



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

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

About You

Name: [Redacted]

Organisation (if applicable): Campaign for Pubs

Address: [Redacted]

	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 checked="" type="checkbox"/>	Tenant representative group
<input type="checkbox"/>	Trade association
<input checked="" 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) Campaign group/pressure group

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: The Pubs Code has been a profound failure. It has not delivered the core aims of the legislation and has not stamped out the ongoing abuse of pubcos tenants, who continue to face excessive anti-competitive tied pricing and unfair rents. See more information below in Additional Comments.

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: It isn't. This is largely because the two Pubs Code Adjudicators (and BEIS) have ignored demonstrably unfair practices in the sector. See further examples below in Additional Comments.

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: It isn't, but this question shows part of the problem. The principle that the legislation was supposed to uphold was the long established core principle that the tied tenant should not be worse off than a free-of-tie tenant *paying a genuine market rent*. Otherwise, the principle is entirely meaningless, as it would mean that pubcos could abide by the principle by equally ripping off FOT tie tenants as tied tenants, so securing their same unfair share of pub profits. There has been a deliberate attempt to redefine this principle, including by previous PCA Paul Newby and this must be resisted. The whole point of this principle is that a genuine comparison between a FOT tenant paying a genuine market rent and a tied tenant would stop the serious and chronic overcharging of tied tenants, through excessive tied prices and also rent.

The Code was supposed to rebalance the relationship between pubcos and tenants and make the split of pub profits fairer. It has failed to do this, because of the way it and this principle have been cynically watered down.

This is made worse by the fact that the PCA is complicit in accepting the pubco/BBPA myth that somehow tied and FOT pubs are different (which then justifies discrimination of FOT/MRO tenants). None of the so-called benefits of the tied relationship are defined in a tied lease. They are non-contractual and therefore in truth entirely unquantified and discretionary. There are many smaller pub companies that support FOT tenants and allow them to succeed. The myth that the terms of tied and non-tied agreements are fundamentally different is utter nonsense, but it is a myth that has been actively (successfully) promoted by the POBs in order to muddy the waters, and in particular to

justify the issuing of brand new agreements rather than agree to the much simpler, quicker and crucially fairer solution of issuing MRO via a Deed of Variation which simply severs tied supply terms in existing leases.

This is all part of the lie that the charging of blatantly, grossly excessive non-market prices is the only way by which companies can support tenants. It is disgraceful that the PCA has accepted this.

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: The performance of the current Adjudicator, Fiona Dickie, has been disgraceful and in our view, she has not only failed to uphold the principles of the Code, she has actually undermined the genuine intent of the Code and in doing so, has undermined tenants' rights.

She has shown an extraordinary lack of interest in the underlying principles of the Code or in dealing with the way tenants are thwarted from taking MRO and has focused only on peripheral issues rather than the fundamental ones (above all, the fact that tenants are being denied what was supposed to be their legal right - to go MRO and within 3-4 months).

She attends trade shows, despite this not being somewhere tenants will be, as they will be running their pubs! She also won't meet with independent tenant organisations & only deals with groups linked to the pubcos. For example: UK Hospitality includes as members two of the regulated pubcos, FLVA membership has been paid for by Enterprise/Stonegate, the BII is a trade charity that receives funding from the large pubcos.

She claims to 'engage' but excludes independent, non-conflicted tenants' groups and all she does in reality is to issue consultations, which in any case are biased and flawed because the sample lists are provided by the regulated companies.

She has failed to act on evidence sent by tenants' and tenants groups, including the abuse of Section 25 notices, dilapidations and the clear discrimination of MRO tenants during the Covid-19 pandemic. All too often, as has long been the case in the industry, consistent reports directly given by tenants are dismissed as "anecdotal", with the clear implication that this makes them unreliable, potentially vexatious and therefore worthless. In truth, consistent anecdotal reports should in themselves be regarded as evidence, and should form the justification for further independent investigation by the regulator. The tenants cannot be expected to provide the macro data required to show wider trends of bad

behaviour, but by using her considerable powers the Adjudicator could and should be relentlessly pursuing the evidence by demanding open access to the relevant crucial data held by the POBs.

Aside from the Adjudicator's apparent reluctance to fully exercise her powers, there is the question of her bizarre (and often frankly pedantic and technical) interpretation of the Code itself. All too often the interpretation appears to favour the POBs themselves, when this simply cannot be the intention of the legislation. A recent example was the quite extraordinary and wholly unacceptable quasi-ruling by Fiona Dickie on gaming machines as published in the Morning Advertiser, whereby she concluded that pubco tenants could only have gaming machines if they are tied. This is clearly not what was envisaged. This was our letter to the PCA <https://campaignforpubs.org.uk/wp-content/uploads/2022/04/Campaign-for-Pubs-letter-to-the-PCA-about-the-machine-tie-27th-April-2022-min.pdf>. Predecessor committees recommended a ban on the gaming machine tie.

There is also the question of actual arbitrations. Fiona Dickie took the active decision not to do arbitrations herself, and instead to contract this out, meaning we have an Adjudicator that neither adjudicates nor arbitrates!

She has failed tenants and is not fit to occupy the role and should be replaced with an Adjudicator who will do the job as intended by Parliament and actually rebalance the sector and stamp out the ongoing abuse of pubco tenants.

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: The Pubs Code was brought in to allow a statutory process that would avoid the need to settle disputes in court, as well as giving tenants the right to go free-of-tie (crucially, with a truly independently assessed market rent) which would stop the chronic overcharging through tied leases. Yet due the way the Code and process was watered down, neither of these things have materialised.

The MRO process, as backed by Parliament, was time limited to 90 days, yet since the introduction of the Pubs Code in 2016, pubcos cynically insist on going to arbitration (although they recently made the quite extraordinary, astonishing and utterly illogical allegation in their evidence to the BEIS Select Committee that it was tenants who were choosing to prolong the MRO process). Arbitration is unnecessary and onerous, and delays the tenants' right in moving to a FOT agreement and rent.

