for Government is that it needs to give greater direction to the PCA to ensure greater clarity and understanding on key Code issues rather than making major changes to the Code, particularly given the fact that the Code itself is still in many ways bedding in. EIG would strongly endorse this conclusion.

Review Questions

Part A: The Pubs Code

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?*

As a whole, EIG's view is that the Pubs Code has worked. This follows to some extent the continued success of the self-regulated environment that preceded the Pubs Code. Tenants are in a better negotiating position with their pub company, with better information, and the perceived balance of negotiating power has shifted towards tenants.

The most important impact has been to provide prospective tenants with more information, which ensures they are properly advised, and to improve the engagement between publicans and their pub company.

That is not to say that the Code was not without its teething problems. The early operation of the Pubs Code in July 2016 struggled to gain any real traction as it was implemented without any lead-in period or any time for preparation. Whilst the vast majority of the Code's contents relate to protections for TPTs and standards of operation for POBs, the MRO-related section of the Pubs Code is a complex piece of legislation with equally difficult regulations. The absence of time to fully understand and analyse the consequences from an implementation point of view was not helpful to either tenants or landlords – or, in our view, the PCA itself.

The political and media focus on the regulations has always tended to be around the MRO option. The MRO procedure is very long and overly complex and could be simplified as suggested above with guidance from the office of the PCA. However, the MRO option for tenants has led, in part, to a stronger negotiating position with the choice and comparison of both tied and untied agreements available to them.

The publication of awards is welcomed. EIG, along with the other pub companies have unilaterally agreed to the publication of all awards. But where some tenants are resisting this position, we would ask that the PCA respects the tenant's request.

The external appointment of arbitrators has been a welcome improvement over the course of the last few months, and we believe this will free up the PCA to regulate, rather than be stuck in some of the detail of arbitrations. However, it should be noted that both the cost of some external arbitrators is extremely high and their expertise in property related disputes is sometimes limited. **A panel of external arbitrators set up by the PCA would be a welcome outcome.**

The question of commonality of the terms of a new MRO agreement under (Reg 31(2)(c) has and continues to exercise all those involved in the Pubs Code including the PCA. This could be resolved by the prior approval or publication of expert research, this would provide significant, welcome and easily obtainable guidance.

Whilst it is acknowledged each case must be taken on its merits the PCA has thus far given inconsistent guidance and precedent within the awards which have been provided. A summary of consistent guidance within each case would be very welcome, an example would be with SDLT and the delivery of that through an MRO agreement via a Deed of Variation by reference, which reduced the cost for MRO option publicans.

It is worth noting that the wide-ranging survey undertaken by the office of the PCA in March 2018 provided the following results for knowledge of the Pubs Code.

- 72% of tenants were aware of the Pubs Code.
- 63% of tenants were aware of the right to request Market Rent Only agreement at certain trigger points.
- 69% of tenants said they felt they had all of the information required about their pub owning company Business Development Manager.
- 64% of newer pub tenants surveyed stated that they would definitely want to remain as a tenant for at least five years.

Knowledge of the Pubs Code Adjudicator was less well known: 47% of respondents were not very or not at all aware of the PCA.

As can be seen from Table 1 earlier in this submission, the timescales to achieve an MRO option are reasonable with 65% of MRO option requests being dealt within 6 months. Other benefits of the Pubs Code include significant investment in training within the field based teams, and the improved processes and capturing of meeting evidence to ensure fair and lawful dealing. The statistics in the answer to question 3 below show a slower income growth within the EIG estate in the leased and tenanted estate where tenants have used the Pubs Code to compare tied terms with free-of-tie terms, regardless of which form of agreement they ultimately chose to pursue. This provides evidence that tenants are potentially enjoying a stronger negotiating position – the Pubs Code is therefore working.

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?

Looking at the Pubs Code in its whole and the impact on POBs and publicans, there are two distinct elements to the Pubs Code, and these are defined by the guiding principles within the original framework:

Fair and lawful dealing

Are tenants being treated as the legislation envisaged, both fairly and lawfully?

Yes. The number of complaints made by tenants of unfair dealing is very small since the introduction of the Pubs Code, and only 1 found against EIG. While we take this adverse ruling very seriously, we would note that EIG was found in breach of PCA guidance which was not issued until over 12 months after the event in question.

The Pubs Code requirement for minutes of meetings between POBs and TPTs to be recorded and circulated within 7 days has provided clarity and assurance to TPTs and ensured that matters discussed and agreed in business meetings are followed through, whilst ensuring that disagreements or concerns are properly raised and recorded.

