



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 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 checked="" type="checkbox"/>	Individual [Redacted]
<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: Badly. We were forced into following the Pubs Code due to our landlord's unwillingness to negotiate the free of tie lease offered as part of our tied rent review in December 2016. From start to finish the process took 22 months. Our landlord forced us to accept a new FoT lease rather than removing the tied terms from our existing lease. We do not believe that this is in the spirit of the Code.

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 pubs code practically invites the POB to delay. There is no advantage for the POB in a speedy resolution and in our experience the POB went out of their way to ensure that every avenue of the Code was followed for as long as possible.

We would take further issue with the publication of cases. Our landlord refused to allow our case to be published by the PCA. Our landlord [Redacted] own [Redacted] pubs and will see hundreds of them go through, or attempt to go through the code. As a result, they have their own case history and are able to make strategic decisions on a case by case basis. Tenants, because of the absence of case history, are unable to gain insight from former cases and have to make their own decisions. This is unfair and disadvantageous to tenants.

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: It is not consistent with this principle. The POB will use the code to delay the process for as long as possible, thereby continuing their tied arrangement for as long as possible. In our case we spent about £25,000 on legal and professional services fees. As a [Redacted] were able to fund this process although in doing so used up almost all of our cash reserves. An individual or couple running a tied pub as their main income would be unlikely to have such means and would be unlikely to be able to fund, as in our case, nearly 2 years of advice and support. That we needed legal support to navigate the process itself indicates that the Code has failed.

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: Becoming Free of Tie must be made possible by a Deed of Variation to the existing lease. In the event that arbitration is needed for the Free of Tie rental and the tenant decides to accept the Free of Tie rental then the POB should be made to reimburse the tenant the difference between the tied prices paid and the FoT prices for the duration of arbitration. This will deter the POBs from making excessive FoT rental demands and will deter them from delaying the arbitration, e.g. as in our case by appealing against the IA's decision. In the end we have accepted a Free of Tie lease of much shorter duration than our previous tied lease (5y versus 30y) and with worse overall terms. Our landlord insisted that a new FoT lease was the only way that the tie could be removed. This is not in the spirit of the Code and we in fact do not believe that we have achieved MRO. Our landlord merely forced us into accepting a FoT lease the rental of which was determined through the Code. An additional point is that our '5y' lease is actually only 4y because of the 1 year spent in arbitration and the Code's stipulation that new leases may not exceed the termination date of the tied lease. This again cannot be seen to be in the lessee's favour.

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: I believe that the wording of the Code is too ambiguous and allows the incumbent PCA to pick and choose where his powers are applied.

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: The PCA's experience as an estate agent and arbitrator within the existing paradigm [Redacted] has become a role that demands expertise in contract law.

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: I can only comment on arbitrating disputes under the code. In our case our landlord appealed against the IA's determination. This resulted in us incurring c.£2000 in legal fees to provide counter evidence to their appeal. Their appeal was based on an accusation of false representation by ourselves and also the IA during the determination process. Our landlord lost their appeal so we applied for our landlord to be made liable for our fees but this was rejected by the PCA. This is extremely unfair and further underlines the bias in the code against the tenant.

Question 6

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

Comments: As above, the full costs for any failed appeal to the PCA by the POB should be borne by the POB. Additionally, the Code should financially penalise any POB who delays Pubs Code process unnecessarily. At the moment the code is beneficial to the POB as they can in effect delay a tenant becoming free of tie, as in our case, by over a year.

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: None

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: None

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: We were delighted by the introduction of the Pubs Code and indeed had lobbied MPs to vote for its introduction. The unfairness of the POB's business practices had been widely accepted by MPs and the Code could have made a significant difference to the operation of many small businesses. [Redacted] the application of the code has been almost entirely in favour of the POBs. [Redacted] Too much of the text of the Code is ambiguous and does not represent the principle that a tied tenant should be no worse off than a free of tie tenant as voted for by the House of Commons.

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.](#)