Ministers promised that they would ensure that pubcos couldn't delay, thwart or 'game' the process, yet that is exactly what the watered-down MRO process allowed. Rather than taking a maximum of 90 days, tenants often find the process lasting well over a year, sometimes two years, which is a shameful betrayal of Ministers' commitments. In practice this means many tenants simply give up, while many others feel they can't take the risk of applying at all.

Worse still, the Pub companies are increasingly threatening tenants with costs in arbitration, meaning tenants simply can't risk proceeding and settle instead for a substandard result. The fact that this has been allowed constitutes a profound failure of the legislation and one that perpetuates the huge power imbalance between pubco and tenant, precisely what the legislation and Code was introduced to address!

All this could be avoided if there was a robust Code and a PCA doing their job of upholding tenants' rights. We have neither.

Additional Comments

The current legislation and Code has not protected tied tenants or the nation's pub heritage and buildings as intended and, partly due to the weak way the PCA and office have interpreted it (and failed to uphold it) it has failed to deliver the two key principles on which the legislation was based.

The legislation is a fudge, it is not what was promoted (to Parliament by Ministers) and simply does not work, and we also have a weak Adjudicator who refuses to take any meaningful action to tackle the ongoing exploitation of tenants. This is a list of key points as to how/why the Code isn't working:

1. The Market Rent Only (MRO) option is not what Parliament voted for/what Ministers promised (the amendment passed by the House of Commons was replaced, watered down to be left to the secondary legislation of the Code, which then came in under Tory Govt post-Coalition & was nothing like MRO in terms of what was voted through in Nov 14). The Market Rent Only option – as proposed by predecessor Committees (then called 'free-of-tie option with open market rent review' or 'genuine FOT option') means the right to opt to move to an independently assessed market rent, on current trading conditions, with no product or service ties. There should be no other changes to the terms of a tenancy or lease. This is not at all what the so-called 'MRO option' in the legislation and Code is. This has been acknowledged by Fiona Dickie in a meeting. Instead pubcos make a so-called 'MRO offer' and then a FOT rent is negotiated or arbitrated – and other terms of the lease are changed, often including the length.
2. The Pubs Code has completely failed to grant the simple right to go MRO/FOT, as envisaged and as promised by Ministers to Parliament, without pubcos being able to thwart tenants (which they do in every single case). The original MRO clause gave 90 days from the date of triggering, at which point an independently assessed market rent would be payable (with no product and service ties being in place). Instead, the Code allows the pubco to insist on going to arbitration (which isn't necessary and shouldn't be allowed) & instead of taking 90 days can take 2 years, with significant costs to tenants, and with the result that most give up & others are scared off starting in first place.

3. Despite the Code stating that it is prohibited to treat tenants who opt for MRO unfairly (with 'detrimental terms') that happens in ALL cases. MRO tenants are put onto advance quarterly rent payments with increases to their deposits, and are forced to sign a completely new - and nearly always shorter - lease [*when MRO should simply be by deed of variation, simply changing the rent to a market rent and ending all product and service ties*]. This has been ignored by both Adjudicators. In a case recently, a tenant with more than one [Redacted] pub was applying for MRO in one pub and was then threatened with losing the lease on another.
4. The regulated pubcos largely continued to charge MRO tenants very high, and indeed in a great many cases, FULL rent during lockdown. This was absolutely disgraceful – and clearly discriminatory given the very significant discounts extended to tied tenants – yet, despite there being absolutely no contractual basis or defensible justification for this, the Pubs Code Adjudicator did nothing! We wrote to the BEIS Secretary of State about this <https://campaignforpubs.org.uk/wp-content/uploads/2021/02/Campaign-for-Pubs-letter-to-Secretary-of-State-for-BEIS-re-discrimination-against-MRO-tenants-8th-February-2021-min.pdf> . We also raised this with the BBPA, the main representative body of the large pubcos and global brewers <https://campaignforpubs.org.uk/wp-content/uploads/2020/06/Campaign-for-Pubs-letter-to-Emma-McClarkin-BBPA-26th-June-2020-min-1.pdf> . In addition, the PCA did nothing when tenants could/should in our view have been able to access MRO <https://campaignforpubs.org.uk/wp-content/uploads/2020/09/Campaign-for-Pubs-letter-to-the-PCA-about-Morning-Advertiser-article-4th-September-2020-min.pdf>
5. The abuse of Section 25 notices is rife, to evict MRO tenants claiming they want pub back to be a managed pub (masking the true objective which is to evict FOT tenants & reinstate a new tenant on terms which will deliver a return to the pubco in line with former tied profit margins). Many tenants have been thwarted in applying for MRO, due to the serving of a Section 25. We wrote to the Committee about this on 31st March 2022 <https://campaignforpubs.org.uk/wp-content/uploads/2022/04/Campaign-for-Pubs-letter-to-BEIS-Select-Committee-re-Section-25-Notices-1st-April-2022-min.pdf> We noted the claims of the POB witnesses at the Committee hearing regarding the number of Section 25 notices issued, and frankly found their claims of negligible numbers utterly incredible given the widespread accounts we have heard from throughout the industry. This matter requires further urgent and thorough investigation.
6. On a similar note it has become widespread for tenants attempting to assign leases to find that the assignment is scuppered by the pubco rep telling the incoming assignee that the lease will not be renewed. This is utterly immoral, and in our view probably illegal. It is certainly an unfair business practice, of the type prohibited by the Code, but it continues largely because all such exchanges are verbal (and this is enough for them to be effective).