In EIG's case, 59,115 meeting minute records have been produced since the Pubs Code was implemented, with copies circulated to TPTs within the prescribed 7 days. There have been no occasions when the non-provision of meeting minutes has been raised by a TPT and just 61 occasions on which the content of meeting minutes has been challenged by the TPT and subsequently corrected by EIG. The evidence clearly shows that 99.9% of meeting minutes reflect that the principle of fair and lawful dealing is being achieved.

The tied tenant should be no worse off than the free-of-tie tenant

The number of MRO agreements completed should not be regarded simply as a measure of success in this regard, as in a large number of cases the tied tenant may already be enjoying tied terms which make them significantly better off than the free-of-tie tenant. There is a lack of context in the way that the debate views the significant benefits of the tied model compared to an MRO agreement.

The evidence shows that the number of tied tenants preferring to stay tied having gone through the MRO process is significant, as can be seen from Graph 1 below (p13).

The process of challenging the terms of an MRO tenancy through the PCA or external arbitrators is clearly not satisfactory for any of the parties and needs to be improved.

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?*

The terms achieved by tied tenants on MRO option requests, and as a result of PCA awards and IA awards, are substantially different compared to those we negotiate in the open market with FoT tenants. EIG are one of the most active grantors of free of tie tenancies over the last 5 years (having granted over 200 of the same) The terms of the free of tie leases granted are consistent, with occasional minor variations negotiated.

We have commissioned expert reports from [Redacted] and [Redacted] as to the terms that FOT agreements typically contain. We have also received independent s.37 Arbitration Act 1996 expert reports from [Redacted] of [Redacted] and [Redacted], who were appointed by the PCA and DPCA. They have made a number of suggestions of minor changes to the form of MRO tenancy to ensure that they contain terms that are both common, and reasonable. However, the body of the MRO tenancy remains the same and, for instance, [Redacted] has commented:

“the lease as currently drafted...would be generally acceptable to the hypothetical willing tenant negotiating with a willing landlord in the open market.”

It would have been helpful if the Government or the PCA had commissioned research into the size and composition of the free of tie leasehold pub market, as they have access to data which EIG do not, such as information from the Valuation Office. That would have been helpful in establishing the commonality of various offered terms in the MRO tenancy.

The lack of public information about the free of tie market has led some tenant advisors to argue that a free of tie lease is the same as a tied lease, but simply with the tie removed for drinks supply. **This is categorically incorrect and fails to appreciate the very substantial differences between tied and free of tie leases in the open market.** Clarity in this matter will be permanently resolved if Government were to encourage the PCA’s office to formally accredit each POB’s MRO-compliant agreements. This approach has been taken in of other property related sectors who follow the Model Commercial Lease precedents which have been produced (for example that originally commissioned by the British Property Federation¹).

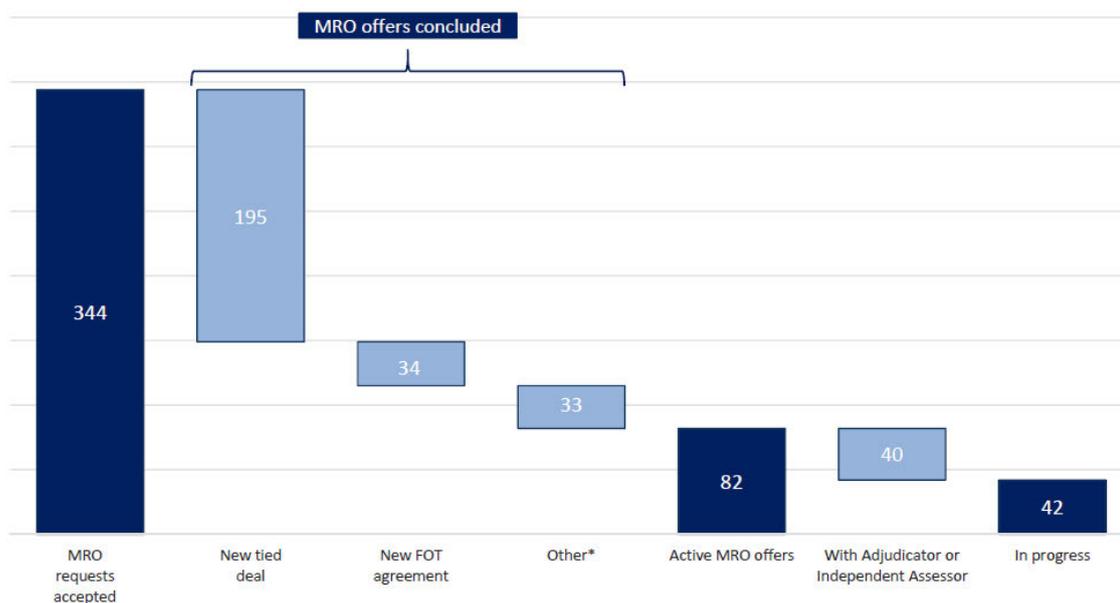
There is some evidence of a value transfer from POBs to tenants in tied agreements. This is due to a number of factors and not just in relation to the Pubs Code. Our interim results demonstrate the number of tenants securing a range of outcomes after concluding rent events whether or not they chose to trigger an MRO option.

