



UKHospitality response to 'options to amend the pubs Code'

About UKHospitality

- UKHospitality is the authoritative voice for over 730 companies operating around 85,000 venues in a sector that employed 3.2 million people prior to COVID.
- The body speaks on behalf of a wide range of leisure and 'out-of-home' businesses, from FTSE 100 enterprises to niche groups and independent single-site operators, as well as 6,000 affiliated operators.
- Engaging with government, the media and the public, UKHospitality works to develop a robust case on how to unlock the industry's full potential as the biggest engine for growth in the economy and ensure that the industry's needs are effectively represented.
- The sector creates £130bn in economic activity and generates £39bn of tax for the Exchequer, funding vital services.
- Hospitality represents 10% of UK employment, 6% of businesses and 5% of GDP.
- Hospitality is the 3rd largest private sector employer in the UK; double the size of financial services and bigger than automotive, pharmaceuticals and aerospace combined.

Introduction

UKHospitality welcomes the opportunity for continued engagement with the Pubs Code Adjudicator on the ongoing evolution of the Pubs Code. Our answers to the technical points in the consultation are outlined below. In light of the extremely difficult situation all hospitality operators have faced during the current pandemic, it should be highlighted that the tied pub model has allowed for a significant amount of support, concessions, and investment to be given to tenants during this period, particularly in contrast to challenges faced in commercial landlord-tenant market dealings around rent and other issues.

Consultation questions

1. What are your views about Parallel Rent Assessments for prospective tied tenants? Please provide the reason(s) for your answer.

One of the key priorities of the Pubs Code and the PCA is to provide clear, relevant and simple information for prospective tied tenants ahead of taking up a tied lease or tenancy. As highlighted in the recent report by the PCA, tied tenant participants said that during pubs entry training (completed before a new agreement is entered into) they faced a very large amount of new information and tended to focus on what was immediately applicable. We agree the focus of all parties should be on ensuring companies provide the full relevant information to tied tenants under schedule 1 and 2 obligations. A parallel rent assessment for a new tenant (which they would be unable to take forward) may distract from the more relevant information provided by the company and independent advisors at the initial stage of taking on a new tenancy.

2. What are your views about encouraging a trial period – for example 3 months - to help a prospective tied tenant familiarise themselves with the running of a new tied pub before entering into a commercial contract? We would particularly welcome comments from individual tied tenants who completed a trial period prior to signing their tied agreement and what they thought worked well and what could have been better.



The risk of a undetermined 'trial UKHOSPITALITY period' as suggested in the consultation could lead to unintended consequences around new tenant being placed on tenancy at will or similar for an undetermined period of time, rather than a full agreement with the required protections. Of more assistance are break clauses (for example after 6 months) within full agreements operated by a number of companies, that allow for a cooling-off period for both sides without the loss of protections that may arise from a more unspecified TAW type agreement.

3. What are your views about reducing the current 6-month period in the previous qualification period? Do you think that a 3-month period in the previous financial year would be appropriate or would you support a different period? Please provide the reason(s) for your answer.

As identified in the consultation document, a business becomes a pub-owning business when it has owned 500 or more tied pubs in England and Wales for a period of at least 6 months in the previous financial year – the 'qualification period'. However, the timing in the legislation means that this can take between 6 and up to 18 months in practice. We agree that a reduction in this period would be appropriate in the Code, for example between three and six months.

4. What are your views about a requirement for the landlord selling the pub to notify the PCA of any tied tenant(s) with extended protection? Should the PCA be informed when extended protection has ended? Please provide the reason(s) for your answer.

The focus of the Code should remain on the ensuring Pubs Code protections remain with the tenant on transfer to the new pub company.

5. Do you have other suggestions on how the MRO process could be changed using existing powers?

The specified time periods within the Code in our view are too short and can sometimes disadvantage the tenant, the periods should be extended to allow for busy trading periods and to give the tenant further time to consider their options. The current 21-day notification period should be extended (a suggestion is 35 days) to allow for the above situations. The current timelines as set out in the Code are confusing in terms of being presented as one 'block', such as the 56-day total negotiating period, but within that a first 14-day objection period, and after 28 days being able to make a third party referral. These timescales can be confusing, and the Code should be amended to make separate timelines and deadlines much easier for tenants to understand.

6. What are your views about requiring the inclusion of rent in an MRO proposal? Please provide the reason(s) for your answer.

We agree that the rent and the terms should be provided in the proposal to the tenant at the same time.

7. What are your views about removing the requirement that terms should not be 'uncommon'? Please provide the reason(s) for your answer.

As the consultation highlights, the Code requires an MRO proposal to be reasonable, which is judged in the circumstances of each case, and it must not contain terms that are 'uncommon' in agreements between landlords and pub tenants who are not subject to a product or service tie. However, there is a continuing lack of clarity as to whether a term is 'uncommon', which may not at all times be relevant to reasonableness.

We would support more clarity around which MRO terms should not be 'uncommon', and further guidance on how what is determined 'reasonable' is defined, for the benefit of all parties involved in negotiations.



8. What are your views on UKHOSPITALITY amending the definition for the 'comparison period'? Please provide the reason(s) for your answer including, where available, views and evidence on whether pub-owning businesses are adopting a 13-month pricing period and the impact this has on business planning.

We have no definitive view on this, aside from there should be consistency and clarity as to what is being compared over that period.

9. What are your views on excluding taxes and duties from the significant price increase calculations? Please provide the reason(s) for your answer.

The current legislation adequately reflects which taxes and duties should be taken into account, and supplier increases are taken into account via application of CPI and the additional calculation set in the Code for each product or service.

10. What are your views about excluding other unavoidable costs from the significant price increase calculations? Please provide the reason(s) for your answer.

These should not be excluded, as per answer above.

11. Do you think there should be an alternative appeal route to the current High Court or should the latter be retained? If you believe that the appeal route should be changed, what do you think it should be changed to? Are there other ways to make an appeal more accessible and potentially less costly without changing the appeal route?

Appeals should ideally be at the lowest cost and complexity for the tenant (for example low-cost mediation which is in place and has been used for disputes relating to the voluntary under 500 company code).