7. There is exploitation of publicans on short-term agreements, with tenants still expected to spend money on repairs and refurbishments, with little chance of a return on investment. At the same time, pubcos talk about the 'investment they make in their tied estates, yet in reality the value of the investment is factored into increased rent (and/or increased product pricing). This is not therefore really investment, but in actual fact a form of a loan and must be seen as such.
8. Pubcos are pushing some tenants onto phoney franchise models, often known as 'Uber-pubs', where the operator is self-employed but isn't really. These are almost certainly in breach of IR35 legislation and should be investigated. The PCA appears to show no interest in this.
9. The continued use of upward only rent clauses. The pandemic and cost-of-living crisis shows that these are commercially absurd, as well as exploitative. They must be outlawed as they have already been in many other countries.
10. The systematic lack of reliability of surveys carried out to assess rents, which are based on the extremely elastic and subjective concept of "fair and maintainable trade". The unreliability and unfairness of this method is evident in the fact that [Redacted] surveyors operating for the tenant and the pubco come up with wildly different figures, [Redacted] , as well as exposing the fact that the process doesn't work in an acceptable way and is frankly unfit for purpose.
11. The same grave concerns arise in the matter of dilapidations surveys. Pubcos, with the active help of surveyors acting on their behalf, routinely abuse dilapidations by grossly inflating claims in order to threaten tenants or punish them. This has been brought to the attention of the PCA, who has done nothing to stop this.
12. Pubcos still provide exaggerated and unrealistic projection of pub income to prospective tenants, based on historical trading figures rather than the latest ones. This was supposed to be stopped, but it hasn't been, and the PCA has shown no interest in the matter.
13. Small brewers also suffer as a result of the pubco tied model. The large pub companies will only put small brewers on their tied price lists if they sell to them at very low prices. This, of course, is then marked up hugely to tied tenants. The Committee should look at the stark difference between what pubcos pay small brewers, the actual brewery (free trade) prices, and what they then charge their own tenants.

We find it very frustrating that both BEIS and the PCA appear to ignore the reality of what is going on and at the same time, there is a continuing refusal of Government and the PCA to acknowledge the truth: **that tenants do not have what they were promised and what Parliament voted for.** We will continue to campaign for the simple rights promised to tenants, including a genuine Market Rent Only option (something that Fiona Dickie, when still Deputy PCA, admitted in person to some of us, that tenants do not have).

The tie (which means tenants being forced to buy only from the pub-owner at inflated above market prices) can only ever be justified if the rent is commensurately lower than the market rent, to compensate. Nothing else can deliver the principle that the tied tenant should not be worse off than the free-of-tie tenant. The notion that other “SCORFA” exists is a nonsense, especially when any such alleged benefits are non-contractual and therefore entirely discretionary (making meaningful quantification totally arbitrary and meaningless), and are in truth utterly negligible (or non-existent) anyway.

It is very odd that a Government that claims to be strongly in favour of free market industry continues to allow the current operation of a skewed and controlled market, dominated by a few large companies (including non-brewing investment companies) who together operate a deeply questionable business model and impose remarkably similar artificial pricing on tenants (who are banned from buying direct from brewers/suppliers, on the open market and are fined if they do so).

So we need a genuine Market Rent Only option as well as legislation to deliver what was promised to tenants and campaigners - this means a simple right to all tenants covered by the Pubs Code to an independent assessment of their market rent and the right to pay this with no product and supply ties, within 90 days and with no other changes to the lease, nor with any ability for the pub-owning company to thwart or delay this.

The PCA's office needs to be much clearer and stronger in upholding the Pubs Code, as tenants simply have not been able to have confidence in successive PCAs due to weak and questionable decisions and an overly close relationship to the pubcos, as well as a consistent refusal to deal properly with independent tenant organisations and an insistence on only dealing routinely with those funded by pubcos or with pubco members! We do not believe that the current PCA, Fiona Dickie, is fit for office. Far from upholding tenants' rights as promised by Parliament, she undermines them by failing to act on key issues, by failing to make rulings about unacceptable pubco behaviour on matters like Section 25 and dilapidations abuse and the clear discrimination against tenants on MRO agreements during the Covid-19 pandemic. The way she has chosen to only appoint conflicted trade bodies to her Tenant Representative Forum, all linked to the pubcos, is rotten and is preventing independent tenants' views being properly represented.

We also believe (and have had oral evidence to suggest) that the Government, in 2015, actively sought to weaken the Pubs Code, as there was no real commitment to the legislation or even the principles of the legislation. We are deeply concerned that the whole Code has been designed to fail (which it very demonstrably has, on the basis of failing to achieve the aims of rebalancing the sector, stamping out exploitative practices and leading to a fairer split of pub profits).

We fear that current Government, through their ongoing overly-close relationship with the regulated pubcos and their lobbyists, will use the lack of take-up of MRO leases to absurdly (and dishonestly) claim that there is little demand (with the implication that therefore tied arrangements are popular and fair, when they are neither). We want confirmation from BEIS Ministers that this is not the case, that there is no intention to

repeal the legislation and instead that they will commit to delivering what tenants and MPs were promised in 2013/4, which is long overdue and more essential than ever, to stop the ongoing abuse and overcharging of tenants.

BEIS and the wider Government needs to wake up to the increasing dominance of pubcos especially Star (Heineken) which now raises grave concerns in terms of healthy competition. The fact that the legislation and Code is so weak & watered down allows the regulated POBs to continue taking more than is fair or reasonable from pubs' profits, but is also seeing the big brewers increase their dominance in the sector to the detriment of local, independent breweries (who desperately need access to more, not fewer, freehouses/FOT pubs who are able and willing to buy their beer at a fair and genuine market price). The ongoing abuse of the tied relationship is detrimental to everyone except those that are part of it. Publicans, independent brewers (and other suppliers), and the consumer (whose choice is so grossly stifled, and who ultimately funds the profiteering of the POBs) are all adversely affected. A competition review into the beer and pub sector is now seriously overdue, there hasn't been one since the Beer Orders 33 years ago despite the chronic problems that have so clearly beset the sector since that time.

