

About the Pubs APPG

Thank you for the opportunity to respond to this consultation.

The stated aim of the All Party Parliamentary Group on Pubs (Pubs APPG) is to “promote and campaign for the interests of pubs, landlords, and the communities around these pubs.”

Unless stated otherwise, all data and quotes provided in this submission are drawn from the Pubs APPG inquiry into the impact of the pandemic on pubs. This launched on 30 April 2021, with an initial call for evidence running until 21 May, an oral evidence session was then held on 15 July. Responses have been filtered to only those respondents who stated they were tied tenants and some quotes provided below have been lightly amended for spelling or clarity.

The Campaign for Real Ale provides secretariat services to the Pubs APPG.

Operation of the Code

Overall, there have been a number of improvements in the operation of the Code since April 2019. However, it is the belief of the Pubs APPG that further action is needed to ensure that the Code operates as originally intended by Parliament and there are some significant areas of concern to be addressed.

The work of the current Pubs Code Adjudicator in clearing the backlog of arbitration cases which existed at the first review, the reduction in the number of ongoing cases, and the decrease in time taken to reach a resolution is a hugely positive step.

The first use of the Adjudicator's investigative powers, and subsequent enforcement measures, was also welcome.

However, as noted in the Business, Energy and Industrial Strategy Select Committee session of 12 July 2022, there have been reports from tenant representative groups of unfair business practices by regulated pub owning businesses. As non-statutory guidance and enforcement of the Code has developed, the business practices of pub owning businesses have also evolved and additional investigations by the Pubs Code Adjudicator may be appropriate to determine whether these reports constitute a breach of the Code.

The imbalance of resources available to tenants and pub owning businesses also remains of concern. While improvements in the level of information available to these parties have been made during the review period by the Pubs Code Adjudicator publishing additional guidance and arbitration decisions, the Pubs APPG believes that this imbalance has persisted.

"The Pub Co's being made to act more reasonably. More importantly a fundamental review of the tied arrangement needs to be revisited. It is virtually impossible to make any money as a licensee unless you and your partner work 70 to 80 hour weeks... I truly hope that something is done to create a more equitable business model rather than the one sided relationship that exists today with Pub Cos having all the power" – [Redacted]

This is particularly apparent with dilapidations, which continue to be a contentious issue for organisations that represent tenants, particularly in the context of tenants who attempt to go free of tie. There have also been concerns raised that inflated dilapidation bills may be a mechanism by which regulated pub owning businesses attempt to deter tenants from accepting a Market Rent Only offer. If this is the case, this may amount to an unfair business

practice designed to avoid Code responsibilities. The Pubs APPG would like to see the Pubs Code Adjudicator monitor this situation – including engaging with tenant representative organisations who may have relevant data or other evidence – and use their investigative powers if necessary.

“To get out of the tie would have cost me so much money that it was totally impractical.” – [Redacted]

Finally, there has been a significant lack of clarity over how the Code applies to gaming machine ties, and the extent to which this issue affects tenants. Should evidence submitted to this review demonstrate that gaming machine ties are a substantive concern of tied tenants, we would welcome amendments to the Code to clarify that ties cannot be imposed on gaming machines, as these can be a vital source of income for tenants.

Principles of the Code

Evidence received by the Pubs APPG during its inquiry suggested that the core principles of the Code – fair and lawful dealing, and that tied tenants should be no worse off – were not being fully met.

This was further demonstrated by a survey carried out by the Campaign for Real Ale (CAMRA) which found that 73% of respondents who were tied tenants of regulated pub companies did not feel that they were treated fairly and lawfully, with only 22% saying that their treatment was fair and lawful, and a further 4% selecting a “don’t know” option.

When asked about support received from pub companies during the pandemic, evidence was also received by the Pubs APPG relating to the use of Section 25 notices as a mechanism to avoid tenants pursuing the Market Rent Only option.

“Have received some help with rent and risk assessments but the cost of the tie is far outweighed by this and after [Redacted] years here I have now been served a Section 25 to ensure I can't request MRO again, I had to give up on the original MRO request as the pubco dragged it out for so long I ran out of money to pay solicitors, Covid hit [Redacted]” – Pubs APPG survey respondent

The Market Rent Only option is a crucial part of achieving the principle that tied tenants should be no worse off – whether they intend to move to a Market Rent Only contract, or simply use Market Rent Only as a negotiating tactic.

It is of huge concern that Section 25 notices may be issued in this way.

As in the recommendations of the Pubs APPG’s ‘Raising the Bar’ report¹, interaction between the Landlord and Tenant Act (1954) and the Pubs Code is poor – particularly in relation to timetables for renewal or agreement of lease terms, and mitigation of the effect of hostile notices.

