



Invitation to contribute views and evidence to the statutory review of the Pubs Code and the Pubs Code Adjudicator

For the period from 1 April 2019 to 31 March 2022

Response form

The consultation is available at: www.gov.uk/government/consultations/pubs-code-and-pubs-code-adjudicator-invitation-for-views-on-the-second-statutory-review-2019-to-2022

The closing date for responses is 17 August 2022

Please email completed forms to pubscodereview@beis.gov.uk

Or send by post to:

Pubs Code team
Department for Business, Energy and Industrial Strategy
4th floor, Victoria 2
1 Victoria Street
London
SW1H 0ET

Information provided in this response, 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 invitation to contribute views and evidence 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: In my opinion there is a massive issue regarding how POB Surveyors present RAPs. One year they can suggest food is 15% of turnover then 5 years later 40% without giving any reasoning or without there being a change in operator or the style of operation. In my opinion this is an inconsistent approach of valuation methodology which should require appropriate reasoning and justification. There is also a tendency to skew wet mix to more profitable lines to increase rent. I suspect that such surveyors start with the rent that they need to secure and work backwards to reverse engineer costs and other inputs. I have an example of [Redacted]. I also feel that there should be no time limit on breaching the code. If a POB doesn't provide a schedule of condition to a new tenant, at the end of

the lease that tenant is provided with a dilapidations schedule which doesn't reflect the original condition, is the POB in breach? IE if the tenant becomes aware of the lack of a schedule of condition after 3 months the POB is in the clear? No incentive to comply in my opinion IE breach the code and get away with the breach due to dragging out discussions

About You

Name:

Organisation (if applicable):

Address:

	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 checked="" type="checkbox"/>	Consultant/adviser
<input type="checkbox"/>	Trade union or staff association
<input checked="" type="checkbox"/>	Surveyor
<input type="checkbox"/>	Arbitrator
<input type="checkbox"/>	Other (please describe)

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: better than before, but still a slow process where POBs use solicitors and legal jargon to intimidate operators that their concerns are unjustified despite the evidence. I can provide information which is going to IA if required

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: I believe this to be true

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: This isn't seen by me. When dealing with MRO, POB surveyors insist that improvements should be rentalised, in a standard lease renewal they are not. The costs POBs try to push on their tenants to move to FoT is prohibitive. Annual RPI is the death knell for MRO leases where downward reviews cannot happen until lease renewal. UPWARD DOWNWARD reviews need to be compulsory for MRO leases to allow sustainability in the model

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: a improvement has been seen; don't have enough direct experience to comment on other points

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: It is positive that POBs face greater exposure to costs, I suspect it should be greater to engender a more conducive attitude to compromise in the initial stages. However this may also lead to an increase in less compromise because the stakes are higher, certainly POBs have ignored previous judgements and double down on intransigence in my experience.

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

Pubs Code and Pubs Code Adjudicator: invitation for views on the second statutory review, 2019 to 2022.

RICS Response

Introduction

We welcome the opportunity to respond to this consultation. The Royal Institution of Chartered Surveyors (RICS) has a public interest remit in line with its Royal Charter, and RICS members work as representatives of Tied Pub Tenants (TPTs), Pub Owning Businesses (POBs), tenants and landlords of 'free of tie' public houses as well as in arbitration and independent assessment proceedings. Our response reflects the public interest remit of RICS, rather than the views of any one stakeholder, and it is confined to those areas where RICS has professional knowledge or experience to bear.

In relation to the operation of the Pubs Code, there are two main areas where RICS professional members would have relevant involvement. First, surveyors can be involved in early negotiations between parties, representing a specific client. In this context it would typically be a surveyor instructed to act on behalf of a tenant or a surveyor working for a pub company. Secondly, surveyors can be appointed as an arbitrator, and as an independent assessor, where they will be taking an objective view and coming to a conclusion in the case of a specific dispute, rather than acting on behalf of any specific client.

The use of qualified RICS professionals in relation to the Pubs Code has helped to ensure that the individual who is supporting the relevant client or parties has the necessary training and expertise, that they will adhere to good practice and [Rules of Conduct](#) and that they are regulated.