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

Thank you for taking the time to let us have your view



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

About You

Name:

Organisation (if applicable): Pubs Advisory Service Ltd

Address:

	Respondent type
<input type="checkbox"/>	Tied pub tenant
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<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)
X	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 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: The code failed to uphold the legislative intent, there were massive breaches of the code as regulated companies continued to make non-compliant offers at MRO putting off people from exercising their rights. The code as enforced under statutory arbitration has shown up a complete lack of arms length transactions and is producing anti-competitive outcomes.

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: It fails to uphold this; the code instead upholds anti-competitive practices of POB's and fosters a wholesale removal of arms length transactions in hundreds of commercial dealings. There is simply an illusion of choice not an actual choice as practiced on a level playing field.

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: There is a failure to transfer profit, the Landlord forces the TPT's to spend money on pointless exercise of a new agreement when all is required is the severing of tied terms which can be done in 3 pages.

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) the guidance is for the most part badly phased and over-whelming it fails to inform and is often contradictory. b) the investigation (just one) shows the PCA isn't

engaging in their role and looking away, there are many other issues to investigate but they refuse to. c) there is no effective enforcement, the PCA simply farms out the decisions to outsiders who fail to uphold the legislative intent. d) the PCA carries out no arbitration's themselves they leave it to unaccountable third parties who give conflicting awards and charge ludicrous fees which is off-putting or at best operate as a "fine" in all but name.

The PCA mangles the intent of the code and in doing so perpetuates an industrial myth regarding "different animals" for tied and free of tied pub. This is deliberate and does not stand up to scrutiny, but the adoption by the PCA does go some way to explaining why the PCA refuse to do their job, they are too busy upholding pub company myths and not the reform.

Firstly, both MRO and tied lease agreements are supposed to be arm's length transactions, is it misleading to suggest that this is something unique to MRO and different from any tied agreement entered by a tenant.

Also, the move from trading as a tied pub to a compliant MRO (FOT) pub requires no changes to the actual tenancy other than the removal of tie related clauses.

The tied support and services that the Pubcos claim makes a tied pub something so different to an FOT pub are not and never were contained in the existing tied lease.

The so-called different tied terms offered by the pubcos for being tied are nothing more than a bunch of concessions offered under company codes of practice, they are not legally binding and can be withdrawn at any time. We attach a sample Pubco's Scottish company code of practice as an example of the concessions on offer to tied pubs not under the code, these items do not appear in tied lease contracts either.

When you put a company code to one side and look at a tied lease it has only a few tie related terms that are unique to tied agreements e.g. the obvious, the purchasing obligations the tie itself - which is more often than not contained in a self-contained section or schedule easily severed. Then the less obvious, to make it Code compliant, that might be unreasonable in a FOT agreement like the presence of flow monitoring equipment or a restraint on assigning to a brewer.

The changes the POB's are demanding in demanding new leases at MRO are not necessary as the vast majority of existing terms tied tenants enjoy are common.

The removal of a few clauses would leave the tied tenancy MRO compliant in every other way, We've attached two deeds of variation to show you how easy this is, one is real from 2010 one is a draft which took us 90 minutes to produce – and we are not lawyers.

The offer of assistance to a tied pub under a code of practice or concession does not change the fundamental nature of the agreement the tied tenant runs or render it a different business as claimed by the PCA. Any support/assistance/difference is contained in a separate non-binding valueless offer which is not included in the tied agreement itself.

There is no evidence that a tied pub lease and a free of tie pub lease create different businesses at all and there never has been, it is seriously misleading for the PCA to state

(as they do) they are different types of businesses just because a landlord used to make separate offers and concessions in a company code a tenant could not enforce or value.

The creation of the pubs code regulations in 2016 did not move the pubcos concessions in their previous company codes into the existing tied lease because the Pubcos and Government did not value them either. The differences all fell away for regulated tenants in July 2016 so it is most grievous to have them used against tenants as proof of difference in tied and FOT pubs as the PCA is doing day to day.

Further, the idea that the tenants and tied pub companies work together in partnership relationship is absolutely voluntary not a contractual obligation of a tied tenancy. Yet the PCA swallow the myth here too and promote it for the pub companies, they appear on the pub companies trade association website to support the non-contractual benefits as a form of statutory cheerleader for those they are meant to be regulating.

<https://beerandpub.com/2022/07/18/publicans-praise-business-advice-and-support-from-pub-companies/>

The current PCA is not fit to hold office and should be sacked, however we are concerned that any replacement will also be swayed by the same industrial myths. Therefore, it would be fitting that, given the very poor outcome for tenants the last 6 years, that all the PCA executives and directors should go and not just the current PCA as the rot was setting in well before the current PCA took over.

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: Too many tenants face costs threats for bringing forward complaints. The Pub companies are increasingly threatening tenants with costs, [Redacted]

The following legal studies (attached to this response) shows that the implementation by the PCA does not uphold the principles of the code.

Notably the PCA also refused to take part in the high court appeals [Redacted] . The PCA simply abandoned tenants in the high court who the PCA knew full well were not on a level playing field.

The code was brought in to avoid the high court threat and to level the playing field instead it abdicated its responsibility to the high court.

The Meers studies have already been shown to the PCA sometime ago, the PCA acknowledged receipt but made no further comment and we understand did not reach out

to Dr Meers. The lack response is callously indifferent and consequently these cases have been left to undermine reform.

The decisions in the high court cases of Highwayman and Jonalt are routinely used against tenants in just about every PCA MRO arbitration and used to threaten a damaging level of costs on tenants who dare to try and re-establish the code principles.

The outsourced PCA arbitrators are racking up unjustified levels of costs for simple low level disputes, so the threat from the POB's is very real and has become well known by tenants which puts them off and makes raising complaints a gamble.