From the date of the Pubs Code introduction to 31 March 2019, there were 1,415 rent review or agreement renewal events which could potentially have triggered a Market Rent Only option.

Graph 1

MRO

1,415 potential trigger events from 21 July 2016 to 31 March 2019



* Sold to publican, lease buyback, MRO request cancelled or timed out

For the 1,415 pubs referred to above there are 946 that we still own and which are still operated by the same publican on either tied or new free-of-tie agreements and in the half year to 31 March 2019. These pubs delivered like-for-like net income growth of 1.1% compared to the prior period. The growth in our income for this group of pubs has not been as strong as the like-for-like net income growth of 1.9% achieved for the total estate reflecting, in part, the stronger negotiating

¹ Available at www.modelcommerciallease.co.uk

position for publicans which the Pubs Code sets out to achieve. Whilst 17 publicans have opted for free-of-tie terms, 929 publicans have opted to remain on tied terms, reflecting the attractiveness of the many substantial benefits that tied publicans can receive from us during the life of their tied agreement.

Clearly the tied model remains a very attractive option to tenants who make a request to go MRO; the evidence of EIG's experience is that the reality of an untied agreement, which does not provide support to tenants, is less attractive to tenants.

4. What, if anything, do you think needs to change to make the Pubs Code operate more effectively and/or better support the principles?

As EIG has the most experience as a regulated pub company under the Pubs Code, we believe we are ideally placed to indicate how the Pubs Code could operate more effectively. Our findings in response to this answer relate specifically to the Code itself, not the PCA, and primarily cover standardisation of tenancy terms.

In the first instance it is worth noting that overall the Pubs Code is working well and the general aims of the legislation are becoming evident in the early stages of the implementation of the regulations. However, there are certain areas around the periphery of the regulations that could improve the interaction of the Pubs Code between all parties.

EIG believes that it is possible for the Pubs Code or the **PCA to confirm that a POB's standard form of MRO tenancy contains terms which are common**. That would save substantial time and expert evidence dealing with the question of commonality and early sight for the tied tenant to consider what options are available. EIG's preference would be for the basic content of an MRO lease to be pre-approved and final in every circumstance, although as an alternative we would seek confirmation that the standard terms are common. The tenant would still be able to argue that the terms are not reasonable in the wider sense used by s.43(2) of the 2015 Act, dependant on the location and trading profile of their public house, and negotiate financial terms.

The main consideration for a tenant is the tied rent and the MRO rent. If a standard MRO agreement was available using terms that are common in the market then a rent could be ascribed to that agreement at an earlier stage. In this scenario the tenant would then get an indication earlier to the potential rent for the pub as both an MRO and under a tie through the Rent Assessment Proposal. The best route forward for the tenant would then be clear and it would save both time and cost. If the tied rent is pursued then negotiations can be finalised and if an MRO agreement is sought the issue of agreement content and commonality will have already been settled.

If these are not issues that are considered capable of change then the following could improve the current process:

- The MRO procedure is very long and overly complex. Extending the timescale for challenging the MRO lease content (presently 14 days) to the end of the subsequent negotiation period (63 days) would provide the space for the parties to avoid arbitration by negotiation.
- Clear guidance and 'golden threads' from the office of the PCA, which would provide consistency for both tied tenants and POBs.

- The current investment agreement which delays the MRO option is currently based on a capital expenditure which is twice the rental value – this reduces the ability of the POB to ensure a return of the capital they invest especially for smaller, but no less essential investment amounts. There are instances where pubs with larger rents require investment but this is not capable of being achieved. We would welcome the opportunity for a willing tenant and POB, to properly document either a longer waiver or the ability to invest less than the twice rental value within the current framework to encourage more investment into pub estates.
- Tenants who have had pre-entry training or who are renewing their lease under the Landlord and Tenant Act 1954 should be exempted from a training requirement, in the latter situation should be exempt from a business plan requirement. This is slowing the process down for already successful tenants.
- Some tenants have attempted to argue that the opening of a competitor pub would be a trigger event for MRO under Regulation 7. EIG believe that is not the case, but clarity would assist.
- The ability for TPTs to opt out of a cyclical rent review being an MRO trigger may enable smaller, and more regular capital investment to be available, and more lease extensions to be granted.

