



## **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](http://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  
1<sup>st</sup> Floor, Orchard 3, 1 Victoria Street, London SW1H 0ET

Email: [PCAreview@beis.gov.uk](mailto: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: As in previous Consultations dating back to 2008, many tenants still fear retribution from their POBS if they raise their head above the parapet, we are concerned that Government will not receive a true picture of the carnage and destruction of people's homes and business as the tenants are concerned that their identity may not be protected. Government must note that for many tenants nothing has changed, they still feel bullied, ripped off, scammed and conned, for them the Pubs Code and Adjudicator has not brought balance to the relationship, they remain worse off than a free of tie tenant and do not believe that there has been fair and lawful dealing between themselves and the POB.



## About You

Name: [Redacted]

Organisation (if applicable): Justice for Licensees

Address: [Redacted]

|                                     | Respondent type   |
|-------------------------------------|---|
| <input 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 checked="" 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: We believe that many tenants do not believe that they have been treated fairly by their POB. Justice for Licensees continues to receive communications from tenants who wholeheartedly believe that they have not been treated fairly by their POB, we are also members of many social media groups, where the stories remain the same as they did prior to the Pubs Code coming into effect, nothing has changed. Tenants still feel bullied, they still feel ripped off, scammed or conned, they are still losing their homes and business, they most certainly do not believe that they are no worse off than a free of tie tenant and so the carnage and destruction continues unabated. The evidence is in the stories of the tenants and the lack of change in those stories, all Government need to do is as we have done, listen to the tenants, that is the evidence that is required to support this view.

#### 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: The duty debacle is a clear example of POB's not exercising fair and lawful dealing in relation to their TPT's as is the Dilapidations debacle. With reference to Duty we are content enough to suggest that the POB's [Redacted] by expressing to TPT's that a cask of ale contains 72 pints, when they knew full well that a proportion of those 72 pints were of unsaleable quality, [Redacted] they intended to make a gain for themselves and ergo a loss to the TPT. The POB's claimed that there was 72 pints of saleable ale in a cask, [Redacted]. For many TPT's this is most certainly not fair and lawful dealing. We believe that the Adjudicator has been woefully inept at addressing this situation, [Redacted]. With reference to the Dilapidations debacle it is clear that the POB's are producing over inflated dilapidations schedules, we have on file many examples of POB's over inflating the costs of repairs, it is a scandal of national proportions, again this leaves TPT's feeling that the Adjudicator is on the side of the POB's, the Adjudicator should be properly investigating the Dilapidations scandal, his actions to date leave TPT's believing that their initial thoughts have proven true, that the Pubs Code and Adjudicator will do little to ensure that POB's will behave consistently with the principle of fair and lawful dealing. Tenants and tenants' representative groups have consistently warned Government that the Pubs Code, as it stands, will fail to deliver the principle of fair and lawful dealing and that the appointed Adjudicator will fail to ensure that the POB's adhere to the principle of fair and lawful dealing. Both the Duty and Dilapidations debacles have shown that the Pubs Code has not

ensured fair and lawful dealing and that the Adjudicator has been woefully inept at addressing the situation.

### **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: We believe that it is clear that the TPT's remain worse off than their free of tie counterparts and that the Pubs Code has failed to ensure that TPT's are not worse off than if they were not subject to any product or service tie. According to the ALMR (now UK Hospitality) benchmarking surveys tied rents have remained higher than free of tie rents for 5 out of the last 6 years, obviously this evidence flies in the face of the POB's claims that TPT's pay a lower rent than free of tie tenants. There is insurmountable evidence of the very high cost of the tie with tied product price lists being far in excess of free of tie product price lists and that tied product price lists restrict the choice of products for the consumer. For far too many TPT's the benefits claimed by the POB's do not equate to 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. The Pubs Code has failed to ensure that tied pub tenants should not be worse off than they would be if they were not subject to any product or service tie. The evidence we have used to support our view are the benchmarking surveys, the tenants stories, tied and free of tie product price lists.

### **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: We believe that the waiting time for a TPT to try and ensure that they should not be worse off than they would be if they were not subject to any product or service tie. The number of TPT's that have gained MRO is derisive, unfortunately this shows that the Code and the Adjudicator are failing to deliver the principles. The loopholes that the POB's have identified and utilised need to be closed firmly with all due haste. Financial penalties for breaches of the Code should be harder and should be issued for all breaches of the Code, we believe that at this point in time the POB's are breaching the Code with impunity as they are fully aware that they will be fairly free from penalty, this is not and should not be acceptable. The POB's have had since 2004, a period of 15 years, to get their houses into order, to date they are failing miserably, how much more time are this Government going to give them? In that 15 years there has been much destruction of people's lives, losing their homes and business, suffering ill-health, relationship break ups, homelessness and very sadly even death. Communities are losing their social hubs, the pub. Why should the POB's be allowed to get away with their behaviour? They have had long enough to get their houses into order, how much more carnage and destruction are this Government going to allow? Has there not been enough human suffering? In order for the Pubs Code to operate more effectively and/or better support the principles the Pubs Code Adjudicator needs to operate much more effectively than the current situation. We and others warned Government of the ineffectiveness of employing a Surveyor [Redacted] RICS are just as big a problem as the POB's they have allowed the POB's to inflate the rents far

beyond what is sustainable and maintainable, just as they have on the high street! In order for TPT's to be able to start to trust that the Code and Adjudicator will uphold the principles [Redacted] and needs to uphold the principles. The Regulatory Compliance Handbook, available through the PCA website, is just 5 pages long, it appears woefully lacking, after 3 years of law and employment is this really the best that TPT's should expect? It is our firm opinion that the Regulatory Compliance Handbook needs much work to ensure that the principles are upheld, the PCA office has had 3 years to do this and have failed, there is no excuse.

