

Pubs Code and Pubs Code Adjudicator – statutory review

Submission from CAMRA



1. Thank you for the opportunity to submit evidence to this review. CAMRA, the Campaign for Real Ale, is a UK consumer group that acts as the independent voice for real ale drinkers and pub goers. Our vision is to have quality real ale and thriving pubs in every community.

2. **Executive Summary**

- The Pubs Code is not working as intended and changes to the Pubs Code Regulations are urgently needed to deliver on the principles of no worse off and fair and lawful dealing.
- Pub Owning Businesses (POBs) have continued to game the Code, exploiting gaps in the Pubs Code Regulations, and failing to properly discharge their duties in relation to the Market Rent Only (MRO) option.
- CAMRA has conducted surveys with tied tenants and other interested parties to collect evidence of tenants' experiences under the Code. These surveys have found high levels of concern that the Code is not performing as intended, evidence of continuing exploitative behaviour from POBs, and a lack of awareness of the Code and MRO among tenants.
- The Pubs Code Adjudicator (PCA) has been under-resourced for a large part of the first review period and the role lacks the teeth to provide a real deterrent to POBs against bad behaviour. This has meant that the PCA has been unable to carry out even a single investigation in the first review period.
- POBs still enjoy access to a much higher level of legal resource than tied pub tenants, as well as access to more arbitration awards. This is despite the efforts of the PCA in persuading parties to agree to waive confidentiality on decision notices.
- This situation is not sustainable for tenants, and changes are needed urgently to allow tied tenants to make a decent living, prevent tenants walking away from the trade, and to ensure that the tied pub sector continues to provide high quality community pubs for consumers.

3. **CAMRA engagement with tied tenants**

- 3.1. CAMRA has been regularly told by the PCA that the PCA cannot contact tenants directly and relies on POBs to communicate messages for them. This is not an effective way to get the honest views of tenants, therefore CAMRA has worked over the last few months to engage with tied tenants directly to collect information and feedback of how the Code has operated.
- 3.2. CAMRA has conducted two surveys, the results of which are appended to this submission. The results are complete, except where a respondent has requested that their feedback be used by CAMRA only for information. Further responses are anonymised as requested.
- 3.3. The results of the survey form the substantive part of the evidence base for this submission, Further evidence has been pulled from other sources including data gathered from the PCA itself.

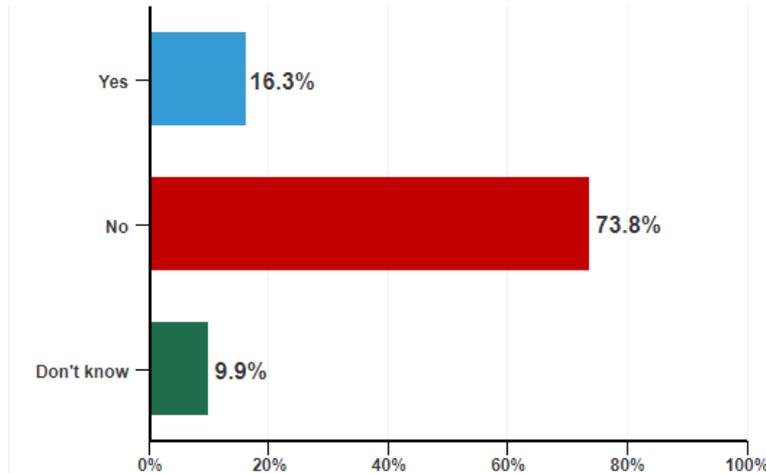
4. **The Market Rent Only Option**

- 4.1. CAMRA notes that there are no consultation questions specifically related to the Market Rent Only option. We would like to highlight separately the feedback we have received regarding MRO, as this is a key vehicle in the Code intended to achieve the "no worse off" principle and has been the main preoccupation for the PCA for the period covered by the review.
- 4.2. Worryingly, our most recent licensee survey shows that 73.8% of tied tenants covered by the Pubs Code say that they are worse off than those who are free of tie.

Indicating the importance of a well-functioning MRO process that delivers for tenants.

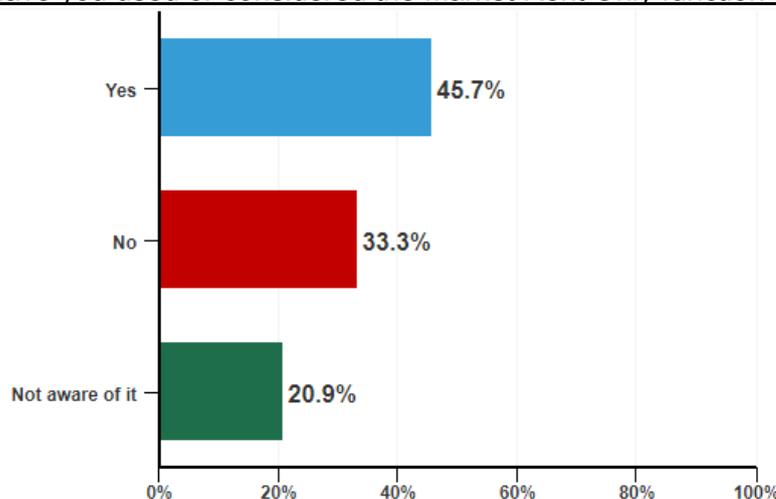
- 4.3. Through text comments, tied tenants have indicated that many of them face a combination of punitively high rents and prices for tied products, while feeling that their pub companies are not delivering on their obligations. As a result, many tied tenants are under constant financial pressure and feel unable to compete with other pubs in their area.

Do you think that in terms of all costs and support provided to you as a tenant, that you are no worse off than a free of tie tenant?



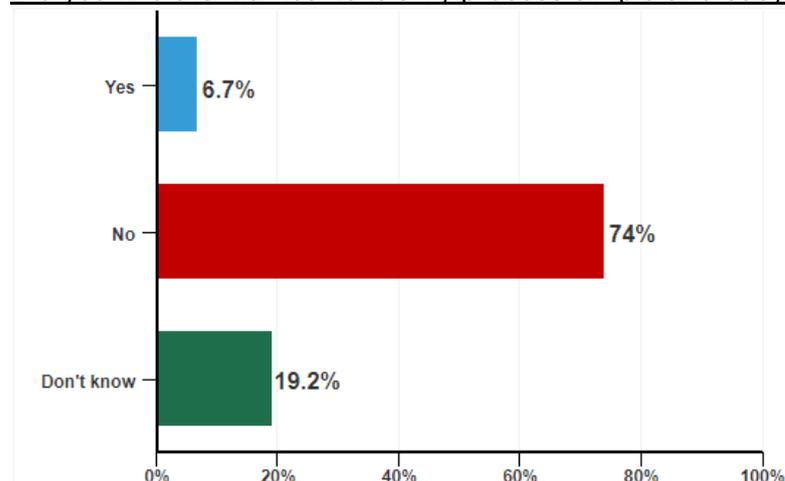
- 4.4. However, many of them have so far not used or even considered the MRO option. Although a clear majority of almost 46% of tied tenants covered by the Pubs Code have considered or used it, a third of respondents have not, which is worrying considering only 16.3% of tied tenants believe they are no worse off than those free of tie.
- 4.5. This suggests that for many tied tenants, reluctance to consider the Market Rent Only option is not the result of satisfaction with their current situation, but instead the result of low levels of trust in the MRO process.

Have you used or considered the Market Rent Only function of the Pubs Code?



- 4.6. This is confirmed by the finding that only 6.7% of tied tenants who have come in touch with the MRO process found it simple and easy to navigate, vastly outnumbered by those who did not (74%).
- 4.7. Further comments from tied tenants who have used the MRO process were that the process is too complex and lengthy, and therefore has become expensive, risky, and liable to abuse by POBs.

Did you find the Market Rent Only process simple and easy to navigate as a tenant?



- 4.8. Further detailed comments on issues with the MRO option can be found at Appendix 1.

Consultation Questions

5. PART A: The Pubs Code

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?

- 5.1. The Code has not performed as intended since its introduction. This is because of gaps in the Pubs Code Regulations, attempts to game the Code by POBs, and an under-resourced Adjudicator.
- 5.2. While a limited number of MRO deals have been completed, and tenants have reported that they have renegotiated their tied deals as well, there is still confusion over how MRO can be delivered, a backlog of arbitration decisions for the PCA to clear, and consistent reports of continued mistreatment of tenants by POBs. These issues are discussed further in our answers to other questions.
- 5.3. Furthermore, a survey by CAMRA on issues affecting the viability of pubs found that nearly 20% of those tied tenants who responded were not aware of the Code¹, suggesting that around a fifth of all tied tenants under the Code could be completely unaware of their legal rights. The PCA's own tenant survey found that only 35% of tenants knew about their right to request MRO under the Code.²

¹ See Appendix 2

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686944/10752-PCA-Tenant_Survey_A5_Leaflet_UPDATED.pdf

To what extent do you think that 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?