In addition, there are a number of small areas of (we believe) unintended negative impact on pricing under the Pubs Code as originally drafted. We would propose these minor amendments:

- Any price increase should be exclusive of any potential tax increase: this is taken into account through increases in alcohol duty (Reg 3(5)(a) and Reg4(5)(a)), but not any other tax. An example of this was the increased tax on high sugar drinks which could not be passed onto the consumer, and is therefore not achieving its policy objective (Reg 5). If the regulations are not amended we foresee, for example, some future environmental policy objectives which are required but which are incapable of being implemented by regulated POBs.
- There is a flaw in the Code in relation to the appointment of an IA following the agreement of the MRO option. Where the tenant fails to pay the IA they do not formally accept the appointment and the claim can continue indefinitely, there is no set timescale. This adds to the perception of the elongated timescale for the MRO option process.

We would ask Government to look at changes in these instances to ensure that policy objectives are met without a detrimental impact on pricing.

Part B: The Pubs Code Adjudicator

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?

EIG believes the Pubs Code Adjudicator has been relatively effective in the role given the lack of time available to set the office up and become accustomed to the nature of the Pubs Code. It has been a difficult period of time for the PCA given the outspoken criticism regarding Mr Newby's appointment by a very small number of campaigners, and the later appointment of the DPCA. However, the effect

of the PCA has been to give clearer information to publicans with a clear consistent obligation on POBs.

EIG believes the Adjudicator's office initially struggled with a lack of clarity as to their role. The PCA saw itself more as using its arbitrator powers rather than its regulatory powers as an adjudicator. There is also some ambiguity as to how far their investigatory powers go as a regulator. This initial confusion has changed as additional personnel at the office of the PCA, with previous experience in a regulatory capacity, have begun to change the emphasis. This change has come at a continuing significant cost both in terms of additional fees paid by POBs for external arbitrators and time whilst the office of the PCA continues with ongoing arbitration proceedings.

The PCA office as a whole has on occasion been very demanding with POBs in terms of timescales. In some instances, this has led to very challenging turnaround times or last-minute guidance which has proved sub-optimal from an operational point of view. An example of this is the PCA providing complex changes to the Compliance Report template for reporting requirements with only weeks to go until deadline for reporting, and the implementation of the requirements for sediment allowance which required significant IT changes within a very short period of time.

In the first six months of the Pubs Code coming to place the PCA took 301 telephone enquiries, while in the six months to March 31st 2018 the PCA took 16 telephone enquiries. The PCA shows a similar drop off in level of online enquiries. One interpretation of this data is that the legislation is not being as actively promoted by the PCA as it could be. EIG has clear direction for its publicans to the PCA web-site and have clear sign-posting through our Publican Channel which is exclusive to EIG publicans. EIG also highlights a TPT's rights under the Pubs Code at every rent review. Whilst there has been a drop in activity the cost of the PCA office has continued to rise, which EIG believes is unjustified and unsustainable.

The Statutory Review asked to comment in particular on:

a) Whether the PCA has sufficient and proper powers to enforce the Code effectively.

EIG believes the office of the PCA has sufficient powers within the existing legislation.

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.

EIG believes the office of the PCA has not overall been fully effective in exercising their regulatory powers under the Pubs Code and has concentrated disproportionately on arbitration proceedings. The office of the PCA should seek to regulate, guide and provide best practice examples to ensure that regulated pub companies are sufficiently well-regulated, but allowing the market to ensure terms are properly open to negotiation between willing parties.

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;*

The PCA has given advice and guidance, although this is limited and in a number of cases has not been very clear. In some instances, in our interpretation, members of the PCA office have struggled to understand the complex and changing nature of the market they are trying to regulate.

There has been a missed opportunity to provide clear unambiguous, properly consulted, guidance that could lead to clarity with both the application of the Pubs Code as a whole and particularly with

the application of the MRO process (including the MRO vehicle, and some of the terms of the MRO vehicle).

For instance, we have consistently sought to understand the PCA's interpretation of what is meant by "common" in Reg 31(2)(c). There has been some explanation given (it means "usual" or "normal" and it concerns clauses individually and in combination) but there has been no usable explanation of how a POB or expert should understand the word.

The PCA's interpretation of what is reasonable in the market also provides for some concern, as they tend to interpret what is affordable as reasonable. This fails to take into account the guiding principles of a willing buyer and seller in the open market providing the reasonable position for the opportunity based on risk and reward. This is not the affordability for the current tenant, which seems to be view of the PCA.

- *investigating non-compliance with the Pubs Code;*

EIG has co-operated with all enquiries and would fully co-operate with any further investigations the PCA wishes to pursue.

- *where non-compliance is found, requiring publication of information, imposing financial penalties or making enforceable recommendations; and*

The PCA has continued to publish awards following arbitrations where non-compliance of the regulations has been found. EIG welcomes the publication of these awards which provides some clarity for all parties. However, should the tenant not desire publication we believe that the PCA should not publish.

