



Pubs Code and Pubs Code Adjudicator: statutory review

Response form

The consultation is available at: www.gov.uk/government/consultations/pubs-code-and-pubs-code-adjudicator-statutory-review

The closing date for responses is 22 July 2019.

Please return completed forms to:

Pubs Code Review Team
Department for Business, Energy and Industrial Strategy
1st Floor, Orchard 3, 1 Victoria Street, London SW1H 0ET

Email: PCAreview@beis.gov.uk

Personal / Confidential information

Please be aware that we intend to publish all responses to this consultation.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see the consultation document for further information.

If you want information, including personal data, that you provide to be treated as confidential, please explain to us below why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we shall take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

I want my response to be treated as confidential ☐

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

About You

[Redacted]

	Respondent type
<input 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: The Pubs code has failed at every level and has been, as result of its implementation, contributed to Pub closures and escalated levels of abuse of tied tenants. It has failed to deliver either of the key principles that underpin its existence reasons for this are as follows: MRO as voted into parliament in 2014 is unachievable, as confirmed by both Mr Newby and Ms Dickie in a tenant representative meeting in October 2018. The lack of MRO is due to the changes made in the drafting of the code allowing a principle based on valuation process to be manipulated by the POBS to become one of “contract law”, which both arbitrators (and any subsequently used) are not experts. The legislation is flawed, in that there is no or little protection as to the abuses of tenants, something which was confirmed by both the PCA and the DPCA directly to myself in a meeting. The emphasis on “arbitration” rather than clear adjudication allows the process to be slow and confidential, therefore allowing the POBS to take complete control of the process, in a way which can never be exposed. In effect, the process pits the TT against, not just the POB but the POBS Solicitors, putting even more pressure on the TT that existed before. I have represented TTs in dispute with their POBs for 10 years and I am having more TT’s coming to me with serious issues, [Redacted], and many exactly the same as they were in 2009. Nothing has changed.

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: There is no “fair and lawful dealing”. The pubs Code has effectively challenged the business model of the POBs forcing them to change the way they operate to avoid the limited effects of MRO, or to challenge it before it actually works. To do this TT’s are removed from their Pubs and replaced by quasi manged operations that are deemed outside of the Code. Therefore, because there are no structures in place to protect the tenant and the PCA operates at such a glacial speed, the Codes implantation has in fact encouraged bad business practices which are rife. I have personally given evidence to the PCA of over 30 examples of abusive business practices [Redacted] and all of these have been ignored.

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: This principle cannot be achieved as the MRO amendment was changed so the POB can effectively change the MRO agreement so that it is a new style of agreement in which new and onerous terms are included. This was not the intention of Parliament, which was the simple severing of tied terms by a DOV. The conflicted Independent Surveyor system of setting MRO rents is deeply flawed and IAs are acting in contravention of the guidelines on impartiality and interpreting the legislation to allow the inclusion of the goodwill of the TT. IA's are acting, whilst representing the POBS as expert witnesses and some IAs are acting as experts for the POBS and justifying MRO rents that are in some cases 100 % incorrect.

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: If you accept the arguments set out above then the code needs so redrafting in order for it and the act to work effectively, this is obviously the job of government and civil servants but the I would suggest that the following areas of the code are the ones that need to be focussed on, evolved and improved.

Part 5.

Regulation 23 – The MRO Notice is far too detailed and needs simplifying.

Regulation 24 – Needs to be more specific as this relates to a “significant increase” in prices – how do you define “significant”?

Regulation 25 – Really doesn't make sense, it talks about a trigger event and yet it would appear that you have to produce a “forecast” explaining why you think it's a trigger – the POB will just say – “it's not” and that causes disagreement and dispute.

Trigger events should be more clearly defined (for example a Managed operation opens next door selling beer cheaper than you)

Part 6 Regulation 28 – This is the section that seems to imply MRO can't be backdated and encourages delay

Regulation 29 - This details what the POB should do if they: agree/ disagree with the MRO request

Regulation 30 – Terms and conditions of the MRO tenancy – this requires simplifying and turning into the original MRO intention, a cheap and simple choice for the tenant.

Regulation 31 – Does not define what's reasonable and not reasonable, which is the main concern, that said we have enough evidence to clearly define and make this work now.

Regulation 32 – This should be simplified so that if the response is not provided the tenant has speedy resolution.

Regulation 33 – This needs to have a timeline so that the PCA are forced to do something in the required time – currently any dispute can drag out forever.

Regulation 34 – Is to do with the negotiation period which doesn't work as there is no intent on the part of the POB to negotiate.