RICS recognises that rental negotiation can be daunting for those not specialist in this area. We promote the use of RICS professionals and the support they can give in terms of understanding the relevant legislation and process. RICS and its professionals are suited to providing guidance and support to both TPTs and POBs. There is a need to communicate what is expected to happen as TPTs and POBs journey through the process. Whilst there is generic guidance available, further support mechanisms could be developed; a process RICS and its professionals can assist with.

RICS professionals engaged by TPTs and POBs can also help in creating clearer understanding of the legislation and the process such as, what could or may happen, in terms of rent, other costs and available support, when choosing to go free of tie or remaining a tied tenant. Stakeholders can also obtain individual advice through RICS professionals to gain a clearer

understanding of the Independent Assessor and Arbitration process. The legalistic language of the code can be intimidating and confusing to some users and RICS professionals engaged by TPTs and POBs have a role to play in setting out options in plain English.

RICS produces a [Global Standards – Valuation “Red Book”](#) including section VPGA 4 covering assets valued in accordance with their trading performance, with pubs being specifically referenced. This valuation standard is mainly used to determine market value (or market rent) in accordance with a standard definition from the International Valuation Standards (IVS). We are also in the process of updating our 2010 guidance note [The capital and rental valuation of public houses, bars, restaurants and nightclubs in England and Wales 2010 \(rics.org\)](#).

The UK hospitality industry, of which the tied lease market forms a small part has undergone tremendous challenge throughout the COVID-19 crisis and beyond. This is coupled with and is in some cases causing an acceleration of underlying trends in the market such as diversification, online trade and improved outdoor facilities. There have also been changes in planning regulations and market tastes that have impacted and caused the evolution of the market. It is our view that the operation of the Pubs Code should be considered within a wider market context. It cannot be the solution to all market challenges but will need to evolve with the market to keep it relevant and functional.

Response to questions

Part A: The Pubs Code

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.

RICS has engaged with stakeholders from across the industry. This includes our members acting for tenants, pub companies and independent advisors and arbitrators as well as individual tenants, representative groups and other market stakeholders. These groups have raised challenges with the Pubs Code as well as suggestions for its better operation. It is with regret that the significant in-person and other industry engagement RICS undertook immediately prior to the COVID-19 was curtailed by subsequent events. We look forward to gearing up our industry engagement once again in due course, notably in relation to a full public consultation of our proposed guidance note update covering the valuation of public houses.

Valuation and rental negotiation are ultimately based on opinion and may be informed by the interests of the parties involved. This can create complexity and lead to dispute in some circumstances. RICS supports the use of qualified professionals for valuation and rental negotiation – for all parties in a dispute. The [RICS Code for Leasing business premises](#) was produced in conjunction with, amongst others, the British Property Federation, REVO retail property community, Law Society, Federation of Small Business and Association of Licenced

Multiple Retailers. It encourages *'both parties to obtain advice from property professionals. This enables negotiations to proceed properly so that each party can make an informed decision about whether to proceed on the terms that they negotiate.'* It also states that: *(1.1) Negotiations over the lease must be approached in a constructive and collaborative manner and (1.5) Negotiations should aim to produce letting terms that achieve a fair balance between the parties having regard to their respective commercial interests.*

RICS does not support formulaic approaches as these do not usually reflect the individual circumstances and can lead to inaccurate results for either or both parties.

Some of the disagreement amongst stakeholders comes down to interpretation and subsequent process of individual elements of the Pubs Code and its operation. An example of this is disagreements around new lease or deed of variation options. RICS does not consider it appropriate to consider legal interpretation of the wider Pubs Code and its interaction and other relevant property law within this response – except where there is a direct interface with RICS standards and guidance as stated below.

RICS engagement with stakeholders suggests that the operation of the Pubs Code has in some cases inclined away from negotiation and towards third party assessment. Although our engagement has suggested that some of this may be related to the detail of the statute itself, our experience has also been that it can be caused by a disparity in views around initial rent proposals and supporting information, a misunderstanding of the roles of the parties involved, and of market practice and available guidance. It is our view that greater clarity in these areas could facilitate better understanding and negotiated settlements.