Arbitration awards are invariably long and complex documents, requiring considerable technical expertise in order to correctly interpret the conclusions drawn and the implications arising. We encourage Government to require the PCA's office to provide summary guidance in every individual award, and cumulative guidance which summarises the themes arising from all published awards to date and the key matters of common interest to TPTs and POBs.

EIG is not aware of any impositions of financial penalties or enforceable recommendations by the PCA.

- *arbitrating disputes under the Pubs Code.*

EIG is the largest regulated pub company with the largest number of long leases and have therefore been subject to the largest number of arbitrations under the Pubs Code. The recent change by the office of the PCA to move towards using external arbitrators rather their own staff is to be welcomed, as this will remove the pressure from the office of the PCA and allow them to begin to regulate more effectively. However, the cost implications need to be considered as part of these changes. There is an urgent requirement for a panel of arbitrators and we anticipate the cost of the PCA office to reduce given the reduced number of activities.

There are a few key areas where the office of the PCA could become more effective which have been referenced already within this submission. They can be summarised as follows:

- Improved consistency of awards, specifically around vehicle for MRO.
- Provide an approved form of lease to Pub Companies.

- Establish an agreed panel of external arbitrators
- Employ experts to produce guidance on common terms
- Produce a comprehensive set of guidance based on 'golden threads' and precedent around awards.
- Provide formal guidance on a standard form of agreement with each POB, as well as the use of a new 'DOV by reference'

In addition, the PCA could speed up processes and provide an associated cost benefit by giving **guidance on suitably qualified tenant advisors**. The basic requirement for a tenant advisor should be as follows:

- Be suitably independent
- Subject to professional ethics as a qualified members of a professional body e.g. Royal Institution of Chartered Surveyors
- Have professional indemnity insurance to a suitable level

This provides a simple basis to ensure matters are dealt with professionally and in a suitable timescale.

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

Yes. Pub Owning Businesses cover the overall costs of running the Pubs Code and the subsequent processes for dispute resolution, which is fair in most cases.

However, tenants are only liable for the arbitrator's costs if they can be shown to have brought the claim vexatiously, which provides for a high level of proof. If the tenant, or the tenant's advisor, has brought a claim unreasonably or continued that claim unreasonably then the arbitrator should have more discretion to award costs against the tenant. The lack of consequence to the tenant and their advisors taking unreasonable positions is one reason why MRO and other cases can take so long.

Pub owning businesses are subject to significant scrutiny and potential costly reputational damage throughout the arbitration and MRO process. POBs' ongoing business relationships with TPTs and the recruitment of future TPTs remains at the centre of a POBs business model, and would be at risk if accusations of "delaying tactics" were substantiated. Despite frequent and malicious accusations to the contrary by a small group of campaigners, no evidence of any delaying tactics have yet been produced by campaigners, or so determined by the PCA.

Part C: Pubs Code Regulations

7. There are two sets of regulations that relate to the Pubs Code: The Pubs Code etc. Regulations 2016 and the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016.

You may have commented on some of these provisions in response to questions in parts A and B, 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.

The overall position has been covered with the preamble to the answers to the specific questions and within the question in A and B above.

Part D: Impact Assessment and other information

8. The review will consider the key assumptions made in the Impact Assessments 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.

Each of the issues raised within this question are dealt with by the Europe Economics Report commissioned by the BBPA on behalf of the six regulated pub companies and can be seen at <https://beerandpub.com/policies/property-and-planning/statutory-code-and-pca/>. A summary of this report can be seen in Appendix 3.

In summary:

- Costs to business are significant, with little impact beyond those economic factors which are currently affecting pubs.
- EIG evidenced the redistribution of income in the submission to the Business, Energy and Industrial Strategy Committee update on the Pubs Code Adjudicator inquiry². This clearly showed the like-for-like net income position which represent a tangible transfer of value to tied pub tenants.
- Tenancy agreements overall are reducing in length of term, while the strategic positions of pub companies has moved as a consequence of better estate management as the consumer environment becomes tougher. However, tenant occupancy within the EIG estate has increase to beyond 8 years, this is due to a continued focus on providing support to tenants in the tied estate.
- Inevitably the level of investment in tied leases reduces as more pubs move to being directly managed

Part E: Other comments

9. Please add any points that you feel you have not been able to make in response to the earlier questions.

In summary, the Pubs Code is working, we have dealt with additional points in pages 3-8 above, in this submission.