The Pubs APPG would support moves to better align this legislation, to ensure that the principles of the Code are upheld.

In relation to the principle that tenants should be no worse off than if they were not subject to a tie, CAMRA’s survey found that 73% of respondents who had regulated tied tenancies said

¹ Available at <https://apppg.camra.org.uk/inquiry/>

that they were not no worse off than free of tie tenants, with 24% saying they were no worse off, while 2% did not know.

“If the government had more power / ability to control the pub companies. [Redacted] put pricing up across the board on all stock DURING lockdown... makes it harder for us to hit the ground running once open, with the poor government grants, has made it a tough feat for any publican.” – [Redacted]

The Pubs APPG also notes that pub owning businesses are not required to maintain public information about rents or tied prices in their estates – for either tied or Market Rent Only properties. This lack of data hampers tenants searching for comparable rents and prices during negotiations, and when deciding whether the tie would be the best choice for their business.

Requiring pub owning businesses to provide this data publicly would support tenants in ensuring that they are no worse off under their tied tenancy deals.

“We need structural support, not more silly schemes like “eat out to help out” please. Pubs are an integral part of the social fabric of this country, and longer term, a regulatory framework should be established, to stop landlords and pubcos exploiting their position. Rents should be regulated at a fixed percentage of fair trade turnover, established by an independent body, not by the pubcos themselves.” – [Redacted]

The Pubs Code Adjudicator

As detailed above, many of the recent improvements in the operation of the Code have been due to the work of the Pubs Code Adjudicator. It is also positive that the Office of the Pubs Code Adjudicator has increased the size of its annual tied tenants survey, particularly as this means that comparisons can now be drawn between pub owning businesses.

However, there are areas where the Pubs APPG would like to see changes made and a number of licensees who responded to the Pubs APPG’s call for evidence during its inquiry voiced their frustration with what they saw as bias or inaction on the part of the Adjudicator.

“Sorry to bang on about the Tied Tenancy model, it is within the Governments remit to ensure this made into a level playing field between Tenants and PubCos. Despite numerous representations still nothing is done. The tied tenancy model is so unfair and loaded in favour of the PubCo, it is very difficult to make a profit. This needs to be reviewed and the PCA do nothing.” – [Redacted]

While the Pubs APPG recognises that the Pubs Code Adjudicator has made a range of improvements to the ease of access to advice and guidance for tenants, it is still the case that there is an imbalance of information and resources available to tenants and to pub owning businesses.

Pubs Code Adjudicator’s own data also shows that almost half of tied tenants are not aware, or not very aware, of the Pubs Code Adjudicator, and that of those who had some awareness, around a third reported that they did not trust the Adjudicator to act as an independent regulator.

“Scrap the pub codes adjudicator. It is a waste of time and money as it’s not dealing with the problem of pubcos aggressive tactics. Pubcos should be shut down as they are the sole

cause of the decline in pubs in this country. As they only interested in the short term and asset stripping our community hubs.” – [Redacted]

Clearly this lack of trust and awareness creates a significant barrier to tenants accessing their rights under the Code and the Pubs APPG would like to reiterate the recommendation from the ‘Raising the Bar’ report that additional resources be provided to the Office of the Pubs Code Adjudicator to help address this.

“...a government body with teeth that can help us with the pub companies, if you wanted to go free if tie. As they just seem to want extortionate rent if you try to go free of tie.” – [Redacted]

This also impacts negotiation and arbitration, with tenants often needing third-party guidance on how to navigate the Code and its mechanisms, and accessing this expertise may not always be financially attainable for tenants.

Finally, the Office of the Pubs Code Adjudicator is limited in the functions that it can undertake by current legislation, particularly investigations into unfair business practices. In the view of the Pubs APPG, there are several areas of concern in which the Adjudicator has no current remit, and would like to see Government take the opportunity provided by this Review to increase the scope and resources accorded to the Office of the Pubs Code Adjudicator, including the ability to investigate any potentially unfair business practices, not only those designed to avoid Code responsibilities.

Matters outside the current scope of the Code

As a Code and Adjudicator are currently being established in Scotland, the Pubs APPG believes there would be benefit to ensuring that legislation is aligned between nations so that all parties are able to access the same rights and protections.

Specifically, the Pubs APPG would support the creation of a statutory guest beer right, as in the Scottish Tied Pubs Act. This would support the principle that tied tenants should be no worse off than those not subject to any tie – who are able to source beer on the open market. Creating this right would also help rebalance the relationship between tenants and pub owning businesses.