The RICS Global Valuation Standards Red Book, incorporating the International Valuation Standards (IVS) includes a process which involves identifying the exact asset to be valued along with the purpose, basis and approach to valuation. The Pubs Code does not refer to valuation (at e.g. 20 and 29) or give details of the basis and approach for the “assessment” of the rent proposal, other than by reference to “RICS Guidance”:

“(3) The pub-owning business must prepare the rent proposal in accordance with the RICS guidance, and the rent proposal, when provided, must be accompanied by written confirmation, from a member or fellow of the RICS, that the proposal has been so prepared.”

This is defined within the Pubs Code as follows:

“the RICS guidance” means guidance issued by the RICS, as amended from time to time”

There has been confusion expressed in stakeholder engagement around which RICS guidance is being referred to and from this, what the rent proposal represents (i.e. is it a valuation or a figure for negotiation).

It should be noted that a surveyor may legitimately advocate for a rent that meets the needs of their client (or employer) so long as this is undertaken in accordance with the RICS Rules of Conduct. This advocacy may be for the pub company or tenant. A surveyor may also be instructed to undertake a valuation of an asset in accordance with a specific basis - such as the internationally recognised basis of market rent (as defined in the International Valuation Standards). These can be very different undertakings and it is not clear to some stakeholders what is expected under the Pubs Code.

In light of the above, we would propose the following changes to the Pubs Code:

“(3) The pub-owning business must prepare the rent proposal in accordance with ~~the~~ RICS standards ~~guidance~~, and the rent proposal, when provided, must be accompanied by written confirmation, from a member or fellow of the RICS, that the proposal has been so prepared.”

“~~the~~ RICS standards ~~guidance~~” means all relevant professional standards, guidance and Rules of Conduct issued by the RICS, as amended from time to time”

An alternative or addition to a statutory amendment would be for BEIS/the PCA to publish guidance confirming what is being referred to in the Pubs Code where it states “the RICS guidance”. To assist RICS will keep BEIS, the PCA and other industry stakeholders informed of the development of relevant RICS standards and guidance.

The RICS Guidance [The capital and rental valuation of public houses, bars, restaurants and nightclubs in England and Wales 2010 \(rics.org\)](https://www.rics.org/valuation-guidance) was published in 2010 and could not therefore have envisaged the exact wording of the Pubs Code. It is a valuation guidance for the hospitality market as a whole and the methodologies incorporated within it reflect that. It does include a section on the valuation of assets with associated tied leases, but not on the process of rent proposals and negotiation. Valuation for negotiation is a listed exception from our Global Red Book, technical standards and a rent proposal may not always be regarded as a valuation in any case. Stakeholders we have engaged with have typically referenced the 2010 valuation guidance note as the primary document to which the Pubs Code is referring. This causes issues due to fact the guidance is now out of date and does not cover rent proposals and negotiation in any case.

RICS are in the process of updating the 2010 guidance note, which was unfortunately delayed further to the impact of COVID-19. Our skeleton proposal includes an introductory section to support non-valuation professionals. This sets out the importance of understanding the purpose and basis of a valuation and the role of any party undertaking it. It is intended that the proposed guidance will include a section referencing the Pubs Code and tied leases but not offer interpretation of the statute.

It should be noted that other RICS professional standards and guidance are potentially directly or indirectly relevant to this area, including but not limited to:

- The RICS [Rules of conduct](#)
- The [RICS-Valuation--Global-Standards](#)
- The (joint) [Code for leasing business premises, 1st edition](#)
- [Surveyors Acting as Expert Witnesses, 4th edition](#)
- [Surveyors Acting as Advocates \(England & Wales\)](#)

A further query raised by RICS stakeholders is around the difference between the definition of market rent referred to in the Pubs Code and the IVS definition incorporated into the latest RICS standards. The Pubs Code refers to the definition of market rent within the Small Business, Enterprise and Employment Act 2015 at 43 (10), which states:

“In this Part “market rent”, in relation to the occupation of particular premises under a tenancy or licence which is MRO-compliant, means the estimated rent which it would be reasonable to pay in respect of that occupation on the following assumptions—
(a)that the tenancy or licence concerned is entered into—
(i)on the date on which the determination of the estimated rent is made,
(ii)in an arm’s length transaction,
(iii)after proper marketing, and
(iv)between parties each of whom has acted knowledgeably, prudently and willingly, and
(b)that condition B in section 68 continues to be met.”