- 5.4. CAMRA has uncovered numerous reports of POBs attempting to game the Code and frustrate the MRO process. This is not consistent with the principle of fair and lawful dealing.
- 5.5. According to a survey carried out by CAMRA, 75.3% of tied tenants responding said that they did not think they were treated lawfully or fairly by their POB. A further 60.5% stated that they had not noticed any improvement in the service provided by their POB since 2016. This means that the first core principle of the Code has not been achieved.
- 5.6. Key to the failure of the Code to provide fairness is that while the PCA's office struggles to provide clarity on key aspects of the relationship, some POBs have continued to act as if the Code had simply never existed; and typical complaints in everyday business practice have continued unabated.
- 5.7. Examples of POBs flouting the principle of fair and lawful dealing include:
 - Seeking to deter tenants from taking MRO deals by presenting large and often inflated dilapidations bills alongside a proposal for a market rent
 - Refusing to negotiate with tenants following an initial MRO offer
 - Attempting to evict tenants in the course of MRO negotiations
 - Refusing to deliver MRO through a Deed of Variation and imposing restrictive terms within proposed new MRO leases (this was identified through the PCA's own MRO Verification Exercise).
 - Until ruled as unreasonable by the PCA, the use of Calderbank letters to deter tenants from pursuing MRO
- 5.8. While the principle of fair and lawful dealing is enshrined in law, the Pubs Code Regulations now need changes to tighten the Code and to ensure that POBs follow the spirit and not just the letter of the Code.
- 5.9. Full examples of failure of POBs to abide by the principle of fair and lawful dealing are provided in Annex 1 and Annex 2.

To what extent do you think that 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?

- 5.10. According to a survey carried out by CAMRA, only 73.8% of tied tenants responding said that they were no worse off than a free of tie tenant since the implementation of the Code. This suggests that the second core principle of the Code has not been achieved.
- 5.11. There are also concerns that POBs are refusing to negotiate with tenants or making artificially high initial MRO offers in an attempt to either dissuade the tenant from taking MRO, or trying to ensure that an unreasonably high free of tie rent is offered. This continues the longstanding practice of POBs extracting more than is fair or sustainable from the profits of tenants. A CGA survey commissioned by

CAMRA before the Code came into force found that 80% of tied tenants were reporting personal earnings of £15,000 per year or less.

5.12. CAMRA has historically supported the rights of the family brewers to establish a beer tie for their own products in their tenanted pubs. This is very different from the wide-ranging tie terms for numerous products and services that are now common in tenancy agreements for pubs owned by the six regulated POBs. It is CAMRA's belief that these have become far too wide ranging and restrictive. CAMRA is dedicated to supporting hard working licensees who run pubs tailored to their communities.

5.13. Furthermore, POBs are now seeking to take their pubs out of the scope of the Code through a mixture of transfers to managed models and various franchised systems. This often results in the eviction of a longstanding tenant for a salaried manager, which can have a significant impact on the character and community connection of the pub.

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

5.14. CAMRA supports numerous changes to the Pubs Code Regulations to improve how the Code is working. These are discussed at length in Parts B and C. It is clear that the issuing of further statutory and non-statutory guidance by the PCA will not be enough to ensure that POBs comply with the spirit and letter of the Code.

5.15. At a minimum, changes to the Pubs Code Regulations are needed as a result of the review. CAMRA would also support changes to the Small Business, Enterprise and Employment Act to strengthen the foundations of the Code, reinforce its core principles and enhance the role and powers of the PCA.

6. PART B: The Pubs Code Adjudicator

How effective do you think the Pubs Code Adjudicator has been between 2 May 2016 to 31 March 2019 in enforcing the Pubs Code?

- Whether the PCA has sufficient and proper powers to enforce the Code effectively
- How effective the PCA has been in exercising his powers. What has been done well and what do you think could be done differently.
- 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

6.1. The PCA has failed to fulfil the full potential of the role. This PCA has been overly preoccupied with resolving the large backlog of arbitrations regarding the MRO option. This is a vital area of the Code but has meant that the PCA has had to neglect other parts of their role for the substantial part of the review period.

6.2. While the appointment of the Deputy Pubs Code Adjudicator (DPCA) was welcomed and went a large way to clearing the backlog of cases, there is still much more that the PCA could be doing to exercise their powers under the Code.

- 6.3. Despite a statement from a Minister that POBs are most likely flouting the Code, the PCA has not conducted any investigations or imposed a single financial penalty on a POB for failing to comply with the general principles of the Code during the first review period. The PCA's office has also omitted to report on POB behaviour in avoiding or 'gaming' the code, as required in the Enterprise Act 2017 (S71A of the Small Business Act 2015).
- 6.4. It is difficult to assess fully how effectively the PCA has arbitrated in cases of dispute. This is due to the arbitration process being bound by Chartered Institute of Arbitrators (CIArb) rules which impose confidentiality unless both parties to an award agree to waive the right.
- 6.5. Welcome progress has been made by the PCA and DPCA on this issue with the publication of the first awards earlier this year. However, only a limited number have been published. To truly address the inequality of information between POBs (who have access to all cases relating to their pubs) and tenants (who may only know the facts of their own case) many more decisions need to be published.
- 6.6. Further effort needs to be put into issuing advice and guidance to both tenants and POBs. The Regulatory Compliance Handbook was published by the PCA in 2017 and welcomed by CAMRA. However, this remains a relatively brief document which CAMRA feels could be significantly improved to provide more information about how POBs and tenants should be operating under the Code.

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

- 6.7. The Regulations relating to costs, fees and financial penalties should be amended in the following ways:
- 6.8. The Code should be amended to give the PCA the ability to award punitive damages to tenants. It has now been established through data released from the PCA that arbitrations have been taking longer than anticipated, and that POBs have sought to use a variety of tactics to frustrate the functioning of the Code and keep tenants tied. Therefore the PCA should be given the power to award punitive damages to compensate tenants in the case of mistreatment or deliberate stalling by the POB during the MRO or arbitration process. This will be a powerful deterrent to discourage POBs from seeking to game the Code.

7. **PART C: Pubs Code Regulations**

There are two sets of regulations that relate to the Pubs Code: The Pubs Code etc Regulations 2016 and the Pubs Code (Feeds, 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.

- 7.1. CAMRA supports the following changes to the Pubs Code etc Regulations:
- 7.2. The Code should be amended to require POBs to waive confidentiality under CIArb rules. While progress has been made, few decisions have made it into the public realm. It is vital for tenants to be able to compare circumstances in cases where

principles are being established as POBs currently have an unfair advantage where they have knowledge of multiple awards that have been made in relation to their tenants, whereas tenants will only have the details of their own case. CAMRA would suggest that the individual identity of POBs and tenants should remain confidential. Furthermore, the Code should be amended or clarity given to prevent leave to appeal being given by the courts to challenge arbitration decisions.

- 7.3. A provision should be added to the Code to require independent rent assessment decisions are published. Decisions relating to the outcomes of independent rent assessments are not governed by CI Arb rules, and therefore not bound by confidentiality agreements. These decisions should be published to allow tenants access to information on rental decisions which they can use to support their own rental negotiations. Currently, individual tenants will only know the results of an independent assessment relating to their own pub, whereas POBs will have access to all decisions from across their tied estate. While each case should relate to the specific scenarios of the pub, this may help tenants find similar cases to theirs.
- 7.4. The Code should be amended to prohibit POBs from unreasonably refusing to issue an MRO agreement in the form of a Deed of Variation. The MRO Verification Exercise found that the main frustration preventing tenants from accessing MRO was the refusal of POBs to deliver MRO agreements through a Deed of Variation. The PCA has since issued guidance to partially clarify this, but as an important principle this should now be written into the Code to ensure compliance by POBs.
- 7.5. The Code should be amended to prevent POBs seeking to impose any increase in tied rent whilst a new MRO rent is being negotiated. Data released by the PCA shows that from July 2016 to December 2017 over half of all arbitration cases had been open for over 6 months. Increasing rent for this period of time could be detrimental to the tenant while they are trying to seek redress and ultimately force them to leave the pub. A change in rules as suggested would prohibit POBs from seeking to extract extra money from tenants during the process in order to undermine the legislation.
- 7.6. The Code should be amended to impose a duty on POBs to negotiate MRO offers. CAMRA has been made aware of instances of POBs providing an inflated MRO offer and subsequently refusing to negotiate with a tenant. This is blatant gaming of the Code, and does not comply with the principle of fair and lawful dealing. Furthermore, a key finding of the PCA's MRO Verification Exercise was the low conversion rate of MRO Notices served to MRO tenancies agreed³, therefore the Code must be strengthened to prevent POBs exploiting the absence of a specific clause prohibiting this obstructive behaviour and allowing tenants to access MRO fairly.
- 7.7. The Code should be amended to change the current restrictive time limits which are preventing tenants from properly accessing MRO. CAMRA would like to see all timescales in the Code reviewed as feedback from tenants and professionals involved in providing specialist advice to tenants has stated that the current time limits are too restrictive and are preventing tenants from accessing and properly considering MRO offers. Currently, tenants have 21 days from an MRO even to serve an MRO notice of their POB, and just 14 days to consider a full MRO response and whether to refer it to the PCA. This is preventing tenants from seeking full independent advice in respect of such offers. Both tenants and POBs are being forced to push their cases to referral stage as they do not have long enough to

³ Pubs Code Adjudicator – Market Rent Only Verification Exercise

consider and negotiate MRO offers. In contrast, there is no limit or guide to the amount of time the PCA should then take to issue a decision notice on the referral.