Arbitration heavy approach of the PCA is off-putting and deeply flawed and can be flipped to high court action at will. It begs the question why even bother with the PCA if you could end up in the high court anyway. The PCA simply uses up more MRO time and produces nonsensical outcomes in their "awards" all of which is evidenced by the Meers legal studies.

Additional comments: The BEIS failed to action tenants responses from the last review in 2019 and so the problems faced by those tenants has not improved in an measurable way.

Aside from the removal of the PCA and the PCA directors we reiterate the call to remove code triggers and uphold the deed of variation as default.

MRO should be on demand and equivalent to the Scottish Pubs Code - there is not reason for tenants with the same company to have an inferior code in England & Wales and continually forced to take terms dictated by their landlords.

We conducted a tenant survey in 2020 the results which we enclose lay bare the true nature of the PCA led reforms. We draw the secretary of states attention to the written comments in question 7 and note that the PCA's effectiveness rating from tenants was an incredibly low average of just 2.5 out of 10.

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 Advisory Service Ltd

Angels View

Scotsford Rd

Heathfield

TN21 8UD

10/08/2021

Sirs

RE: No Worse Off principle.

It is a fact, but the NWO issue was clarified back in 2009 by RICS who said if you follow RICS guidance the result will leave a tied tenant no worse off. See points 111 and 113 of the enclosed House of Commons PDF

On the face of it, the Pubs code does not regulate RICS members but does regulate RICS rent assessments sent to tenants by POBs as they are meant assessments adhering to NWO principle.

That said, if the RICS surveyors acts as a BDM's they are also under the code and are regulated. This happened in the published award of Rob Whitby v Stars where a RICS surveyor contracted in by the POB was found to have acted as a BDM (see Quarter 4 2019 award PDF attached).

So despite the NWO matter being clear and subject to awards the PCA has decided to leave it alone, despite their remit to be enforcing the principle 24/7. This coming after the self-regulation movement / RICS failed to do so post 2009 - 2016. The job of upholding NWO passed from RICS to the PCA in July 2016.

The PCA should be assessing POB output and the outcomes in any Pubs Code IA determinations to see if the both the offers from POB surveyors and the determined rents under IA's are truly are no worse off as there is a statutory remit for the PCA to do so.

As it stands the PCA have failed to act as an independent regulator passing judgement on RICS valuations made under the code, which is all the more curious given that the former PCA was a notable long-standing RICS member who should have been applying the principle for 7 years before the pubs code came into being. It would seem the only reason tenants got the code was because RICS couldn't regulate their members to uphold the NWO principle and the members of the self-regulation movement couldn't do it either, if they had we wouldn't have needed the code.

The current policy of the PCA to side-step the issues related to NOW, this means they are repeating the mistakes of those actors in the pre-code era, taking their side and demonstrating that they are not capable of upholding the principle either which unlike the pre-code era is unlawful.

Tenants are being cheated by the failure of Govt to uphold the principle and apply statutory enforcement under its agency the PCA.

This can only be deliberate.

Regards

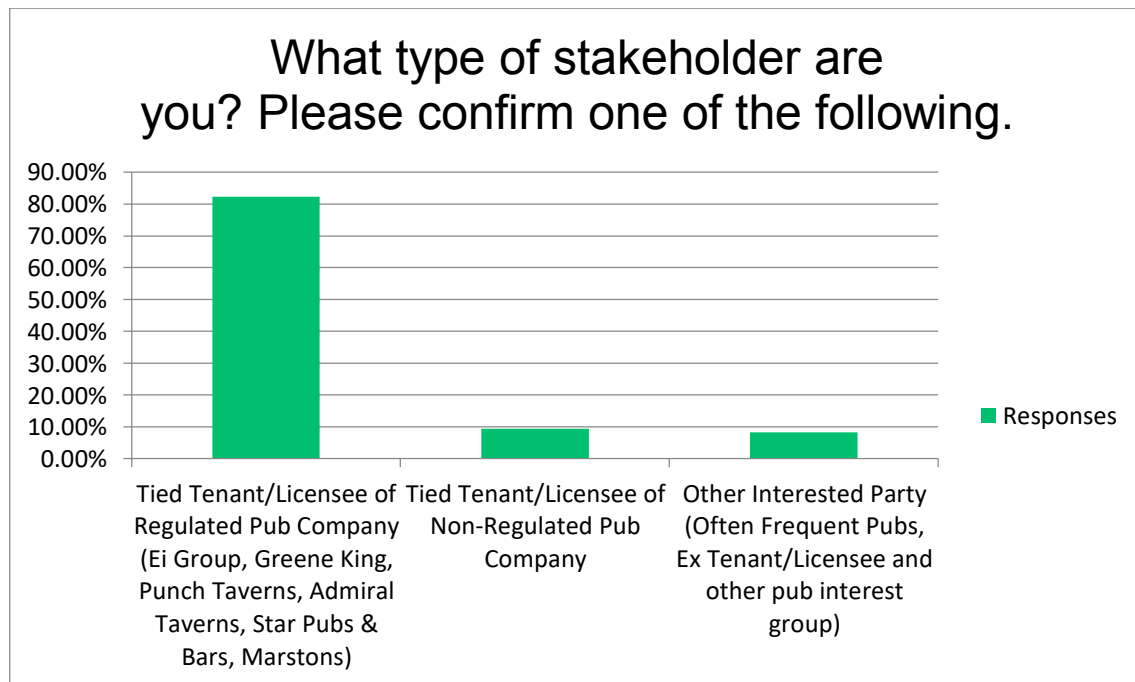
[Redacted]

Pubs Advisory Service Ltd

Pubs Code Adjudicator Communications Survey

1. What type of stakeholder are you? Please confirm one of the following.

Answer Choices		Responses	
Tied Tenant/Licensee of Regulated Pub Company (Ei Group, Greene King, Punch Taverns, Admiral Taverns, Star Pubs & Bars, Marstons)		82.35%	140
Tied Tenant/Licensee of Non-Regulated Pub Company		9.41%	16
Other Interested Party (Often Frequent Pubs, Ex Tenant/Licensee and other pub interest group)		8.24%	14
Answered	170		
Skipped	0		