² <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/business-energy-and-industrial-strategy-committee/pubs-code-adjudicator-update/written/84739.html>

Appendix 1 – Enquires to the PCA

Information provided by the BBPA. House of Commons: Written Answer: Department for Business, Energy and Industrial Strategy: Pubs Code Adjudicator

From a question by Mr Nigel Evans (Con) (Ribble Valley) - Since July 2016 the PCA has had the following enquiries:

Month	Received via phone	Received via email	Received via website	Not categorised	Total
Jul-16	80	1	24	0	105
Aug-16	86	0	28	0	114
Sep-16	56	3	19	2	80
Oct-16	36	1	11	1	49
Nov-16	26	0	11	0	37
Dec-16	17	1	10	0	28
Jan-17	18	2	12	0	32
Feb-17	11	0	10	0	21
Mar-17	15	0	9	0	24
Apr-17	10	2	3	0	15
May-17	21	0	3	0	24
Jun-17	16	0	8	0	24
Jul-17	4	0	1	0	5
Aug-17	15	0	3	0	18
Sep-17	13	0	1	0	14
Oct-17	14	3	6	1	24
Nov-17	22	4	5	0	31
Dec-17	9	0	3	0	12
Jan-18	11	0	0	0	11
Feb-18	13	0	1	1	15
Mar-18	2	2	1	4	9
Apr-18	7	1	3	6	17
May-18	6	1	2	5	14
Jun-18	6	7	0	4	17
Jul-18	3	2	1	5	11
Aug-18	2	3	1	13	19
Sep-18	8	1	1	0	10
Oct-18	3	2	0	3	8
Nov-18	5	2	0	5	12
Dec-18	0	1	0	2	3
Jan-19	5	2	4	0	11
Feb-19	3	2	4	0	9
Mar-19	0	0	8	0	8
Apr-19	2	0	2	1	5
Total	545	43	195	53	836

Appendix 2 - Significant Support provided to the tied pub tenants.

Include:

- Regional Managers who provide personalised business advice
- Access to a wide range of drinks all delivered on one lorry (reduces the number of deliveries to the pub) and one invoice – both lower cost and more environmentally friendly
- A discounted exclusive utilities offer is available to our publicans.
- Category Management Tool to ensure that the publican can maximise the opportunity within the pub.
- Range includes:
 - 70 keg ales,
 - 158 cask ales,
 - 69 draught lagers,
 - 25 bottled ales,
 - and access to the SIBA scheme which provides over 900 cask ales
 - beer from 362 small and medium sized UK based brewers
- On-line ordering for one delivery and one invoice
- Unique trade shows by 140+ suppliers offering individual and exclusive deals
- Different repairing options available to tenants for the pubs
- Our property packages ensure publicans are able to comply with relevant statutory Health & Safety obligations
- Access to our 24 hour property help-desk
- Access to food support, via our food partner, that gives our publicans cash back.
- Support packages
- Free access to off-site cellar training
- Capital Expenditure options
- On-going Marketing & PR support
- Membership of Cask Marque
- Membership of BII
- Publicans can exit with six months' notice at any time on a tenancy agreement
- Licensing support
- A discounted business rates service
- Web-service, and web-site and social media management service tool

Free-of-tie tenants do not receive these significant services.

Appendix 3 - Summary Europe Economics Independent Report

Europe Economics Independent Report

The British Beer and Pub Association in conjunction with the regulated Pub Owning Businesses have instructed Europe Economics to provide an independent study to reflect on, and investigate, the issues associated with the introduction of the Pubs Code and PCA. The aim of this project was broadly, but not limited to, consider the following:

- Undertake an independent and factual economic analysis of the first two years of the Pubs Code.
- Highlight critical success factors of the tie.
- Put into perspective some of the issues raised under the Pubs Code, especially in relation to the different operating models and their capacity to address broader trends in the sector.

The report makes a number of independent recommendations and identifies further analysis, the output of the report is separated into three main areas: the rationale for the code, the tied pub model, and the impact of the code.

A summary of the outputs can be concluded as follows:

- The original rationale for the Code finds that the evidence for the introduction was not strong based on a limited number of tenant specific experiences, with no comparison with other market or sector evidence. The report concludes that there is nothing intrinsically wrong with tied the market and that 7 out of 10 tied tenants would sign up again with their pub company suggesting that the majority of tied tenants are happy with the current tied arrangement.
- The key issues of market failure form part of the study these are:
 - Asymmetry of Information
The Code has improved the potential imbalance of information between the tenant and the pub company, by providing greater transparency in the information requirements between the two parties.
 - Market Power
The perceived unequal power relationship has been addressed by the introduction of the MRO option, this needs to be assessed prudently as this could fundamentally undermine the key benefits of the tied model.
 - Behavioural Biases
The report finds that tenants who make economically unusual decisions with different motivations for running pubs are generally less satisfied than those who make the decision based on economic reasons.
 - The extent to which the tie unreasonably “locks-in” tenants to their agreements
The report finds that there is no evidence of market failure due to “lock-in” issues and that there has been no developments that would suggest market power of pub companies has increased since the Office of Fair Trading Study in 2010, which found that the tied pub market did not result in any competition issues.
- The study revisits the tied model itself, reducing barriers to entry, transfer of knowledge, ongoing support, and scale efficiencies and the shared risk and reward are significant benefits of the economic model. The study highlights that these benefits are derived a

different times by the parties during the cycle of the relationship and the agreement. The tenancy model therefore provides a safety net for pub tenants when they are doing less well by balancing the fixed and variable costs.