- 7.8. The Code should be amended to prevent POBs enforcing dilapidations as a means of discouraging tenants from taking up an MRO option. POBs are currently enforcing dilapidations on tenants following receipt of an MRO Notice, as a means of discouraging tenants from going free of tie.
- 7.9. The Code should be amended to prevent POBs issuing Calderbank letters and other undue pressure tactics during rent reviews. Calderbank letters have been used in the past to place unnecessary pressure on tenants, which the PCA has stated does not comply with the principle of fair and lawful dealing. This should now be enshrined in the Code and the PCA should take firm action against POBs who continue to do this, or seek to exert undue pressure on tenants through other means.
- 7.10. The Code should be amended to place a temporary moratorium on POBs taking action to evict until the MRO process is exhausted. This would prevent POBs seeking to frustrate the MRO process by seeking to evict tenants after they served an MRO Notice.
- 7.11. The Code should be amended to require POBs to publish tied price lists. A tenant seeking to take on a tied pub or negotiating a tied rent does not have access to information on tied beer prices from all POBs so that they can decide which POB is likely to offer the most favourable deal. POBs should also be required to publish which of their pubs have access to beer distribution systems such as SIBA Beerflex or Flying Firkin. This information asymmetry reduces the ability of tenants to negotiate fair rents. It also prevents any competition between POBs on their tied prices. A simple amendment to the Code would compel POBs to publish their tied price lists and provide more equality of information between tenants and POBs.
- 7.12. The Code should be amended to require POBs to produce a public register of tied and Market Only rents of their properties. Tenants are at a significant disadvantage in rent negotiations because they do not have access to rents on comparable pubs. This creates a situation where POBs have data from their whole tied pub estate for comparison, surveyors have other information from previous clients, but tenants navigating the system do not have access to rents on comparable pubs. A public register will level the playing field in terms of the information available to all parties and will also be an important source of benchmarking for tenants when negotiating rents.
- 7.13. Performance standards should be implemented to track the performance of the PCA and ensure that all parties can seek redress in a timely manner. It has been clear from the periodic releases of data relating to the number of open arbitration cases that a number of cases are taking a significant amount of time to resolve. Data released by the PCA in January 2018 showed that from July 2016 to December 2017 there were 71 arbitration cases open for longer than six months, whereas from April 2017 to December 2017 this reduced to 24, suggesting an improvement. CAMRA believes it should only be in exceptional circumstances that a case is open for more than six months. CAMRA is advocating for performance targets that require 90% of cases not related to MRO to be concluded in three months, and for 90% of cases relating to MRO to be resolved within six months. In addition to this, the PCA should be required within the Code to carry out an annual Tenant Survey to track awareness of the Code among tenants and measure the effectiveness of efforts to increase understanding of the Code and MRO process.

7.14. The Code should be amended to require POBs to publish their self-assessments of compliance with the Code in full. This amendment is required to deliver transparency and allow scrutiny of POBs own assessments of their compliance. It would enable third parties to highlight inaccuracies and gaps in compliance reports. It would also allow tenants and prospective tenants to make an informed comparison of the performance of POBs against Code requirements.

8. Contact

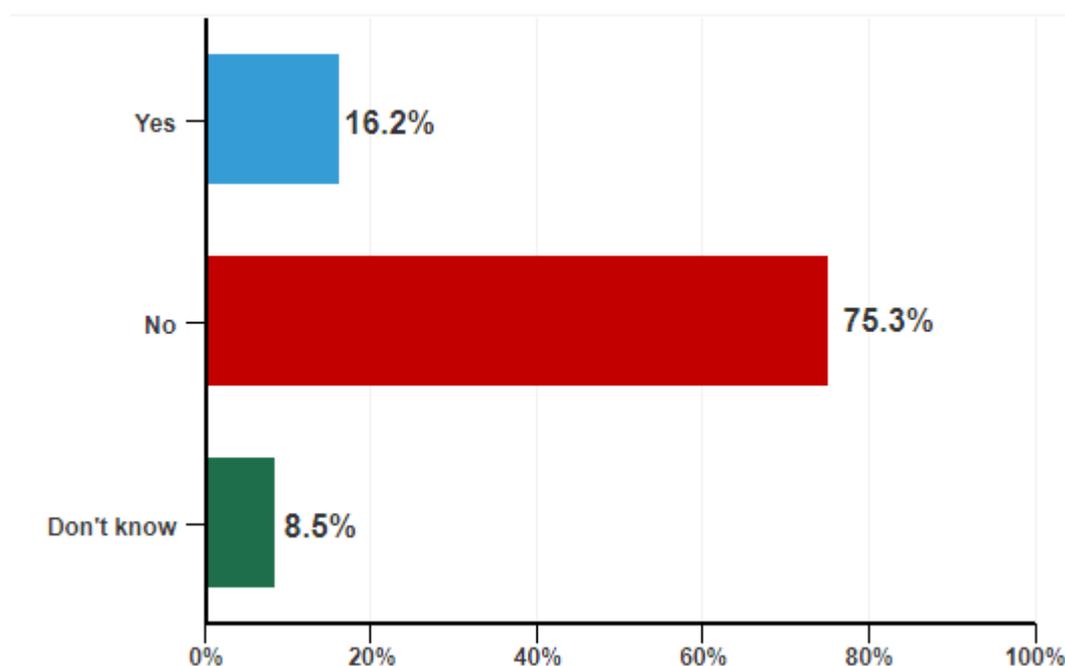
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Appendix 1 - CAMRA survey of tied publicans on the Pubs Code

CAMRA's licensee survey regarding tied publicans on the Pubs Code has received 410 responses, including 298 responses from tenants covered by the Pubs Code, between the 19th of June and the 16th of July, 2019.

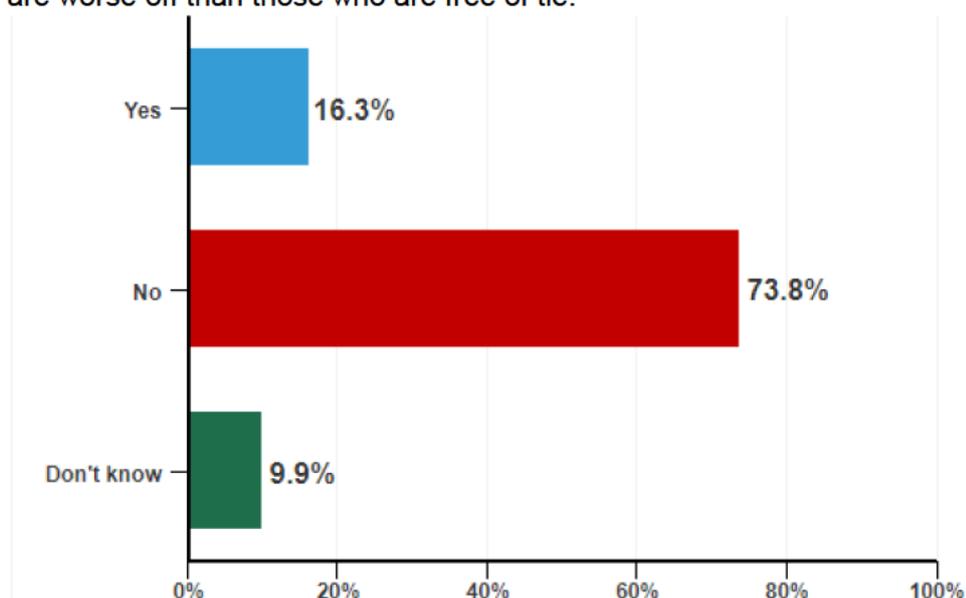
1. Do you think that you are treated fairly and lawfully as a tied tenant?

Only a small minority (16.2%) of tied tenants covered by the Pubs Code think that they are being treated fairly and lawfully, heavily outnumbered by the 75.3% who do not.



2. Do you think that in terms of all costs and support provided to you as a tenant, that you are no worse off than a free of tie tenant?

Similarly, a large majority of 73.8% of tied tenants covered by the Pubs Code think that they are worse off than those who are free of tie.



Text comments by tied tenants indicate that many of them face a combination of punitively high rents and prices for tied products, while feeling that their pub companies are not delivering on their obligations. As a result, many tied tenants are under constant financial pressure and feel unable to compete with other pubs:

"I have to fight tooth and nail to get any repair work done, and the beer I purchase is massively overpriced with no room for negotiation on discount."