## **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: We believe that the PCA should have sufficient and proper powers to enforce the Code effectively, we believe that these powers should be strengthened.

**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: We believe that [Redacted], the POB's have been allowed to breach the principles of the Code with impunity, they have breached both principles and [Redacted] failed to ensure severe financial penalties for such severe breaches, this is not good enough, the POB's will learn much quicker if sufficient financial penalties are applied to POB's who breach the Code. We are really not sure that anything has been done well, the PCA has been paid an awful lot of money for doing very little, nice job if you can get it! TPT's still believe that the POB's do not operate in a fair and lawful manner and that they are most certainly worse off than if they had no product or service tie, after 15 years of investigation and 3 years of law, this is not good enough. We would propose that as soon as a TPT identifies a breach of the principles that the PCA office has an avenue of redress for the TPT. The POB's have shown a distinct lack of liking for the Code and in particular it's principles, they have had 15 years to get their houses into order, they should not be allowed any longer, the cost to the TPT's, their families and the communities they serve far outweighs any loss the POB may make. We believe that if a TPT identifies a breach of the fair and lawful dealing principle and/or a breach of the no worse off principle that they should now be able to immediately seek to begin the MRO process, they should not be made to wait. [Redacted].

**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: As it is clear that for the TPT's the principles of the code have not been adhered to then it is also clear that the PCA [Redacted]. We are aware that the PCA has chosen to ignore either TPT's or TPT representative groups, this is not acceptable, the office of the PCA should give advice and guidance, should investigate non-compliance with the Code and should impose financial penalties AND make enforceable recommendations where non-compliance is found, they should never, ever ignore TPT's or their representative groups, this is neither helpful or acceptable. [Redacted]

### **Question 6**

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

Comments: [Click here to enter text.](#)



## Part C: Pubs Code Regulations

### Question 7

**There are two sets of regulations that relate to the Pubs Code: The Pubs Code etc Regulations 2016<sup>1</sup> and the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016<sup>2</sup>.**

**You may have commented on some of these provisions in response to questions in parts A and B of this consultation<sup>3</sup>, 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: We believe that changes are needed to the regulations, TPT's should now be allowed to begin the MRO process as soon as they believe that they are able to prove that their POB has breached either of the principles. There is no justification for the POB's to breach the principles ergo they do not deserve any more time, they have had long enough! ~The loopholes identified and/or utilised by the POB's should be closed with all due haste. The POB's should no longer be allowed to delay the MRO process, they should also face severe financial penalties should they choose to so do. There is no excuse for a POB not to produce a realistic and comparable to an independent assessment for rental valuations, they should face financial penalties for producing ridiculous rental valuations that fly in the face of independent valuations, there is no excuse, other than greed, for such ridiculous behaviour. The PCA needs the power to instigate and execute legal cases when the POB's behaviour breaches UK and (for now) European law. The law is the law and it is really not good enough that the POB's get away with breaching the law just because the TPT's are suffering so much at the hands of the POB's that they cannot afford lengthy, expensive legal cases. If it is identified that the POB's may have breached criminal law then the PCA should have the power to instigate and execute criminal proceedings, including cases that precede the Code, where there is no Statutory Limitation.

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<sup>1</sup> <https://www.legislation.gov.uk/uksi/2016/790/contents/made>

<sup>2</sup> <https://www.legislation.gov.uk/uksi/2016/802/contents/made>

<sup>3</sup> 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 Assessments<sup>4</sup> 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: It is clear that there have been many potential pub closures, POB's have been reducing the size of their estates for years, the difference in size, for some, is astounding. Pub closure numbers have been rising for years, there is no doubt that a proportion of the POB estates have contributed to that. There appears to have been very little redistribution of income from pub companies to tenants, there is evidence of POB's trying to increase the rent to the size of loss to the POB when MRO is triggered, this is not acceptable. The principles are clear, they do not, in any way shape or form, state that a TPT should be no worse off than if they had no product or service tie, unless the POB will have to redistribute income between the TPT and the POB, then the principle is invalid! This is the reality that some TPT's face, as ridiculous as it is. It is clear that there has been much change in industry structure or ownership status over the last 15 years.

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<sup>4</sup> <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: For far too many TPT's there has been no re-distribution of income from POB to TPT, ergo the status quo remains unchanged. The TPT's remain worse off than if they were not subject to any product or service tie and therefore the Code and the PCA have failed to uphold the Code and its principles. For a tied tenant there has been very little change over the last 15 years, all the problems identified in years of investigation remain the same, tenants still feel bullied, they still feel ripped off, scammed and/or conned, they are still losing their homes and business, they are still facing relationship difficulties, they are still facing ill-health, they are still facing homelessness, their stories have remained the same over the last 12 years that Justice for Licensees has been running and listening to their stories, the underlying theme is always the same, the POB's have not behaved fairly and that they are taking far too much of the income generated. It is imperative that this Government act quickly to rectify the situation, we remain firmly of the opinion that the human suffering caused by the POB's far outweighs the profits of the POB's, enough is enough, there is absolutely no excuse for TPT's to continue to be abused and exploited by the POB's. A TPT should be treated fairly and lawfully and should be no worse off than if they were subject to a product or service tie, very sadly, at this point in time, there are far too many TPT's that are not in this position and that is far from acceptable.

**Do you have any other comments that might aid the consultation process as a whole?**

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

[Click here to enter text.](#)