“We have to make it more affordable for the consumer to come back to the hospitality environment. I also think the pub companies could help more by recalculating rentals and the wholesale prices to tied pubs. I feel that the pub system is unfairly weighted towards the pub companies for tied properties. The beverage margins they allow for are not economically viable.” – [Redacted]

The Pubs APPG also notes that the Scottish Code will apply to all tied tenancies, rather than only tenants of pub owning businesses with more than 500 tied tenancies.

There has been an increase in the use of operating models that are not necessarily covered by the Pubs Code. Among these are “retail agreements” which are usually subject to extensive product ties. Under this model, tenant licensees are considered self-employed – as is the case with a regulated tied tenancy – however these tenants do not benefit from the oversight currently offered by the Code or the Adjudicator. Additionally, these tenants are not able to make the types of business decisions commonly under the control of a tied tenant working with their Business Development Manager.

Despite the issues highlighted with the Code and its application, the Pubs APPG believes it would be preferable to see all of these agreements brought into the scope of this regulation, as there is currently little to no oversight for these operating models.

Applying the Code to all tenancies with a tie would also disincentivise the use of Section 25 notices to move premises from regulated tenancies to other operating models outside the scope of the Code.

Contact

The Pubs APPG would be happy to provide further information on any of the points raised within this submission, or contacted regarding any further research.

The Campaign for Real Ale provide the secretariat for the Pubs APPG and can be reached at apppg@camra.org.uk

About You

Name: [Redacted]

Organisation: TVC Leisure (Gaming Machine Supplier)

Address: 27/28 Space Business Centre, Molly Millers Lane, Berkshire, RG421 2PQ

	Respondent type
<input type="checkbox"/>	Tied pub tenant
<input type="checkbox"/>	Non-tied pub tenant (please indicate, if you have previously been a tied pub 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 companies (please describe, including number of tied pubs in England and Wales)
<input type="checkbox"/>	Tenant representative group
<input type="checkbox"/>	Trade association
<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"/>	Surveyor
<input type="checkbox"/>	Arbitrator
<input checked="" type="checkbox"/>	Other (please describe) Gaming Machine Supplier

Review questions

Part A: The Pubs Code

Question 1

How well do you think the Pubs Code has operated between 1 April 2019 and 31 March 2022? Please provide any evidence you have to support your view.

Comments: **Its completely failed, the relationship between tied tenants and their pub companies has not improved, pub companies are still abusing their power and ripping off their tenants, a tied tenant is still worse off than a free of tie tenant.**

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? Please provide any evidence you have to support your view.

Comments: **Pub companies are not fair and lawful to their tied tenants, they are unfair and, in some cases, act illegally. They manipulate the interpretation of the pubs code for their own gain and threaten legal action against anyone that challenges them.**

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? Please provide any evidence you have to support your view.

Comments: **The interpretation of the gaming machine tie within the pubs code has been manipulated, and now the gaming machine tie is mandatory in every new tenancy agreement, therefore it is impossible for a tied tenant to be no worse off than a free of tie tenant. When tied the gaming machine supplier will empty the machines and collect their rent, the remaining balance is split 50/50 with the pub company and the tied tenant. When free of tie the gaming machine supplier will empty the machines and collect their rent, the free of tie tenant will then keep 100% of the remaining revenue. The average gaming machine can make £400/£500 a week, under tie the pub company receives 50% of that for nothing.**

Part B: The Pubs Code Adjudicator

Question 4

How effective do you think the Pubs Code Adjudicator has been between 1 April 2019 to 31 March 2022 in discharging its functions in relation to the Pubs Code? Please comment in particular on the PCA's performance in undertaking the following:

- a. giving advice and guidance;
- b. investigating non-compliance with the Pubs Code;
- c. enforcing the Code where non-compliance is found; and
- d. arbitrating disputes under the Pubs Code.

Comments: Very ineffective, I approached the pubs code adjudicator multiple times with regards to the gaming machine tie and was repeatedly ignored, the pubs code adjudicator is also guilty of providing conflicting information. 2nd February she posted an information page on her twitter account about what rights the Pubs Code includes, it stated the gaming machine tie cannot be required in new agreements. 9th March she wrote an article in the Morning Advertiser stating her interpretation of the pubs code was that it did not prohibit a pub company from enforcing a gaming machine tie.

Part C: Pubs Code (Fees, Costs and Financial Penalties) Regulations

Question 5

Do you think the regulations relating to costs, fees and financial penalties remain appropriate or should these be adjusted? Please give the reason(s) for your answer and, if you believe these regulations should be amended, please set out how.

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

Thank you for taking the time to let us have your views.

At BEIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No

TVC Leisure
27/28 Space Business Centre
Wokingham
Berkshire
RG41 2PQ
[Redacted]

Date: 14th February 2022

Subject: Gaming Machine Tie

Dear Sirs,

I am writing to inform you of an ongoing issue I am experiencing within my industry, which 18 years ago your previous enquiries uncovered but has yet to be resolved.

I own a family business that supplies gaming machines to pubs throughout London & The Home Counties. Every year we lose a frustrating number of customers because pub companies are still enforcing the gaming machine tie for new tenancy agreements as well as tenancy renewals.

In 2004 and 2009 the BISC conducted a report into the pub industry and the relationship between the pub owning companies and their tenants. Within the report the goods and services a pub company can tie a tenant into using was reviewed which included the supply of gaming machines.

The 2004 and 2009 Business Select Committee inquiries established that the cost of rental of these machines was usually higher than on the open market and both inquiries concluded that the 'machine tie' brought little benefit to tenants and should be removed.

The 2010 Select Committee report echoed these conclusions and suggested another option:
It is unacceptable that pub companies have again failed to address the AWP tie or to seriously offer free of tie options. If the AWP tie offers the benefits claimed for it, offering such a choice on an informed basis would demonstrate goodwill at little if any cost to the pub companies as lessees will freely chose to retain the tied machines.

In 2022 18 years since it was first recommended that the gaming machine tie be removed, it is still very much a part of the pub companies business model, and the situation is now worse than ever. The gaming machine tie is now compulsory in every new tenancy agreement offered by the pub companies, and a tenant is still not offered a choice to be tied or not.

Currently the only way for a tenant to be free of tie on their gaming machines is to pay a substantial increase in rent for the pub, this acts as a tie release fee in all but name, something the pubs code was meant to prevent. The increase in rent renders the sector anti-competitive and punishes consumer choice.

I was optimistic that this would end when the Pubs Code was introduced, as there is a section in the code relating to gaming machines which states:

A pub owning business –

(a) Must not enter into a new tenancy or licence; and

(b) Must not renew a tenancy or a licence

Which requires a tied pub to purchase or rent gaming machines

However, the pub companies choose to ignore this regulation or manipulate its interpretation. For example, when challenged about the gaming machine tie, a common response from the pubcos is *"you are not obliged to operate gaming machines, but if you want to operate them it has to be with one of our nominated suppliers"*

I have addressed my concerns with the Pubs Code Adjudicator and personally discussed the issue with Fiona Dicky at the Pub Show in 2019. Fiona suggested that I review the Pub Companies and Tenants consultation to see what the recommendations were for the gaming machine tie and also find out what the objective of the pubs code was in relation to the gaming machine tie.

My research uncovered that in 2004 and 2009 the Business Select Committee inquiries concluded that the gaming machine tie should be removed. My research also uncovered that the objective of the pubs code in relation to gaming machines was to ensure a pub tenant has a choice to be tied or not, which is clearly not being offered in the pubco's gaming machine agreements.

I have contacted the Pubs Code Adjudicator multiple times and provided them with the information I have discovered, but I still haven't had a response and feel my concerns are being ignored. The failure of the PCA to regularise the intention of parliament (and the previous select committees) cannot be overlooked any longer, they must not be allowed to turn a blind eye to this most egregious of practices. I would sincerely hope that the committee chair quizzes the PCA as to why they have failed to uphold the intentions.

I have attached the Government's Response to the consultation and their recommendations and a copy of the Draft Pubs Code, and I have highlighted the sections relating to gaming machines. I have also attached the gaming machine policies, and the agreement terms of the pub companies regulated by the pubs code. I have highlighted the sections relating to gaming machines, which clearly shows the pubco's tying the tenant into using a nominated supplier and not offering the tenant a choice to be free of tie.

It is my firm belief that the gaming machine section of the pubs code needs to be amended and rewritten so that the pub companies cannot manipulate the interpretation. Tenants don't purchase gaming machines they rent them, and they have always had the choice to have them installed in their pub or not. What the Pubs code clearly needs to state is a pub owning business must not tie a tenant into using a nominated supplier for their gaming machines, or a tenant has the freedom to choose whichever gaming machine supplier they wish.

The fundamental purpose of the pubs code was to ensure a tied tenant is no worse off than a free of tie tenant. When it comes to the gaming machine tie a tied tenant is a lot worse off, and in many cases would express how the machines have no financial benefit to them as the pub companies and suppliers take all the money.

I am very keen to discuss this matter in more detail and can provide case studies from multiple tenants that are worse off because of the gaming machine tie, or who pay a substantial annual tie release fee.

Your Sincerely
[Redacted]
TVC Leisure