- Anonymous tenant

"Beer prices [for tied pubs] are far too expensive to be competitive with free houses."

- Tenant of [Redacted]

"The tied prices of beer are absolutely disgusting. The pub companies force your hand in to buying beer at hugely inflated prices which pushes margins right down, making it harder and harder to make a profit. They add hundreds of pounds of charges on each year for various different reasons and rarely fulfil their end of the deal when it comes to repairs/maintenance."

- Anonymous tenant [Redacted]

"The rent is too high and we have no room to negotiate about the rent. It is based on the previous 8 years of trade which doesn't take into account the current climate. It may be lawful but it isn't fair."

- Anonymous tenant

"Rent too high. Get no help at all from brewing i.e. repairs [and] decor. Prices far too high."

- Tenant of [Redacted]

"Beer prices are astronomical, then putting prices up to make back the profits drives customers away."

- Anonymous tenant

"Lawfully as by current laws, but fairly hardly fits the phrase when paying at least 40% more for tied products."

- Anonymous tenant [Redacted]

"I have to pay far more for my products than a free of tie pub (approx 35% more for draught beer and cider and 60% more for bottled)."
- Tenant of [Redacted]

"Forced to buy from the chosen supplier for all goods at very high premiums forcing margins down."
- Anonymous tenant [Redacted]

"We pay far more than free of tie pubs and our rent is in line with free of tie pubs. It's hard to make ends meet with the prices we are charged for the products and we have no choice but to do so."
- Anonymous tenants [Redacted]

"I feel that I pay at least a fair market rent, plus all repairs and decoration and I am then financially penalised for my beer tie [Redacted]. Beers cases especially can be 2.5 to 3 times the price of the same product in a wholesaler."
- Anonymous tenant [Redacted]

"I feel that the over inflated rent and high prices I am forced to pay for beer is killing my business as we cannot compete anymore."
- Anonymous tenant [Redacted]

"I feel that the pub company are still trying to get a market rent as well as the tied charges and tie release fees. Even when they can't show me how to reduce my costs any further or increase my revenue they are still pushing for the magical 10% rent."
- Tenant of [Redacted]

"There's nothing fair about the extortionate price that we pay for tied products. Even with the decent (and that doesn't mean good) range of products, there still is little flexibility to adapt to consumer changes, which isn't ideal. The margins on tied products are so low, it's easy to understand why pubs are continually going out of business."
- Anonymous tenant

"Due to the price of my rent and beer I am just about breaking even on profit."
- Anonymous tenant

"I am greatly worse off than a free of tie tenant, at least £1 of every beer sale goes directly in to my Landlord's pocket, in addition to my inflated rent. My costs are far higher as a tied tenant, my ability to purchase and take deliveries of stock is vastly reduced and detrimental to the business. Support from my Landlord is minimal and has no benefit to me."
- Tenant of [Redacted]

"I am HUGELY worse off; I am not treated as a customer - I cannot take my "business" elsewhere when treated badly by their suppliers. I pay far more than I should not only on rent, tied stock but building insurance as well."
- Anonymous tenant

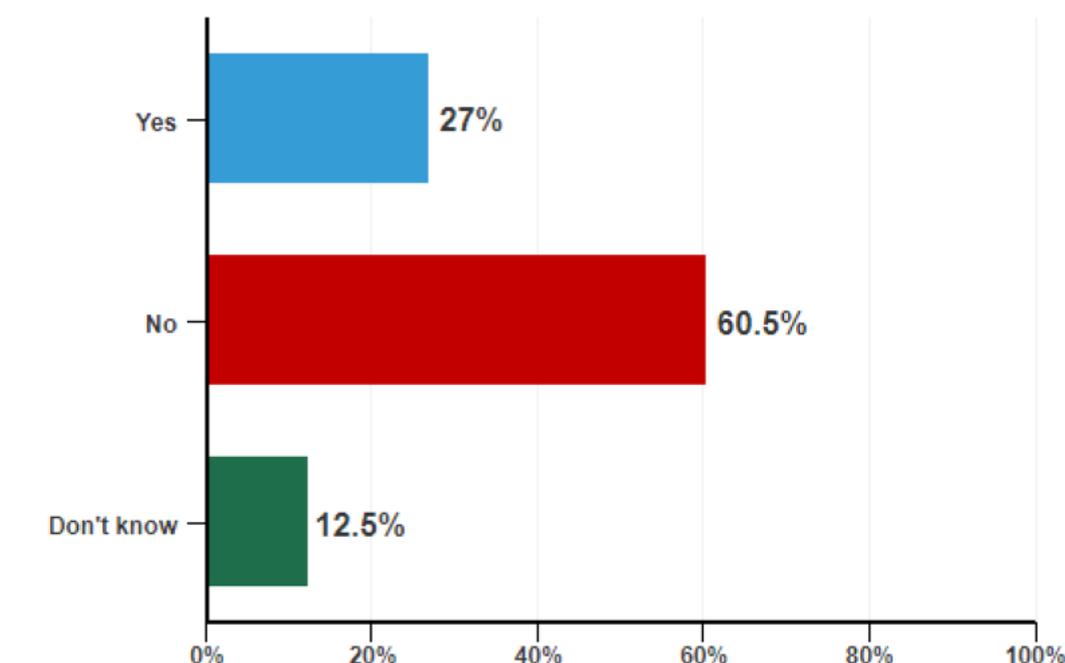
"[T]hey have done nothing ever to help me, they have offered nothing and to tell you the truth I do not believe they have any lessee or tenant's interest at heart, [Redacted]."
- Tenant of [Redacted]

“The prices of barrels and packaged products are far too high, even my stock taker has expressed his concern over the prices we are paying and are under tie to buy from the pub co. I again have asked for help from them to get these down, but nothing has ever happened.”

- [Redacted]

3. Have you noticed any change in the quality of service provided by your pub company since the Pubs Code came into force in 2016?

A majority (60.5%) of tied tenants covered by the Pubs Code have not seen any change in the quality of service provided by their pub company since the introduction of the Pubs Code. Although 27% of them have seen a change, the results of the next question suggest that this does not necessarily mean a positive change.



Text comments by tied tenants suggest that for many of them, the Pubs Code has proven to be ineffective as POBs have found ways to circumvent it:

“No improvement to service. My Pubco has put in tremendous effort to avoid its Pubs Code [obligations].”

- Tenant of [Redacted]

“It always has been and always will be a one way street, there’s no such thing as a working relationship between a tenant and a pub co.”

- Anonymous tenant [Redacted]

“The pub’s code was meant to address the imbalance of power between landlord & tenant. It has failed stunningly to do so. The PCA has been useless and consequently, tenants have been bullied again!”

- Anonymous tenant

[Redacted] routinely circumvent the Pubs Code at every opportunity. Spending money on

legal’s and fraudulently inflating repair bills to grind down tenants that they want out. Nothing had changed.

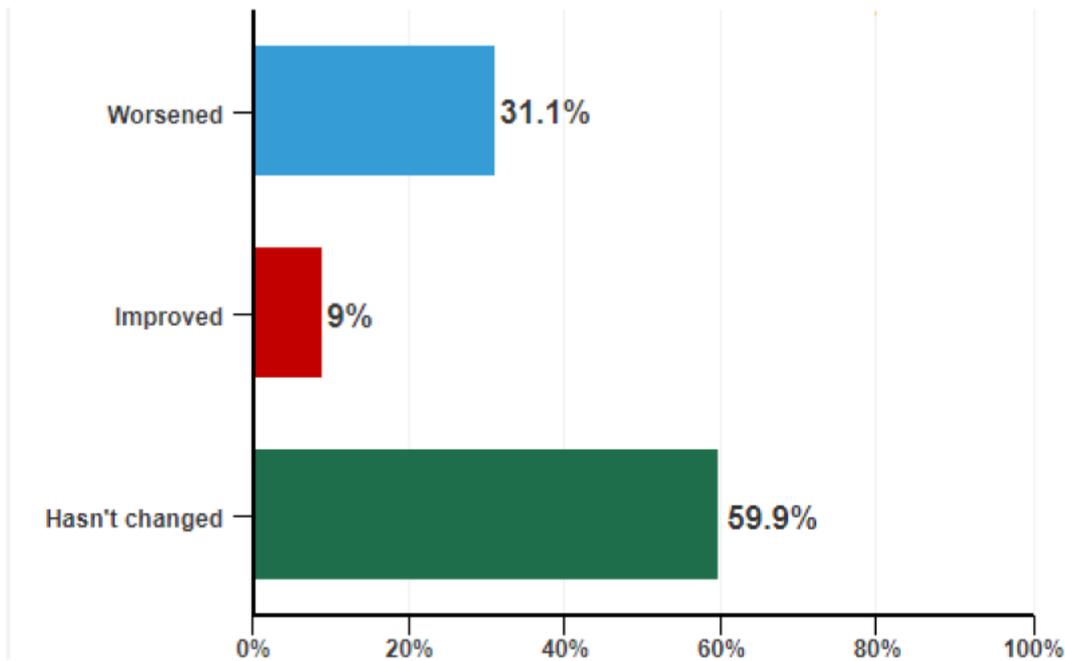
- Tenant of [Redacted]

“Pub Companies [are] just finding their way around the pub code and no significant changes [have] been noticed.”