- The overall impact of the Code was highlighted by the Study in the following ways:
 - Awareness
The study finds there is good awareness and information for the Code especially for those tenants coming up to a rent event. Knowledge of the office of the PCA is lower than that of the legislation itself.
 - Barriers to Entry
The report notes that the tied model lowers barriers to entry for those who want to run a pub and helps ongoing investment in the tenanted pub estate.
 - Bargaining powers of tenants
The MRO option is improving the negotiating position of tenant in the short term. The transfer of value is difficult to assess as it is intangible and should be treated with caution. However, Europe Economics conclude that the overall impact of the MRO option could have a detrimental effect with lower levels of investment in leased and tenanted pubs.
 - Dispute Resolution
Best practice is slowly being achieved. However there are many weaknesses including clarity, what is in and out of scope for the adjudicator and what constitutes a reasonable MRO. The slow pace of the arbitration process and resulting awards was identified by Europe Economics as a problem.

- What do we see from Government

Europe Economics key finding for Government is that it needs to give greater direction to the PCA to ensure greater clarity and understanding on key code issues rather than making major changes to the Code itself at what is an early stage of the Code's use.

The full report is available at:

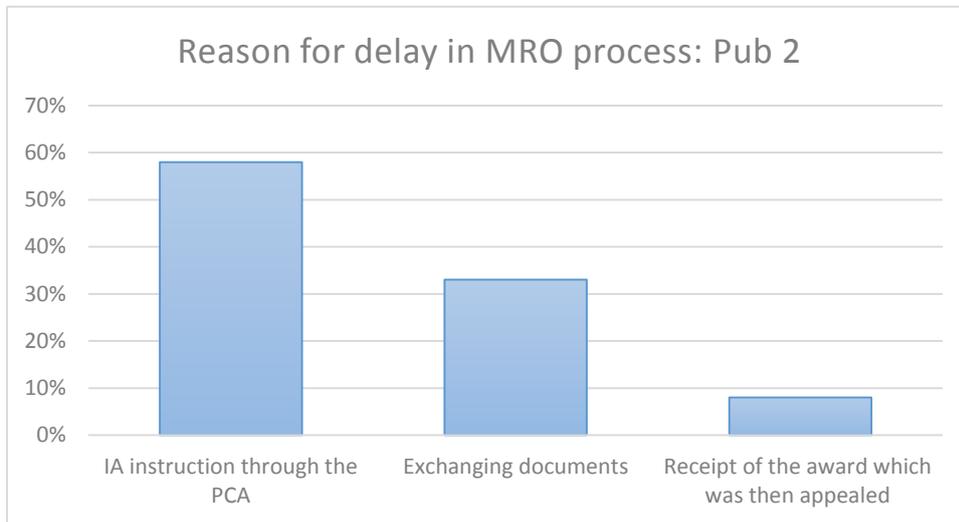
<https://beerandpub.com/policies/property-and-planning/statutory-code-and-pca/>

Pub 2

The MRO process could have taken around 6 months from MRO notice to execution of MRO tenancy, [Redacted]. Clearly tenants should have the ability to appeal, however the framework needs to be quicker and more effective.

[Redacted]	[Redacted]

In terms of responsibility for the delay – EIG have complied with all directions on or before time. Out of the 6 tenant’s unsuccessful appeal was the sole cause of the delay.



From the MRO notice in [Redacted] 2018 to the Independent Assessor’s (IA) award on a free of tie rent in [Redacted] 2018 was in accordance with statutory framework. The tenant did not challenged the terms of the MRO agreement.

The tenant could have accepted the award and moved on to execution of the MRO tenancy.

The tenant elected to appeal the IA award in a referral at the beginning of [Redacted] 2018.

A case management conference took place in [Redacted] 2019.

