



Pubs Code
Adjudicator

Repairs and Dilapidations

Review of their management under the
Pubs Code



Thematic Review Report

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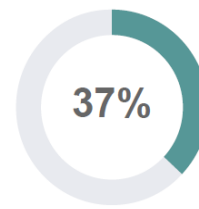
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1. Executive summary

The results from the 2023 PCA Tied Tenant Survey show a continued level of dissatisfaction in the way in which pub companies handle repairs and dilapidations with their tied tenants.

The PCA has undertaken a review of repairs and dilapidations through informal consultation exercises with pub companies and the British Institute of Innkeeping, as well as consideration of tenant feedback from the 2023 survey.

This report outlines the findings of the review and sets out further steps the PCA intends to take to support pub companies to improve tenant satisfaction with the handling of repairs and dilapidations.



are happy with the way
BDM manages repairs
and/or dilapidations

2023 PCA Tied Tenant Survey

2. Background

The Pubs Code introduced important new rights for tied pub tenants in respect of the pub premises. The PCA has set out these rights in its factsheet [What Tied Tenants Need to Know About Repairs and Dilapidations](#).

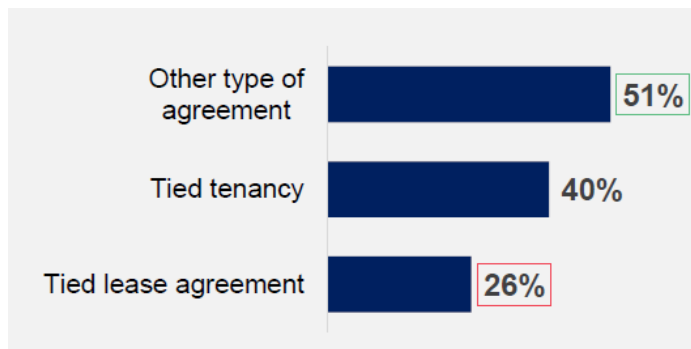
In brief, the Pubs Code places obligations on the regulated pub company, which include the following:

- Before the tied tenant takes professional advice, prepares their business plan and takes on the tenancy, the pub company must do the following:
 - Provide required information in relation to the premises, repairing liabilities and how dilapidations will be dealt with. This includes a schedule of the condition of the premises, which summarises the state of repair.
 - Advise the tenant to carry out a thorough inspection of the premises.
 - Advise the tenant to take advice from a surveyor with experience relating to tied pubs.
- Update the schedule of condition during the term of the tenancy as specified in the Pubs Code.
- Comply with obligations concerning the recording in writing of discussions with the tenant relating to the repair of the premises.
- Carry out any surveys to review any dilapidations at the premises in line with the agreement, and at least six months before its end.

The results of the 2023 Tied Tenant Survey identified that a significant number of respondents (45%) were not satisfied with how regulated pub companies through their Business Development Managers (BDMs) managed repairs and dilapidations for their pub.

Those who entered into agreements **after** the Pubs Code came into force were likely to be more satisfied than those who entered into their agreement before.

Data from the survey indicates that the longer the tied tenant's agreement, the less likely they are to be satisfied with how the pub company manages repairs and dilapidations. Tenants with leases were less likely to be satisfied with their BDM on these issues than those with tenancies or other agreements. This is perhaps unsurprising given that tenancies are typically shorter agreements with more limited repair liability on the tenant. Leases are typically longer agreements where the tenant has more significant repair liability. Such agreements are also more likely to have started before the Pubs Code was introduced on 1 July 2016 and gave important information rights to tenants in relation to the pub premises.



% Agree they are happy with the way their BDM manages repairs and/or dilapidations

3. What we did

As a result of the survey findings, the PCA reviewed how repairs and dilapidations are treated under the Pubs Code.

This work included the following:

- Reviewing the Pubs Code requirements and publishing a [factsheet](#) for tied tenants.
- Analysing the PCA Tied Tenant Survey results data.
- Reviewing the annual compliance reports from the six pub companies for the year ending March 2023
- Considering guidance already in the market, including the [Best Practice Guide to the Management of Pub Repairs and Dilapidations](#) published by the British Beer and Pub Association (BBPA) in association with the British Institute of Innkeeping (BII) and UK Hospitality.
- Discussing with the six regulated pub companies and the BII to explore the various processes and procedures relating to repairs and dilapidations, as well as common issues for tenants.

4. What we found

4.1. Before entering into an agreement

Information

All pub companies said that complying with Schedule 1 of the Code (i.e., the requirement to provide certain information before entering into a new agreement) was onerous given the amount of information that needed to be provided. But the pub companies also indicated that the Schedule 1 requirement was a useful tool in ensuring that tenants were armed with all the information they needed to assess their repair liability before committing to an agreement. All pub companies agreed that it was difficult to present the information in a user-friendly way given the volume of documents which had to be provided.