- [Redacted]

4. How has your relationship with your pub company changed since the Pubs Code came into force in 2016?

Almost 60% of tied tenants covered by the Pub Code have seen no change in the relationship with their pub company since the introduction of the Pubs Code. More worryingly, not only do these results suggest that the Pubs Code is currently ineffective, they also indicate that many tenants might be adversely affected: over 31% of tenants indicate that the relationship with their pub company has worsened since the Pubs Code came into force. Only a small minority of 9% of them has seen an improvement.



Text comments by tied tenants suggest that for many of them, the Pubs Code has led to a worsened relationship with their POBs as the latter frequently attempt to circumvent it:

“It [the relationship] has worsened because of their refusal to accept the Pubs Code.”

- Tenant of [Redacted]

“It [the relationship] has worsened, we have been embroiled in negotiations for the last 24 months, to do with a FOT rent.”

- Tenant of [Redacted]

“They seem obsessed with showing they are following the Pubs Code when they are not, they are using it as an excuse to raise costs and interfere more.”

- Tenant of [Redacted]

“Our pub co- [Redacted] - seems like it is now just an investment company. They specifically name the tie as the reason they are offering less investment and support- because they

could do the work then we'd request free of tie trading relationship and they'd lose their "investment".

- Tenant of [Redacted]

"A lot more red tape and less help with problems."

- Tenant of [Redacted]

"More paperwork to cover themselves as they [are] easily finding the loopholes in pub code."

- Tenant of [Redacted]

"We looked forward to the legislation coming into force but the way that [Redacted] interpret the code totally goes against the spirit of the act."

- Tenant of [Redacted]

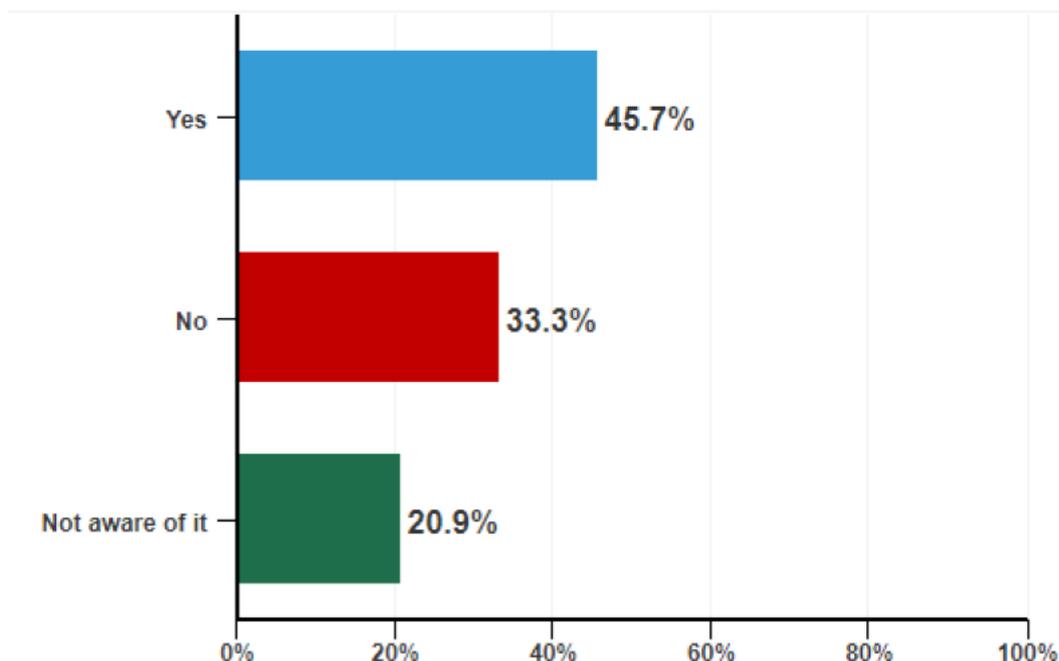
"It seems like our pubco has become so wound on fighting their investment against potential fair market rent reviews that they are no longer offering the support we knew historically."

- Anonymous tenant [Redacted]

5. Have you used or considered the Market Rent Only function of the Pubs Code?

Although a clear majority of almost 46% have considered or used the Market Rent Only option, the fact that a third of respondents have not even considered it is worrying, considering only 16.3% of tied tenants believe they are no worse off than those free of tie (figure 2).

This suggests that for many tied tenants, reluctance to consider the Market Rent Only option is not the result of satisfaction with their current situation, but instead the result of low levels of trust in the MRO process.



The comments made by tied tenants below suggest that the MRO process may have developed such a bad reputation that many will not even consider to make use of it:

"I mentioned MRO and was told my lease wouldn't be renewed if I tried to implement it"

- Tenant of [Redacted]

“Lots of scare stories about new leases required, full dilapidations to be completed and excessive rent assessments have put us off actively pursuing it at present.”

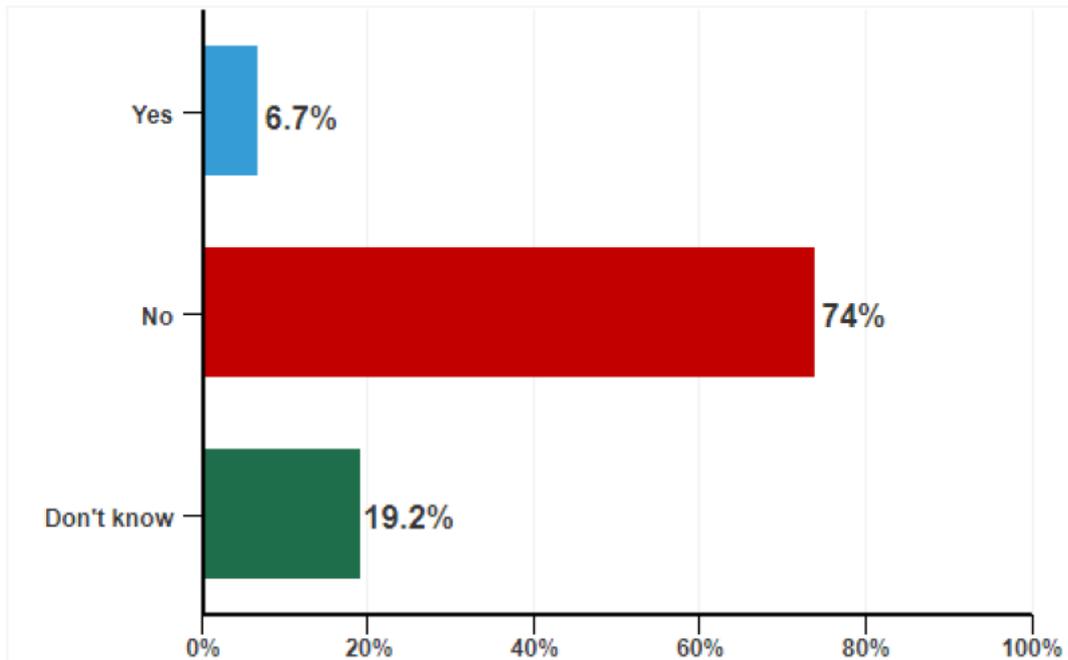
- Anonymous tenant

“I have been told by every licensee that it is a horrible hard experience, think very carefully if you wish to do this!”

- Anonymous tenant [Redacted]

6. Did you find the Market Rent Only process simple and easy to navigate as a tenant?

Only 6.7% of tied tenants who have come in touch with the Market Rent Only process found it simple and easy to navigate, vastly outnumbered by those who did not (74%). The results clearly show that the Market Rent Only process is currently too complex.



The survey has received a vast amount of comments from tied tenants who indicate that the MRO process is too complex and lengthy, and therefore has become expensive, risky, and liable to abuse by POBs. The quotes below offer a mere selection of these:

“I have been negotiating for 8 months and it is a slow and extremely complicated process. Very confusing and difficult for people to understand so very off-putting.”

- Tenant of [Redacted]

“Not got 1 straight answer off [my] BDM [Business Development Manager] about going through MRO”

- Tenant of [Redacted]

“The process is too long and expensive.”

- Tenant of [Redacted]

“There was not enough clear information or help about the MRO and my application was rejected as it was a day late.”

- Anonymous tenant

“I have yet to be handed a suitable reason to use MRO, but have looked into it extensively. It looks hugely complicated and possibly not very beneficial.”

- Anonymous tenant [Redacted]

“It has taken 7 months so far and haven’t even got to the rent yet.”