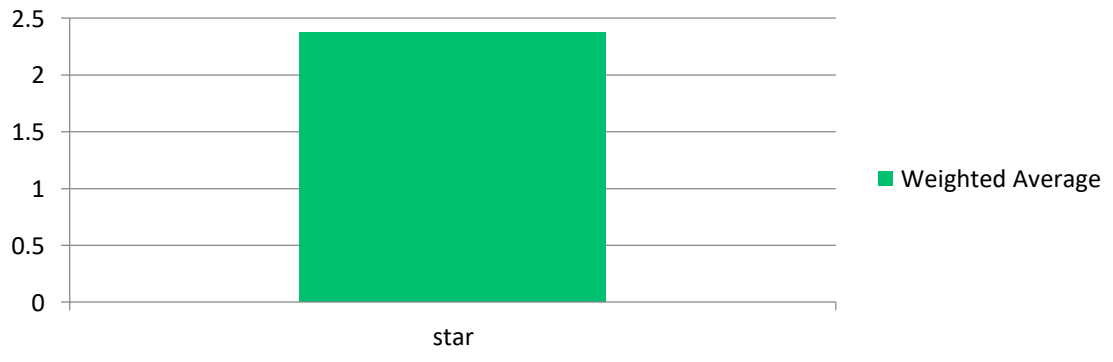
Pubs Code Adjudicator Communications Survey

2. Based on your interaction with the Pubs Code Adjudicator, how would you rate the effectiveness of the PCA's current communication efforts? Do not answer if not applicable.

Weighted Average	Total	High	9	8	7	6	5	4	3	2	Low							
2.37	128	4	1	1	1	4	0.78%	10	3.13%	7	7.81%	15	8.59%	11	5.47%	74	11.72%	57.81%

star

Based on your interaction with the Pubs Code Adjudicator, how would you rate the effectiveness of the PCA's current communication efforts? Do not answer if not applicable.

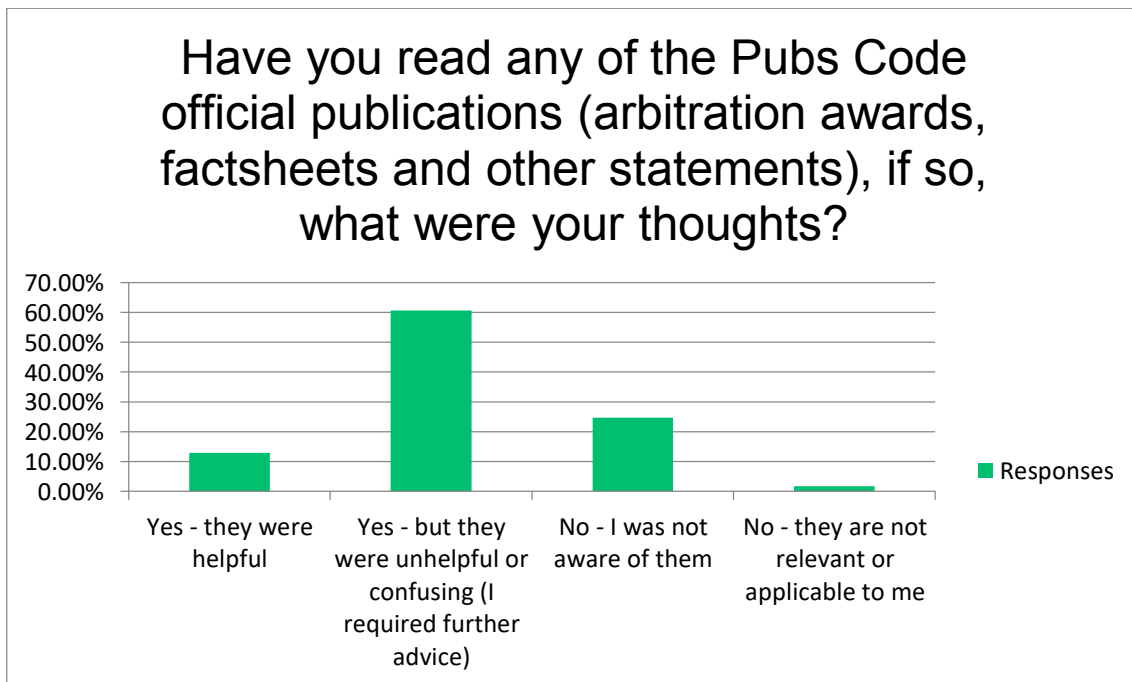


Pubs Code Adjudicator Communications Survey

3. Have you read any of the Pubs Code official publications (arbitration awards, factsheets and other statements), if so, what were your thoughts?

Answer Choices	Responses	
Yes - they were helpful	12.94%	22
Yes - but they were unhelpful or confusing (I required further advice)	60.59%	103
No - I was not aware of them	24.71%	42
No - they are not relevant or applicable to me	1.76%	3