Feedback on how this information is used was mixed – pub companies commented that some tenants read it all, others ignore most of it and most will refer to it when they have problems during their tenancy. Most of the pub companies also create their own shortform guides which they encourage tenants to refer to later down the line. Some pub companies asked their BDMs to sit down with new tenants to go through the information, others asked tenants to sign documents to confirm they had read them. It was felt that there wasn't a 'one size fits all approach' to making sure tenants had understood what they needed to. There were suggestions that more could be done to provide simple, jargon-free guidance for tenants in an easily accessible format.

Professional advice

Pub companies commented that it was rare for tenants to seek advice from a surveyor at the outset. This was unless they were taking on a longer lease where their liability was greater for property repairs and some pub companies insisted on the tenant taking advice in those circumstances. Pub companies confirmed that it would be normal for tenants to undertake a walk round of the pub without a professional independent adviser (but possibly with the BDM or property manager) before entering into their agreement.

Further feedback from pub companies was that tenants are generally reluctant to take advice from property professionals (e.g., solicitors, surveyors, accountants) in connection with repair and dilapidations. The exception to this appeared to be where tenants took advice in relation to assignments of existing agreements. The cost of professional advice was possibly a barrier in many cases – either because a tenant could not afford to pay for advice or because they did not see the benefit of spending money on it.

Liability and state of repair

Some pub companies ask BDMs or property managers to take tenants through any repair liability on site as part of a handover or as part of Heads of Terms discussions at the outset. Some pub companies use a summary sheet for repairs which breaks down the areas within the pub and outlines which party is responsible for repair (but this would also depend on the agreement type). Again, a clear pattern was that pub companies retained a greater repair liability under short term agreements but expected tenants to commit to greater repair obligations on longer agreements.

All pub companies referred to carrying out works themselves before the tenant commenced any agreement to get the property up to a minimum standard. It was unusual for tenants to carry out fit out works on top of this. If this did happen, it was usually where the tenant entered into a longer agreement and was looking to invest in the pub and carry out fit out works themselves.

Several pub companies commented on the usefulness of having a schedule of condition in agreements and that it had eliminated a lot of disagreement about the state of repair at the outset of the agreement. Although this is only likely to avoid disputes where repairing liability is linked to the schedule of condition.

4.2. Ongoing management of repair

All pub companies operate a helpdesk service for tenants to report issues with repairs - these are mostly managed in-house. Several pub companies mentioned helping tenants with repairs that were the tenant's responsibility and charging the cost back to the tenant, e.g., if the tenant needed help finding contractors for works.

Pub companies described other initiatives such as serving schedules of dilapidations well in advance of Code deadlines and mandatory reserve funds to spread the cost of repairs. They also arrange for BDM visits and ongoing review meetings with tenants about repairs/condition, although the process for doing so varied between them. Some pub companies require their BDMs to have regular meetings on site about property condition as well as sending written reminders to tenants about liability for repairs. Other pub companies had much less frequent meetings or only held ad hoc reactive meetings when a repair issue came to light.

BII was of the view that ongoing monitoring of repairs and property condition was key to reducing significant dilapidations at the end of an agreement as it allowed issues to be identified (and rectified) early. Comments were also made by some pub companies about the benefit of identifying repairs early.

Industry guidance supports an ongoing review of the property condition, such as regular informal visits by property managers to discuss and monitor repairs on an ongoing basis. This was considered beneficial to tenants in giving them the information they needed to manage and prioritise maintenance tasks during the term of an agreement. This should avoid disrepair worsening and/or maintenance tasks stacking up.

4.3. Key milestones and property condition

Assignment

Pub companies stated that it was much more common for tenants to take independent property advice on an assignment of an agreement than at any other point during the lifetime of the agreement. The approaches of the pub companies differed on assignment, but most would expect urgent repairs and/or statutory compliance works to be carried out before an assignment took place. Assignments are generally rare in the regulated sector where a pub company favours shorter agreements, which either prohibit assignment or are less likely to be in place long enough to be assigned.

Rent assessments

All pub companies carry out an interim dilapidations schedule ahead of any rent assessment, although in most cases this is used only to inform rent negotiations and as a reminder to the tenant of their liability. Pub companies generally do not insist on repairs being carried out at this stage.

Market Rent Only option

None of the pub companies said they would use outstanding dilapidations liabilities to block a tenant from exercising their option to go MRO, although all said they would expect statutory compliance works to be done before any new agreement was put in place. Other repairs could be carried out afterwards, with most pub companies allowing tenants time to carry out repair works depending on the urgency of such repairs. The PCA has now published [MRO Guidance](#) which sets out the expectations when managing repairs and dilapidations during the MRO procedure.