- Tenant of [Redacted]

“The PC needs to be easier to navigate and helpline or information easier to get to force pubcos to talk”

- Tenant of [Redacted]

“The path to MRO is not working. It should be a very simple process of applying, being approved, agreeing a new rent based on an independent assessment and signing the necessary. Sadly, it is nothing like this and currently, after three years [of] trying, I still have not attained MRO status.”

- Anonymous tenant [Redacted]

“It needs to be very much simplified and in its current form serves the POB’s rather than the tenant.”

- Anonymous tenant [Redacted]

“Far too complicated and slanted in favour of the pub companies.”

- Anonymous tenant [Redacted]

“It is too difficult, expensive (legally) and there are no guarantees.”

- Tenant of [Redacted]

“I would have taken up the MRO option but it was too costly, too complicated, too lengthy and seemingly without benefit.”

- Anonymous tenant

“Information is confusing and not clearly written.”

- Anonymous tenant

“I wouldn’t dream of trying to negotiate a PCA referral without taking expensive professional advice. It worked for us in that the savings covered the fees but the complexities only work against the interests of the tenant.”

- Anonymous tenant [Redacted]

“The whole process takes too much time and the PCA doesn’t appear to have the power to bring pubcos into line.”

- Tenant of [Redacted]

“It still seems heavily process and timeline driven and in the favour of big pubcos with access to lawyers. It’s very hard and expensive to attempt to challenge anything via the Pubs Code when the pubcos ignore it.”

- [Redacted]

“We tried to do the MRO and were punted around, lots of emails and money to our negotiator, but no MRO.”

- Anonymous tenant

“The PCA have been completely shocking - we have waited months for a reply to emails; no transparency regarding investigations involving our case; the arbitrators ‘hands are tied’; ignored fraud committed by the Pub Owning Company despite promises by their former intelligence officer that it would be investigated.”

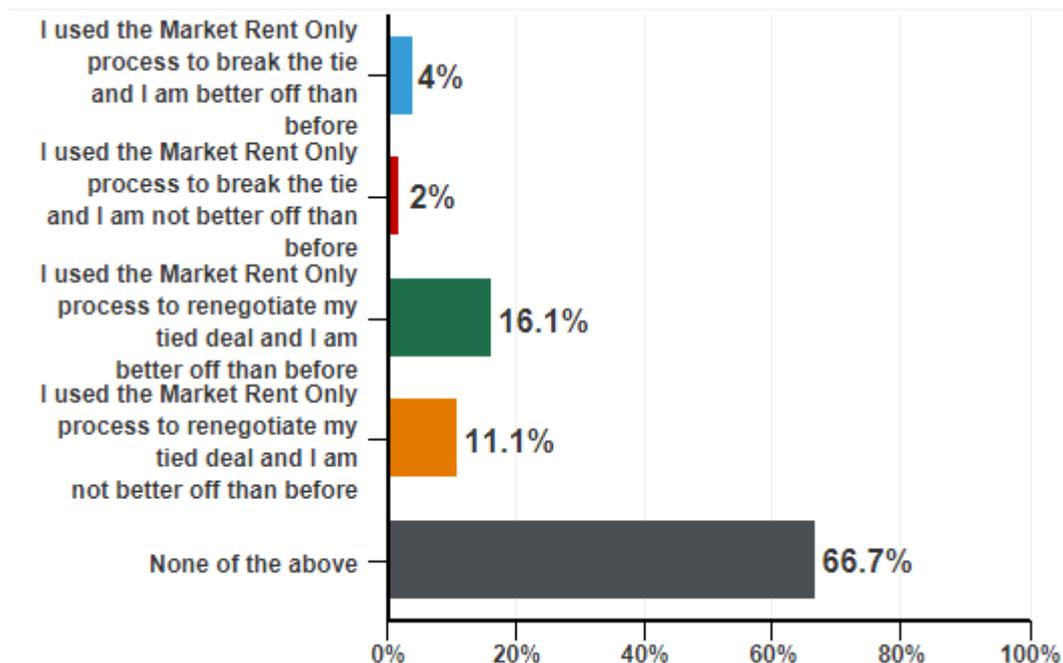
- Tenant of [Redacted]

“PubCo stalling and delaying MRO at every stage.”

- Anonymous tenant from Bath

7. Having used the Market Rent Only process, which of the following statements do you think best describes your situation now?

Less than 20% of tied tenants who got involved with the Market Rent Only process feel that they ended up better off than before. Most worryingly, 13% actually consider themselves worse off. The results indicate that tied tenants face high risks when engaging with the Market Rent Only process. Two-thirds of respondents have not even concluded the MRO process (yet).



The sizeable number of quotes below are only a selection of the large number of complaints about the MRO process that this survey has received. The examples provide evidence on how the MRO process is easily and frequently frustrated by POBs through many different ways, such as:

- avoiding MRO request triggers by not renewing leases and only offering short tenancies;
- delaying the process to increase costs for the tenant;
- making unreasonable demands, such as very high FOT rents;
- Obfuscating the process through legal complexities;

- being uncooperative;
- Intimidating or even threatening to evict tenants that want to pursue MRO.

As a result, many tied tenants are strongly discouraged from using their right of MRO by making the process lengthy, expensive, and risky:

“3.5 years of useless negotiating with [Redacted], no legal MRO contract offered as all offers up to date will leave me worse off than the agreement I signed when I took the lease of the pub. They continually muddy the waters and offer contracts that have various bits that have changed to either suit them or just confuse the tenant and possibly the adjudicators looking into the case. This in turn makes me the lessee look as if I am causing trouble by refusing these new contracts.”

- Tenant of [Redacted]

“I mentioned MRO and was told my lease wouldn't be renewed if I tried to implement it”

- Tenant of [Redacted]

“I used the MRO process with the sole intent of breaking the tie with [Redacted]. I fell foul of the process with (at best) confusing, at worst (wrong), information direct from the PCA Office. I could not afford the money needed to engage the necessary legal advice to navigate the MRO process. I was told by [Redacted] that they "had deep pockets" to fight me throughout the process. I was beaten by a rotten system - completed unjust!”

- Anonymous tenant

“The pub company has used every opportunity to, heavy handily, push us away from MRO. Their behaviour is both a disgrace and, at times, in breach of the code.”

- Anonymous tenant [Redacted]

“[Redacted] will basically put the rent up by the amount I'd save being free of tie or they would throw me out.”

- Tenant of [Redacted]

“It is a lot easier for the pubco's as they have a huge legal team and department that they just brush it off to and they deal with these things all day every day.”

- Anonymous tenant [Redacted]

“Long winded, expensive, and the Pubco seem to be using every trick in the book to prolong and delay the process. I think it just proves that they really do not want a fair and level playing field.”

- Tenant of [Redacted]

“The process is flawed, to trigger the MRO you need a rent review or a renewal. Rent reviews happen after 5 years, the pub companies don't offer tenancies for longer than 5 years! And we couldn't renew our deal, we had to start a brand new deal, so both trigger points avoided!”

- Anonymous tenant

“I tried to activate the MRO and [Redacted] ignored it.”

- Tenant of [Redacted]

“When I went for MRO I feel I was bullied into accepting their offer.”

- Anonymous tenant from [Redacted]

“Having been granted MRO, I was told it would only be possible by means of a new lease. I requested a DoV [Deed of Variation] but was told it was not allowable, despite showing them an email from the PCA's office stating that it was. The offered lease was rife with unacceptable added clauses, contradictory to the pubs code, which made it impossible to accept. They have continued to delay the process for three years at an approximate loss to me in excess of £220,000. They told me my MRO rent would be £95,000. An IA [Independent Assessor] later settled it at £51,000.”

- Anonymous tenant from [Redacted]

“The numbers for the fair rent agreement were made up. [Redacted] took the last 3 years trade figures and added a percentage for a refurbishment to achieve the rent they wanted. There was no indication of how the percentage was calculated.”

- Anonymous tenant

“My request for MRO or free of tie on cask was ignored, in hindsight I wish I had pushed it.”

- Tenant of [Redacted]

“We feel we are being penalized on statutory compliance and dilapidations now that we have applied for an MRO.”

- Anonymous tenant from [Redacted]

“The pub's company will always be in a stronger position about any deal we made. It's like we can't really say "no" to anything that comes from them.”

- Anonymous tenant

“After attempting MRO in 2017 we are now treated differently. It's almost like "how dare you"!! [Redacted]! Particularly as we were award winners at their previous year's awards ceremony, and had always had a brilliant working relationship with them in the past.”

- Anonymous tenant

“BRMs like to mention that there will be a large increase in rent if I decide to go free of tie at my next Rent Review in December.”

- Tenant of [Redacted]

“Very obstructive towards market rent option. i.e. Instant dilaps and ridiculous market rent quote.”

- Tenant of [Redacted]

“They made it so hard for tenants to go free of tie and we had to keep going backwards and forwards to renegotiate and pay monies for extensions.”

- Anonymous tenant

“I have been in the process of trying to achieve MRO for three years now. [Redacted] have delayed it time and time again by the insistence of unreasonable terms and added conditions. They have either refused to answer my questions, or have ignored them.”

