

British Pub Confederation

Standing Up for Pubs and Publicans



22 July 2019

British Pub Confederation Submission to the BEIS Consultation

This is the response from the British Pub Confederation to the BEIS consultation. The British Pubs Confederation is a confederation of thirteen pub organisations including all the independent (non-pubco linked/funded) tied tenant representative groups. The British Pub Confederation represents more tied tenants than any other organisation.

We also refer you to the individual submissions from all British Pub Confederation member organisations (the membership is listed here on the right).

The Pubs Code has been a profound failure; not only in delivering rights promised to tenants but demonstrably so by its own principles, neither of which have been delivered.

Worse still, it is now the belief of the British Pub Confederation Steering Group that this has been deliberate, with a Government that have effectively sided with the large pubcos through ignoring the reality of the implementation of the Pubs Code or worse still, through the wording of the Code, have deliberately undermined the all-important Market Rent Only option.

The Government has failed to deliver what it promised and broken its commitments in regard to this matter. The Pubs Code in operation and in drafting fails to deliver and honour the intent of the legislation and the principles underpinning that intent. This not only flouts the will of Parliament but means thousands of hardworking tenants have been duped and betrayed.

The British Pub Confederation have consistently and repeatedly highlighted [Redacted]. Yet thus far, the Government has failed to pay any meaningful attention to this matter, indeed denying the demonstrable failure as experienced by hundreds of tenants who have tried to exercise their rights, only to be frustrated by the gaming of the code which the woeful implementation of the code has enabled, meaning many thousands of tenants are simply unable to exercise the legal rights your Government promised them.

As we have already highlighted, it is now clear that tenants of the large pub-owning companies do NOT have access to a genuine Market Rent Only option. This has been demonstrated in all the cases where tenants have tried to pursue that right, but also is clear **that the Pubs Code was drafted in a way that ensures this outcome.**

The Pubs Code Adjudicator and Deputy Pubs Adjudicator confirmed that they are aware that tenants do not have the right to a genuine Market Rent Option as intended by Parliament and only have access to negotiate a free-of-tie agreement, which is not a genuine Market Rent Only option at all.

Member organisations:

Forum of Private Business

Guild of Master Victuallers

Licensees Supporting Licensees

The GMB

Scottish Licensed Trade Association

Fair Pint Campaign

Pubs Advisory Service

Justice for Licensees

Punch Tenant Network

Federation of Small Businesses

Unite the Union

Protect Pubs

Society for Preservation of Beers from the Wood

British Pub Confederation - [Redacted]

The consultation has asked for evidence. The British Pub Confederation and Confederation organisations that represent tied pubs tenants have been regularly providing evidence both to the PCA and also to BEIS Ministers, yet this has been systematically ignored by the PCA himself and the PCA's office, as well as by disinterested BEIS Ministers who wrongly suggest the performance of the PCA is nothing to do with them and that any issues about the failure of the Pubs Code ([Redacted]) should be referred to the PCA, meaning the PCA, who by statute exercises a judicial function, is accountable to himself.

BEIS Ministers and civil servants are fully aware of our many letters and submissions over the last three years as well as our previous warnings, issued as the Pubs Code came into force.

We have also made clear the failure of the Pubs Code and of [Redacted] which BEIS have consistently ignored with Ministers issuing glib and misleading soundbites, which in reality is ignoring the issue.

We therefore reiterate the following (and attach again):

- Our original report into the failure of the PCA and Pubs Code six months in. Very notably and regrettably, the conclusions of the report are still the same reasons the Code is still failing over two years later.
- Our letter to the Secretary of State sent in March this year about the reality that there is no genuine Market Rent Only option in the Pubs Code – which means that Ministers have failed to deliver the will of Parliament and their own promises made to tied tenants.

The sad fact is – and we and our member organisations have experienced this over the four years - that the Ministers responsible for the implementation and effectiveness have disgracefully washed their hands of this issue.

The Secretary of State for BEIS. Greg Clark MP, has paid no attention and has shown a complete disregard for the issue, despite it being clear that the Secretary of State remains responsible and must ultimately oversee the Pubs Code and the achievement of its principles

Anna Soubry, Margot James, and Kelly Tolhurst have failed in their duty as responsible Ministers (we will give Richard Harrington the benefit of the doubt, due to the length of time he was in post and the fact he was giving the impression of taking some interest). Much of the fault rests with Anna Soubry, whose arrogant attitude based on a remarkable lack of actual knowledge and understanding of the issue led to the [Redacted]. These Ministers, who should have been overseeing the Pubs Code, badly failed tied pubco tenants, who have continued to be exploited, bullied and ripped off, in spite of the department and Government's promises to tackle this.

[Redacted]

British Pub Confederation - [Redacted]

We have no confidence in this consultation, which we fear will be another example of the disdainful attitude of BEIS and this and the last Government's approach to the issue and to tied tenants.

Our biggest fear is that the conclusion reached, will be (ridiculously) that as only a few tenants are choosing to take the Market Rent Only option, that there is no need for a Code or Adjudicator, and furthermore that this shows that pubco tied agreements are what tenants really want! This would be a travesty and the opposite of the real situation on the ground – tied tenants want a genuine market rent only option but are prevented from securing one because of the failure of the code and the gaming of the system by the pub owning companies.

This inability of tied tenants to exercise this desire is of course the outcome the large pub-owning companies and their representatives have hoped for and we believe worked towards. It is also clear that with the profound lack of interest in this issue shown by BEIS that they would be happy with this outcome too, rather than the outcome they claimed they wanted, to actually stop exploitation by pub owning companies and to give tenants the rights Parliament voted for.

Enough is enough and a failure to act on your part now will say to the UK's tied leased tenants that this Government cannot be trusted when it comes to the promises made to them or to rebalancing the relationship between the large pubcos and their tenants. We hope that this is not the case and that the Government will now intervene to make the Pubs Code work as Parliament intended.

We hope you may at last prove us wrong, but we and tied tenants have no confidence at all in this Government on this issue, no confidence in current BEIS Ministers and civil servants, all of whom are ignoring the failure of the Pubs Code.

Our hope is that a different set of Ministers under a new Prime Minister may show a profoundly different attitude, but we fear this is very unlikely with two successive Conservative led Government's showing a disdainful attitude to the plight of tenants and a clear bias to the large companies who lobby them.

So that being the case, unless we see a fundamental change in the attitude of BEIS Ministers, we hope to see a different Government elected and as soon as possible that may actually ensure that we have a Pubs Code as voted for by Parliament and a Government, who will do the simply and honourable thing of giving tenants the simple right, as the trigger points laid down in the law, the right to choose to go free-of-tie based on an independently assessed market rent with all other terms remaining the same.

Yours sincerely,

[Redacted]
[Redacted]

[Redacted]
[Redacted]

On behalf of the British Pub Confederation