4.4. Termination of the agreement

Towards the end of an agreement, all pub companies instruct external surveyors to prepare a costed schedule of dilapidations. This is the landlord's assessment of the state of repairs towards the end of an agreement – essentially indicating that the tenant has not complied with their contractual obligations to keep the property maintained to an agreed standard of repair. Both pub companies and the BII acknowledged that tied tenants can be dissatisfied as a result of dilapidations schedules being served, especially towards the end of the term of a tenancy or lease.

The general view among pub companies was that the further in advance this process was started, the smoother discussions would be between the parties. Some pub companies said they would ask the BDM to meet with the tenant to run through the work that needed to be done.

The exception to this was where tenants were looking to exit their agreement on short notice and so the dilapidations process had to be shortened. Most pub companies said they would try to facilitate a quick exit as it was usually in all parties' interest to do so, but this tended to leave little time for dilapidations to be assessed and repair works to be undertaken. In such circumstances, financial settlements were needed to cover the cost of the repairs and these sums could be larger than usual given the limited time to carry out repairs.

Most of the pub companies said that when disputes did arise, they were usually about dilapidations on tenant exit. They added that this could be part of wider problems, such as the tenant having financial difficulties and being asked to pay a potentially substantial dilapidations bill yet wanting to exit quickly.

All pub companies reported a mixed response from tenants to service of dilapidations schedules. All confirmed that it was rare for a tenant to do all works outlined in dilapidations schedules. It was usual for pub companies to agree a settlement figure to cover the cost of outstanding repairs where these were more than insignificant. Notably, pub companies commented that few tenants seek legal or property advice at this stage. One pub company said that the sums involved are normally too small to make getting professional advice worthwhile, while another said they would offer to contribute towards the cost of advice but did not think this had led to more tenants taking them up on it.

The general feeling amongst the pub companies was that significant disputes were now quite isolated and that a lot of progress had been made to repairs and dilapidations processes.

4.5. Dealing with disputes

All pub companies said disputes were uncommon and rarely reached the point of instructing solicitors and even complaints about dilapidations raised through their internal complaints process were infrequent. All pub companies have a complaints process which allows for the matter to be escalated. The pub companies were of the view that issues can usually be resolved amicably through discussion with BDMs or more senior members of staff through the complaints process. The BII said that they would usually advise tenant callers to their helpline to discuss any concerns over schedules of dilapidations with their pub company informally before raising formal complaints, and that this would normally resolve matters.

Where disputes did occur, they were usually about dilapidations. The BII said that a tenant can often carry out the repairs themselves at a lower figure to that quoted by a pub company.

4.6. Other comments

Most pub companies confirmed they were interested in better understanding the reasons for tenant dissatisfaction and several made suggestions that the PCA's annual Tied Tenant Survey could include more detailed questions about repair and dilapidations. Suggestions included asking about repairs and dilapidations separately, sorting data by reference to leased and tenanted pubs and asking tenants for the reasons for their dissatisfaction. There was a feeling that independent surveys were the best way to find out this information as some pub companies noted a lack of feedback from tenants when pub companies sought this themselves.

Pub companies are required by regulation 43 of the Pubs Code to submit an annual compliance report to the PCA, which amongst other things must include a detailed and accurate account of its compliance with the regulations. Each of the pub company's compliance reports have been considered.

In addressing their compliance with duties in respect of the pub premises (related to the schedule of condition and the pub premises, Regulations 12, 13 and Schedule 1 (para 15, 22)) it is noted that there are differences in approach. For example, the independence of the surveyor appointed to prepare the schedule of dilapidations, whether interim inspections are carried out during the term of the agreement and how far out from the end of the contract the schedule of dilapidations is served (noting the Code requires a minimum of six months). The PCA will consider the data from the compliance reports and these and other areas may provide issues to explore and further consider when engaging with stakeholders.

5. Next steps

The results of the 2022 survey showed a degree of tenant dissatisfaction with pub companies due to issues with the handling of repairs and dilapidations under agreements. This concern has remained in the [2023 tenant survey](#).

Further engagement between all key stakeholders will be crucial to facilitate a more collaborative approach between pub companies and tenants to improve the processes and communications between them concerning matters of repair and dilapidations.

Although not exhaustive, the key challenges for the industry to overcome in the short term are to ensure that tenants are made aware of the following:

- Support and guidance available to them throughout the lifecycle of an agreement.
- Details of professional advisers who can provide independent advice at key points.
- Their obligations relating to repairs at the outset and on an ongoing basis to avoid significant dilapidations liabilities at the end of an agreement.

The PCA will continue to engage with the pub companies to discuss the recent survey results and explore ways that pub companies can cooperate with tenants to drive better processes and alleviate some of the concerns regarding repairs and dilapidations. The PCA will be seeking to engage directly with tied tenants and their industry bodies to further understand their views and to inform its ongoing regulatory approach.