- Anonymous tenant from [Redacted]

“I am still in the process since Sep 2017.”

- Anonymous tenant from [Redacted]

“Due to [Redacted] threatening to evict me and the end of my lease I have been forced to horsetrade for a new FOT Agreement at a higher rent. This was never the intention of 'no worse off'.”

- Tenant of [Redacted]

"I was looking at a lease renewal and the possible offer from the pub co was very high and in the event I went for Market Rent Only I was led to believe that they could refuse to renew the lease."

- Anonymous tenant from [Redacted]

"I felt I had very little option but to take what was on offer."

- Anonymous tenant from [Redacted]

"We have started the rent review process and are looking at triggering MRO but as our lease only has 5 years left they have indicated that they may not renew it if we go free of tie."

- Anonymous tenant from [Redacted]

"Pubco insisted on a new lease to deliberately make the MRO a hugely expensive and over complicated process in order to dissuade us from taking it further. A simple deed of variation would have sufficed. Particularly as there is a clause already in the existing lease that allows for the tie to be removed. Onerous terms were also inserted into to the new lease and a shorter term offered."

- Anonymous tenant

"I feel every obstacle possible is put in [my] way as I fight for MRO."

- Anonymous tenant from [Redacted]

"Despite the fact that we had agreed terms with our landlords the PCA refused to give us a further deferment while we got the legals sorted. That resulted in the appointment of an independent arbitrator who never contacted either us or our landlords and charged fees for doing nothing. Another rip-off!"

- Anonymous tenant from [Redacted]

"Increase in rent was greater than the profit to be made by being tied and so was completely a non starter."

- Tenant of [Redacted]

"The fact I had to surrender my lease and take a new one out made it unviable for me to switch to MRO. I simply could not afford the upfront costs the pub company required."

- Anonymous tenant

"It was very expensive and the Pubco were not cooperative causing many delays."

- Tenant of [Redacted]

"We asked at renewal about MRO and got told it would cost hundreds just to apply with little chance of success and that we would get zero marketing support, glassware etc."

- Anonymous tenant

"The rent would have been raised to compensate for the lack of tie....what was to be gained?"

- Tenant of [Redacted]

"[Redacted] deliberately delay and prolong the process knowing it is costing me lots of money."

- Tenant of [Redacted]

"If we ask for a free of tie or market rent option they will jack the prices up elsewhere! They have top lawyers that know the loop holes on everything. Even if I did try to fight with a 20

lawyer by my side the company I'm with will exercise their right to NOT offer me a new contract when mine runs out."

- Anonymous tenant from [Redacted]

"It is working in as far as the pubco will sit around the table and discuss bringing rents down, but if you don't have the money for a legal team and professionals, they just sit and wait for you to buckle."

- Anonymous tenant from [Redacted]

"We asked about being free of tie and were told we would have to take over the entire maintenance/responsibility for the (Old and poorly maintained) building and would have to extend our lease and have a much higher rent. Our BDM virtually dismissed it as an option."

- Tenant of [Redacted]

"Major deposits and rent up front hamper anyone who is finding it hard to save the money to go free of tie."

- [Redacted]

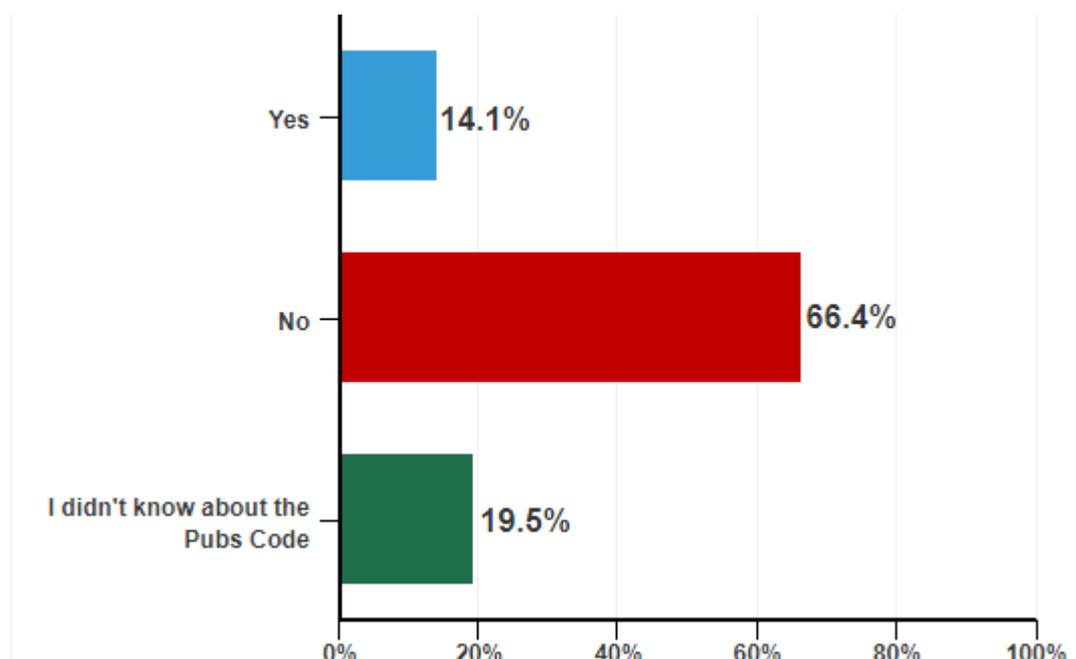
Appendix 2 - CAMRA survey of licensees about the economic viability of pubs CAMRA's

licensee survey has received 704 responses, including 155 responses from tenants covered by the Pubs Code, between the 8th of March and the 6th of May, 2019.

1. Has the Pubs Code improved the economic viability of your pub?

So far, the Pubs Code has largely failed to improve the situation of tied tenants. Of those tenants covered by the Pubs Code, a large majority of 66% feel that the Pubs Code has not improved the economic viability of their pub.

Most worryingly, the small minority of tied tenants who have seen an improvement (14%) are outnumbered by those who are unaware of the Pubs Code (19%).



Text comments from these tied tenants clearly show why so many feel that the Pubs Code is ineffective:

“I have tried to use the pub's code to go free of tie but after two and a half years I am still in arbitration with the PCA. The system is broken and every delay favours the pub company.”

- Tenant of [Redacted]

“[The] Pubs Code need strengthening, it should be easy to go FOT and not take years of fighting. Negotiating a slightly better deal is the only way to squeeze something out of the Pubs Code as it stands but that is a failure of the Pubs Code’s objective. “

- Tenant of [Redacted]

“[R]equested MRO almost 12 months ago, still ongoing with PCA and has cost £20000 so far in legal fees alone”

- Anonymous tenant of large pub company

“The Pubco’s are flouting the new legislation using every trick in the book to stop their tenants from taking up MRO. And the toothless PCA has allowed it to happen without investigation even though Margo James stood up in the HOP saying there was clear evidence that the pubcos were gaming the code. No one is standing up for tenants rights as they should be. Tenants with little to no money are forced to remain tied due to the lack of support and honesty from the PCA office.”

- Tenant of [Redacted]

“The "partnership" model is completely in their [pub companies] favour. So much so that the PCA was set up to "level the playing field" under the banner "no worse off ". I share the opinion of most tied tenants that the PCA is evidently facilitating the Pub Co's by lack of any adjudication whatsoever when it come to the loop holes the Pub Cos have exploited in the Code.”

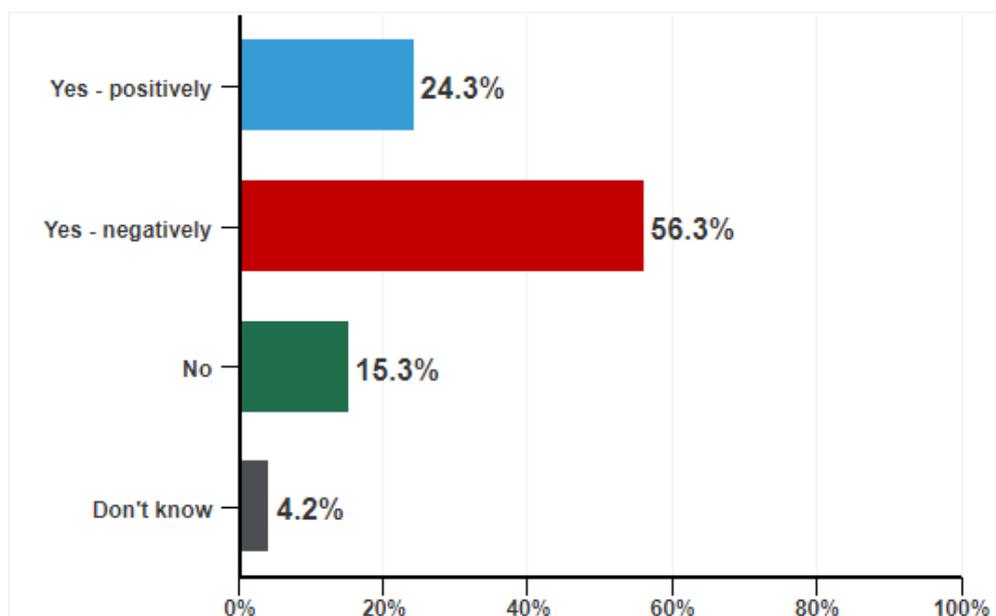
- Tenant of [Redacted]

“Section 25 notices [are] being used to game the Code. We are already aware that our Pubco are using Joint Ventures with existing tenants to claim they are owner occupied and in other instances where they claim the pub will be managed, the manager is placed under a Self Employed Contract void of employment rights”

- Tenant of [Redacted]

2. Do you think that your relationship with your pub company affects the economic viability of your pub (tenants of pub companies covered by the Pubs Code)?