This is far from an exhaustive list

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: He has sufficient powers, [Redacted] Regulation 40 of the Enterprise act <http://www.legislation.gov.uk/ukpga/2016/12/section/40/enacted>

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: [Redacted]. The only notable success, the implementation of 72 Pints, took 3 years and consistent pushing from true tenant representative bodies, namely The Punch Tenant Network and the Pubs Advisory Service. The emphasis on negotiation has been disastrous, as this has put two parties together, in confidence, when one holds all the power and all the negotiating skills. This has resulted in “horse traded” deals whereby the TT is marginally better off (after months of lost MRO), and most importantly, new comparable are being set. [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: Guidance notes have been pointless, rehashing sections of the Code but clarifying little. Despite a legal requirement to investigate the PCA have ignored all the evidence given and chosen a “staged approach”, achieving nothing but distrust from true

tenant representative bodies. [Redacted]. The arbitration of disputes has been a complete and utter failure, taking too long and being completely ineffective – in the few disputes that have occurred, the tenants have gone out of business before anything meaningful has occurred

Question 6

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

Comments: The application of costs are arbitrary and have little basis in logic. On a number of occasions, application for costs have been reduced by the PCA and the reasoning given that various individuals are “not experts” – however, in every case so far, these “non experts” have both won their arbitration cases and also arrived at a closer IA figure than the POB, so I would argue that they are clearly very experienced in what they are doing but because they do not have letters after their name they are treated accordingly. In many if most cases the average TT are unable to afford legal advice.

Part C: Pubs Code Regulations

Question 7

There are two sets of regulations that relate to the Pubs Code: The Pubs Code etc Regulations 2016¹ and the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016².

You may have commented on some of these provisions in response to questions in parts A and B of this consultation³, but please provide any additional views on the regulations. If you think changes are needed to the regulations, please explain why and how you think they should be changed.

Comments: With regard to the Fees, costs and financial penalties, I do not feel I have enough knowledge and experience to comment other than to say, there have been no penalties so I would suggest it is a meaningless point.

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

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

³ Some elements of the Regulations are covered by review provisions in the SBEE Act 2015, for example, Parts 2 to 10 of the Pubs Code etc Regulations 2016 make up the Pubs Code and must be reviewed under s.46 review provision in the SBEE Act. The review of the Adjudicator set out in s.65 of the SBEE Act states that the review may consider whether it would be desirable to amend regulations about costs, fees and financial penalties.

Part D: Impact Assessment and other information

Question 8

The review will consider the key assumptions made in the Impact Assessments⁴ which were published alongside the legislation and regulations. This will include wider impacts, non-monetised impacts or unintended consequences of the changes made. Specifically, we plan to consider any related impact on:

- **costs to businesses and potential pub closures;**
- **redistribution of income from pub companies to tenants;**
- **changes in industry structure or ownership status; and**
- **wider industry trends such as employment and investment.**

We welcome any evidence to support the analysis of these areas, or if there are any other elements of the Impact Assessments you think we should consider revisiting as part of this review.

Comments: As predicted the failure to get this legislation right from the onset and poor regulation by the PCA has resulted in numerous questionable business models being created with a hugely detrimental affect both to individual tied tenants and the early closure of Pubs. The legislation has contributed directly to the systematic refusal to renew long term leases under hostile section 25 notices, which otherwise would not have happened. There has been little or no distribution of income from POBs to TT, as the expense and the time factor alone has cancelled out the meagre increase in any TT profits by accepting a smaller deal. The industry has been given enough time to [Redacted] and will inevitable result in the further closure of perfectly viable Pubs. Investment in the Pub trade by POBS is a myth. POBS do not invest, in the way normal businesses do, as every penny spend results in an increase in the rental of the Pub, normally to levels that are completely unsustainable. This is occurring as part of [Redacted] and will occur with [Redacted].

⁴ <https://www.parliament.uk/documents/impact-assessments/IA15-002.pdf>
<https://www.legislation.gov.uk/ukdsi/2016/9780111146330/impacts>
<https://www.legislation.gov.uk/ukdsi/2016/9780111146323/impacts>

Part E: Other comments

Question 9

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

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

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.

There is no confidence in true tenant representative bodies that the legislation was ever intended to work. The evidence throughout the drafting of the legislation and prior to its inception was of a Government in thrall to big businesses despite the overwhelming evidence of a systematic abuse of a well tried and successful business model. AT every stage in the drafting of the legislation, true tenant representatives spoke of the need for a robust department ready to challenge the activities of the POBs, proven after 15 years of Business and Industry Investigations. Instead we were belittled and ignored, and the result is a further loss of Pubs and damage to people's lives, wholly avoidable by an effective Code and an effective adjudicator.

[Redacted].