Answered 170
Skipped 0

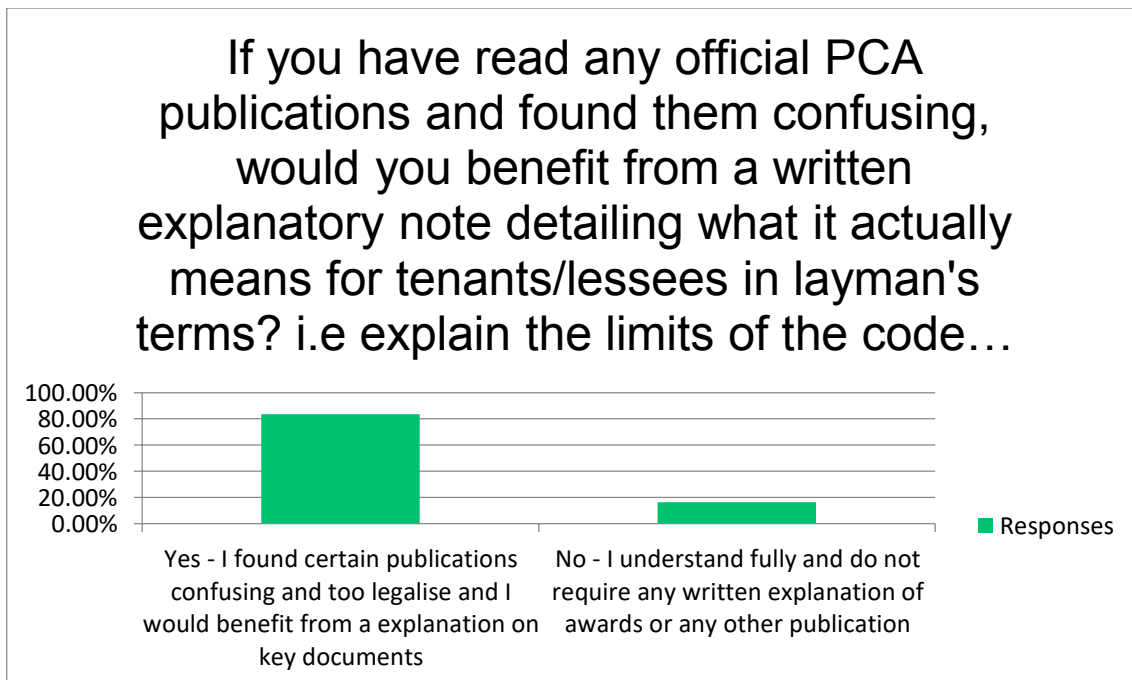


Pubs Code Adjudicator Communications Survey

4. If you have read any official PCA publications and found them confusing, would you benefit from a written explanatory note detailing what it actually means for tenants/lessees in layman's terms? i.e explain the limits of the code and referrals.

Answer Choices	Responses	
Yes - I found certain publications confusing and too legalise and I would benefit from a explanation on key documents	83.53%	142
No - I understand fully and do not require any written explanation of awards or any other publication	16.47%	28

Answered 170
Skipped 0



Pubs Code Adjudicator Communications Survey

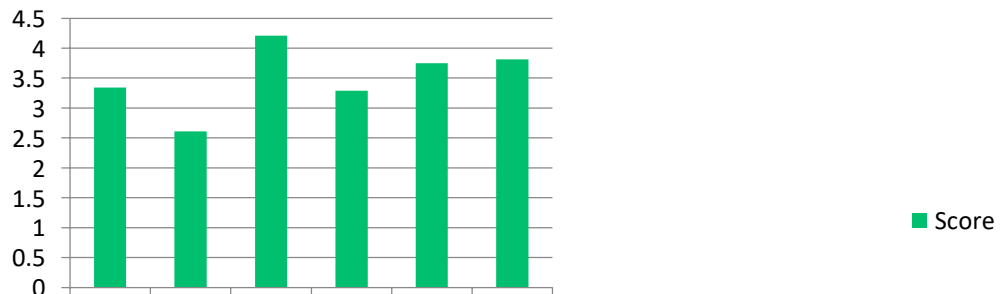
5. Please rank the following methods of communication the PCA should look to undertake in order of effectiveness. 1 being the most effective and preferred method...

	1	2	3	4	5	6	Total	Score
Regional Workshops (Raise awareness and Q&A sessions)	10.59% 18	15.88% 27	17.06% 29	21.18% 36	24.12% 41	11.18% 19	170	3.34
Annual Conference (Online and in person)	6.47% 11	11.18% 19	10.59% 18	14.71% 25	22.35% 38	34.71% 59	170	2.61
Email (Newsletters and email alerts)	30.59% 52	18.24% 31	18.82% 32	13.53% 23	11.18% 19	7.65% 13	170	4.21
Postal (Letters/mail outs etc)	9.41% 16	17.06% 29	18.82% 32	18.24% 31	20.59% 35	15.88% 27	170	3.29
Social Media	15.29% 26	22.94% 39	21.18% 36	15.88% 27	11.18% 19	13.53% 23	170	3.75

Voice concerns via third party representative groups (British Pub Confederation, Forum of Private Business, Forum of British Pubs, Licensees Association, Pubs Advisory Service, Protect Pubs, Punch Tenant Network, Fair Pint Campaign, Licensees Supporting Licensees, Unite the Union, GMB etc)	27.65%	47	14.71%	25	13.53%	23	16.47%	28	10.59%	18	17.06%	29	170	3.81
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Answered 170
 Skipped 0

Please rank the following methods of communication the PCA should look to undertake in order of effectiveness. 1 being the most effective and preferred method...