A very clear majority of 56% of tied tenants covered by the Pubs Code still feel that the relationship with their pub company has a negative effect on the economic viability of their pub. Only 24% see this relationship as beneficial.



Text comments by tied tenants covered by the Pubs Code provide plenty of reasons why they feel so negatively about the relationship with their pub company, and the urgent need for improvements to the Pubs Code:

“[Redacted] don't give us any support they just put prices up whenever they can. We are powerless against such a large company and pay the highest rent in the area”

- Tenant of [Redacted]

“I feel they don't care about me or how the pub performs. All they want is their rent and drinks revenue.”

- Tenant of [Redacted]

“Lack of support for the business. Very much just left to it... we see a BDM once a year and they are uncontactable the rest of the time. Affordability of rent and beer tie is unsustainable.”

- Tenant of [Redacted]

“Our pub company takes a huge amount of money from us in an inflated rent and inflated beer prices, whilst forcing us to run at a loss and not take a wage.”

- Tenant of [Redacted]

“Over inflated tied beer prices make us less significantly less competitive in our location.”

- Tenant of [Redacted]

“The Pub Cos themselves have no care for their properties or tenants and the tenants' customers and the price of the tied products are non competitive.”

- Tenant of [Redacted]

“Trying to fine me for “buying out” when I clearly haven’t. Charging extortionate fees for beer and for unscheduled deliveries. Getting out of any repair needed to the point where pub is actually dangerous. So many lies it would take me a month to write them down.”

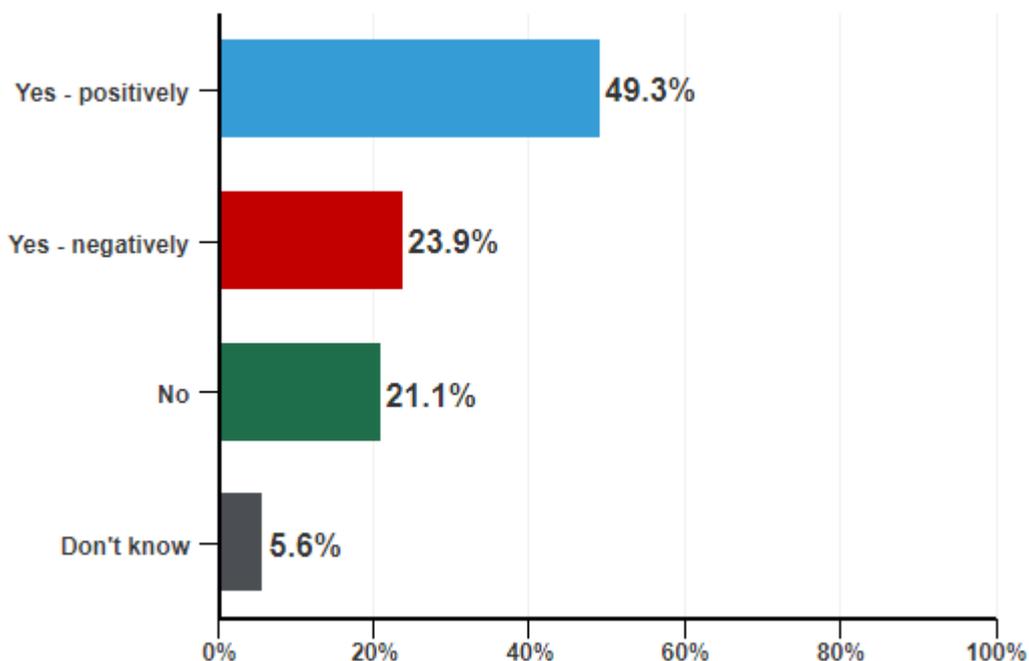
- Tenant of [Redacted]

“The premium prices charged [Redacted] for our tied products make it difficult to make any money on the wet trade.”

- Anonymous tenant of large pub company

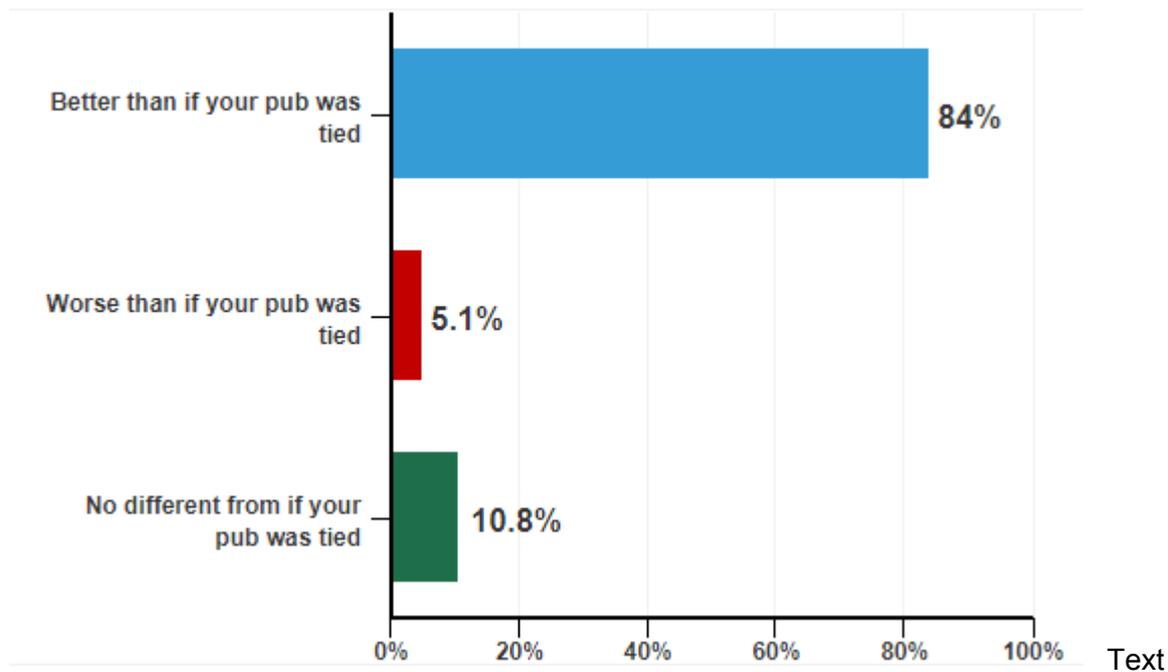
3. Do you think that your relationship with your pub company affects the economic viability of your pub (tenants of pub companies not covered by the Pubs Code)?

Tellingly, tied tenants covered by the Pubs Code are much more negative about the relationship with their pub company than those tied tenants who are not covered by the Pubs Code. In the latter group, the tied tenants who feel that the relationship with their pub company positively affects the economic viability of their pub (49%) outnumber those who do not by a margin of over two-to-one (24%).



4. Comparing your situation to a tied pub, do you think as a freeholder the economic viability of your pub is:

The vast majority of freeholders (84%) believe that they are better off as a freehold. Only 5% believe they would see economic benefit by becoming tied.



comments provided by freeholders clearly illustrate why so many of them believe they would be worse off if they were tied. Freeholders named the following benefits of their current situation compared to tied tenants:

“Bargaining power.”

- Anonymous freeholder

“Not being tied gives me the freedom to swiftly adapt to changing markets and the ability to carefully curate menus and drinks that suit my unique customers.”

- Freeholder of [Redacted]

“Freedom of buying from different suppliers to shop to get the best deal.”

- Freeholder of [Redacted]

“I am free to change suppliers to get a better deal if needed.”

- Anonymous freeholder

“I believe we have more freedom to sell the drinks our customers want, we can shop around different suppliers to get the best rates.”

- Freeholder of [Redacted]

“I can buy my ales from whom I choose, at the prices which suit me.”

- Freeholder of [Redacted]

“Tied pubs have to pay a set price from their brewery, I can shop around.”

- Freeholder of [Redacted]

“We can offer a wide choice of beers, according to what our locals like to drink, and can negotiate the best prices from our suppliers.”

- Freeholder of [Redacted]

“[W]e have the ability to shop anywhere for our products and in doing so [I] am able to use local suppliers”

- Freeholder of [Redacted]