



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
*	Tied pub tenants [Redacted] to [Redacted]
*	Non-tied tenants (please indicate, if you have previously been a tied tenant and when) – from [Redacted]
<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 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: Not well at all. I write as a member of [Redacted] that took over the lease of the [Redacted] in [Redacted] 2012. This was a fully tied, fully repairing lease from the Pubco [Redacted]. We increased the turnover and barrelage by more than 50% and appeared to have a successful business. However it soon became apparent that the prices we were being charged by [Redacted] for our beer were far in excess of market rates available locally directly from breweries, and after over four years of trading we had not made a profit. So we welcomed the introduction of the Pubs Code in 2016 and determined to pursue our freedom from the iniquitous tie via a Market Rent Option. The trigger point was a tied lease proposal issued by the landlord on [Redacted] December 2016 and we requested an MRO rent assessment on the [Redacted] December 2016. We achieved our current free of tie lease in October 2018, almost two full years later.

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 principles of the Code are fine. It is the practicalities of enforcing these principles where the Code fails. The Pub owning companies have exploited a number of weaknesses in the Code and this has enabled them to seriously delay all proceedings in the necessary negotiations before an MRO option can be put in place. In our particular case every month of delay was to the benefit of the Pubco and the detriment of [Redacted], and the two year delay pushed our own direct costs to a figure in excess of 25000 pounds, not including continuing to pay over the odds for our beer for a further 22 months. It is my opinion that we succeeded in achieving our free of tie status only because [Redacted] to carry through our intentions. I cannot imagine that the normal situation of a couple taking on a pub and then attempting to follow the MRO route would be possible, even if they had the financial resources to do so. The stress of dealing with the various officers of the Pubco and the delays caused by their intransigence would be over whelming.

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: See the response to question two. As [Redacted] we now have experience of running [Redacted] both with a tie and now, for the last nine months, free of tie. There is no comparison. As a tied pub tenant we had a restricted choice of beers as everything had to be ordered from their price list. We were invoiced 72 pints for every 9 gallon firkin ordered, with no allowance for the unsellable sediment, and our account was debited with the full amount the minute the delivery was in our cellar. From our present experience of buying directly from mainly local breweries, including some that were on [Redacted] list, it appears that [Redacted] were enjoying a mark up of 100% on ex brewery prices. Furthermore, every January there were the annual price increases, usually around 3% to 4%, even in years when inflation was 1% or below.

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: The loopholes being exploited by the Pubco's need to be closed, and enforcement of the principles should be swifter. Additionally penalties for non compliance would help to speed up the process. In our particular case [Redacted] were responsible for all the delays experienced, even appealing against the decision of a jointly agreed Independent Assessor, and suffered no consequences. This needs to be changed. We also feel that the Pubs Code is insufficiently clear on the question of whether MRO should be achieved by means of a deed of variation to the existing lease or by the issuing of a .new lease. A deed of variation would allow the tenant to continue to enjoy the terms of their existing lease, but [Redacted] insisted on a new lease and this enabled them to provide a lease with less favourable terms than the original tied lease. One final point, the code is also insufficiently clear on what constitutes a full response to the MRO request. We believe that the 14 day period to appeal against the Pubco's response is insufficient.

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: Yes.

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: In our specific case we do not believe that the PCA was effective in the arbitration of a dispute. [Redacted] appealed against the Independent Assessor's determination and this appeal was finalised on [Redacted] 2017. We were notified of the PCA's decision in June of 2018.

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: The only one of the above points that we have any experience of is the arbitration of disputes under the code, and we have dealt with an aspect of that in our comments on question 5B.

Question 6

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

Comments: no comment.

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: No comment.

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: No comment.

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: Nothing further.

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.

No comment.