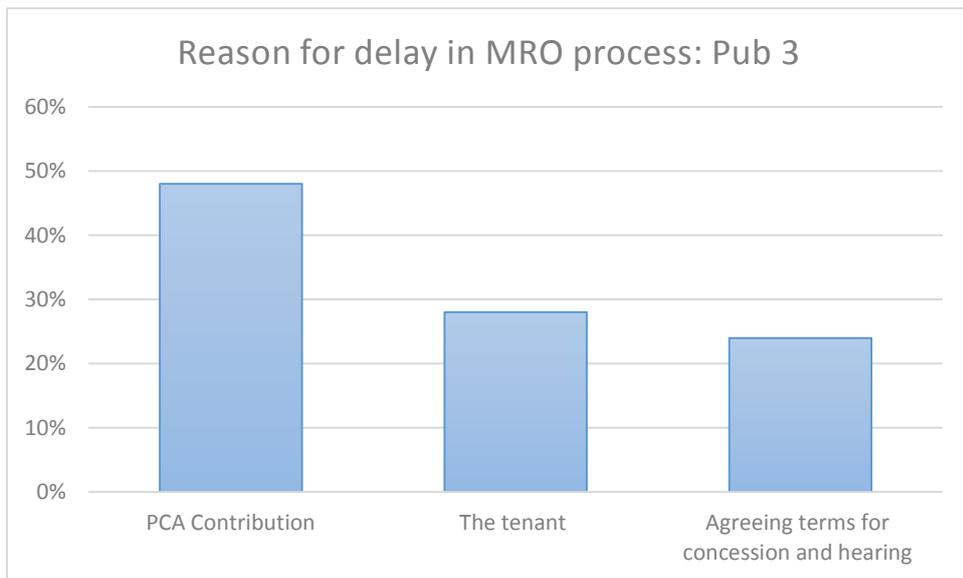
Directions were finalised in [Redacted] 2019. Statements for claim and defence were filed in [Redacted] 2019, the appeal was dismissed in [Redacted] 2019 by an external arbitrator.

Pub 3

This was an MRO referral of the analysis of the delay of 31 months (when it should have been six) a summary of the additional 25 months is as follows:

[Redacted]	[Redacted]

In terms of responsibility for the delay – EIG have complied with all directions on or before time. Out of the over two years delay the PCA had contributed 12 months (48%), tenant delay and challenges contributed 7 months (28%) and agreeing terms for concession and hearing 6 months (24%).



The tenant was represented by a prominent campaigner. The following provides a timeline of the case

[Redacted]

[Redacted]

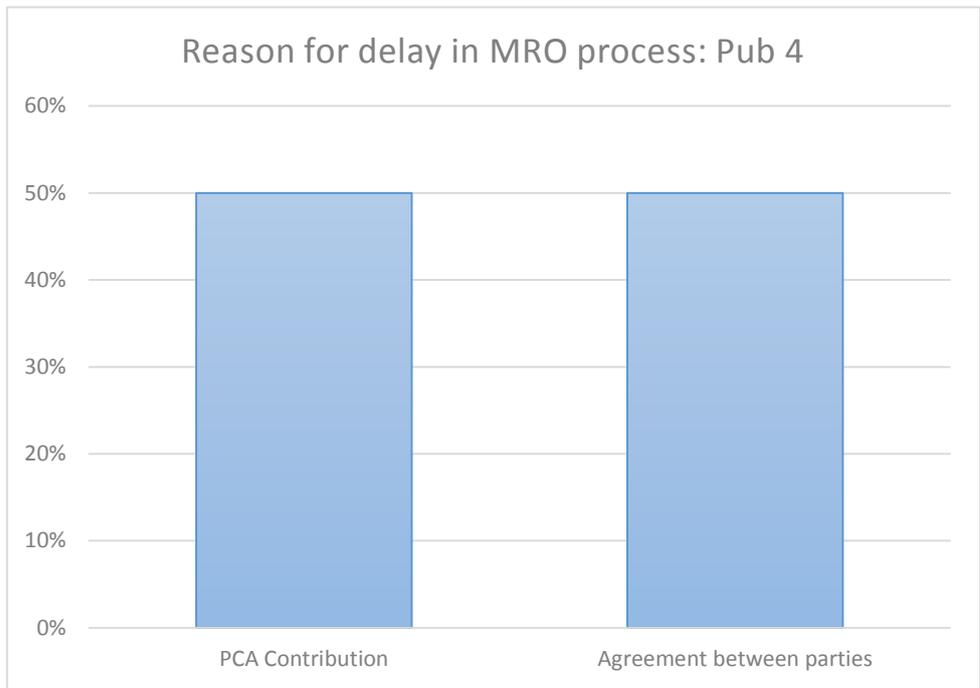
If the prominent campaigner had accepted the jurisdiction of the PCA, and the subsequent determinations awarded by the PCA then the matter would have settled substantially quicker.

Pub 4

In contrast the non-MRO referral for this Pub took six months the timeline is as follows:

[Redacted]	[Redacted]

The time spent on this case represents 3 months with the PCA (50%) and the rest of the time, 3 months, agreeing between the parties (50%).



[Redacted]

This matter is near conclusion at the time of writing, and has taken [Redacted] months, however it does provide an example of how the PCA referral process can be quickly.