The IVS definition is as follows:

“Defined Basis of Value – Market Rent 40.1. Market rent is the estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm’s length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.”

An example of the difference is that under IVS judgements around “appropriate lease terms” are to be made by the valuer, whereas in respect of the SBEE/Pubs Code there are further reasonableness and other tests made in reference to terms. The disparity in the definition can add to a separation of rental proposals (and valuations) undertaken for the purposes of agreeing a rent under the Pubs Code and valuations undertaken in respect of other purposes relating to the wider hospitality market (e.g. secured lending, financial reporting). It can cause confusion as to whether the same basis and approach should be applied. This confusion can

extend to the relevance of evidence used in support of a rent proposal. RICS will continue to assist with communication on this point through stakeholder engagement and the development of relevant content.

RICS is strongly supportive of the rights of tied pub tenants to take disputes about the Code to the Pubs Code Adjudicator. Our RICS Dispute Resolution Service (DRS) has worked constructively with the Pubs Code Adjudicator to provide a suitable process for the appointment of an independent assessor. RICS professionals acting as independent assessors are experienced in dealing with commercial rental values of pubs and have a strong understanding of the issues that impact the market. We believe that the independent assessor process is functional and that there is generally a good understanding of the role of independent assessors in such circumstances. However, we do think there are potential opportunities to streamline and simplify the process.

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.
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.

This response is to questions 2 and 3 together. It is RICS's view that the Pubs Code as amended can be a useful tool in achieving consistency with the core principles above, subject to its successful operation and further to the points of clarity raised in response to question 1. However, we fully recognise that fairness is subjective and open to wide interpretation. We are aware through our engagement with tenant stakeholders and associated representatives that some are of the view that the Pubs Code in its current form is not consistent with the stated principles.

In our stakeholder engagement and with reference to the [12 July cross-party committee hearing](#) we have heard differing interpretations of 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*" contained in the [Small Business, Enterprise and Employment Act 2015 \(legislation.gov.uk\)](#), and how this principle might be delivered in practical terms; for example, reference has been made to the greater freedoms in the market that MRO tenants have experienced but also to greater market risk at times of uncertainty such as during COVID-19. We have been party to significant disagreement within our stakeholder engagement sessions around the benefits or otherwise of the respective models and what the tied tenants not being worse off principle means. Some view the principle as referring to all costs and benefits holistically, whereas others see it as relating to specific matters individually (e.g. rent, pricing). We believe there is a place for BEIS,

the PCA and other market stakeholders to further develop guidance around the available models and the pros and cons of each.

The Code refers to market principles and these are also included as a basis in RICS and other UK and international standards. It is often the role of an RICS professional to observe and comment on the market, rather than seek to influence it, notwithstanding the advocacy and negotiation role RICS professionals may also undertake. We refer to wider market context in our introduction and suggest that the place of the Code is not to attempt to resolve all issues related to the wider evolution of the pubs market and related consumer behaviour but, where possible, to focus on the core principles.

Part B: The Pubs Code Adjudicator

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.

Given RICS's status as a professional body, with members acting across all aspects of the process, including in current litigation, we do not think it is appropriate to comment on the efficacy of the PCA for the stated period.

We are strongly of the view that RICS professionals can and should have an expanded arbitration role in this sector. We recognise the need for objectivity and professionalism in arbitration and our professional standards and profession assurance mandate and regulate this. Beyond basic governance requirements, we also recognise an emerging need for people to have access to professionals who have subject matter experience, further referenced in our introduction. We are aware of comments raised in the market, including in the recent [PCA 3 year strategy](#) (p20) about whether arbitrators appointed under the Code have relevant real estate and public house experience and expertise. RICS and its professionals can offer professional support and understanding of the market. RICS can also appoint arbitrators and valuers who have practitioner experience in the pubs market.

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

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

RICS does not have any comments on this.