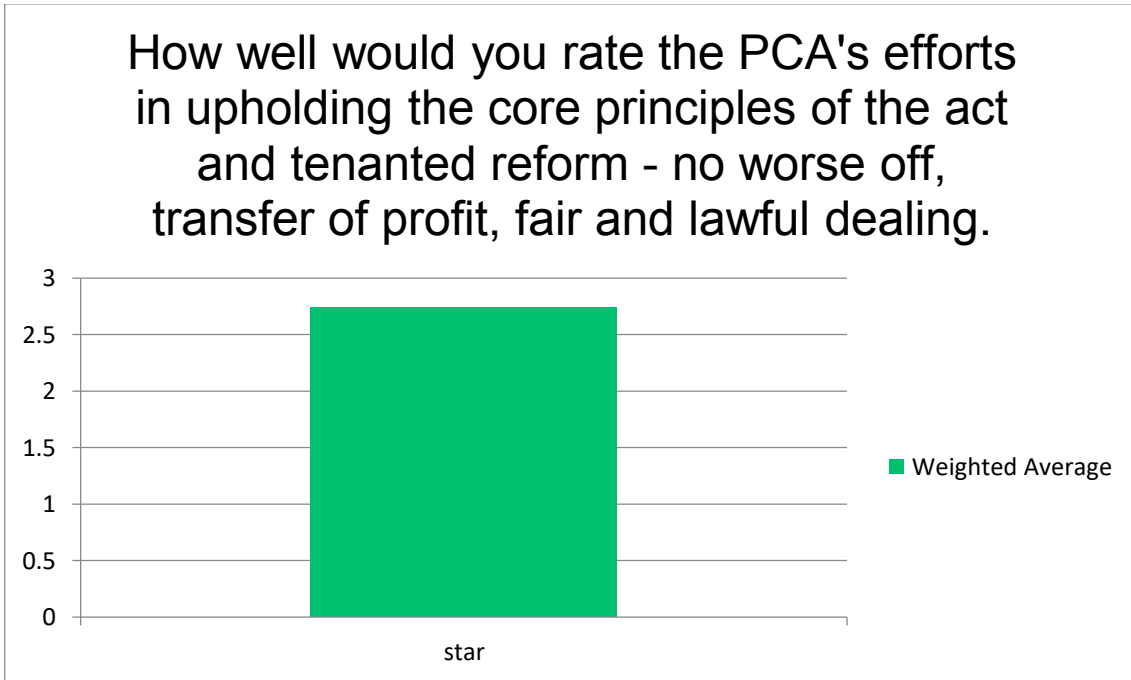


Regional Worksops, Pubs, Facebook (British Pub Confederation, Forum of Private Business, Forum of British Pubs, Licensees Association, Pubs Advisory Service, Protect Pubs, Punch Tenant Network, Fair Pint Campaign, Licensees Supporting Li

Pubs Code Adjudicator Communications Survey

6. How well would you rate the PCA's efforts in upholding the core principles of the act and tenanted reform - no worse off, transfer of profit, fair and lawful dealing.

Weighted Average	Total	High	9	8	7	6	5	4	3	2	Low
2.74	170	4	2.35%	3	1.76%	9	5.29%	19	11.18%	17	10.00%
											7.65%
											52.94%
											90
											star



Pubs Code Adjudicator Communications Survey

**7. Is there anything else that you think would improve PCA communications?
Please add your further comments below.**

Answered	71
Skipped	99

Respondents	Response Date	Responses
1	Jun 17 2020 01:41 PM	Please, do your job and put an end to the tied scam for good. You have the power - use it!
2	Jun 17 2020 06:03 AM	It's too late for me but write direct to pubs and get a decent data base so we know you are there. I did not find out until recently and needed support 2 years ago.
3	Jun 16 2020 07:36 PM	The PCA needs to prove that they fully understand the business strategies of each of the POBs. This then needs a constant review with each POB. Until then everything is just a reaction which the POB manoeuvres around. They cannot control or regulate what they clearly do not understand. This will accelerate as tenancies are converted to managed operations.....I'm not sure that the traditional pub tenancy will exist in 5-10 years
4	Jun 16 2020 01:29 PM	A independent review of pubcos is urgently required We are being hung out to dry
5	Jun 16 2020 12:41 PM	More open and transparent reporting of awards in a more timely manner. If you arbitrate on one principle, then your dceision process should be applicable to future claims around that same priciples. Why allow the Pubcos to insist on rafts of new agreements when a simple DOV can remove the supply terms from most existing leases? Personally I have a full R & I lease, it is only the supply terms that need removing/cancelling, and the rent reviewed.
6	Jun 16 2020 11:02 AM	Answer individual messages with concerns

7	Jun 16 2020 10:37 AM	GET OUR PUBS OPEN,CHEERS TO A GOOD REAL ALE!!!
8	Jun 16 2020 10:16 AM	Transparency
9	Jun 16 2020 10:12 AM	Do your job properly. Stop pandering to Pubco's.
10	Jun 16 2020 10:08 AM	Very slow, needs to speed up.
11	Jun 16 2020 09:49 AM	Just do it - The PCA has the funding and the money and the team to be able to do great things but decides not to do it. Why not employ the right people out of the budget you have and stick to the core INTENDED principles of the code.
12	Jun 16 2020 09:17 AM	Help tenants against the immoral pubco, s
13	Jun 16 2020 08:25 AM	Write to all pubs letting them know there IS a trade body that can advise
14	Jun 16 2020 08:08 AM	Is PCA really helping tenants? I'm afraid it does look like you are focusing on the pub group's security instead... And pretty much not existing communication
15	Jun 15 2020 08:08 PM	Anything
16	Jun 15 2020 08:29 AM	There seems to be no support in managing your landlord - some have supported to the extreme - others not at all
17	Jun 13 2020 11:37 AM	Na

18	Jun 12 2020 10:02 AM	Just some one to listen to us and support when needed , clear proper guidance
19	Jun 11 2020 07:46 PM	Communication with tenants groups not commercial companies
20	Jun 11 2020 10:38 AM	no
21	Jun 11 2020 10:25 AM	informal tennant support phone line that can respond to tenant queries and discuss POB practices that often feel unfair to the tenant.
22	Jun 11 2020 09:17 AM	More communication and more financial help Help with ppe
23	Jun 11 2020 08:47 AM	More communication to sub 500 and evidence
24	Jun 11 2020 07:02 AM	As a professional body, impartiality is key. Speed is also a major factor and so much time is lost waiting for a response.
25	Jun 11 2020 06:49 AM	Online surveys like this one would capture views effectively.
26	Jun 10 2020 08:59 PM	To be receptive and action concerns of leaseholders and pub tenants. To effectively create open dialogue between tenants, leaseholders with pub Co's. To protect and enhance the relationship between brewing and retailing for the benefit all all working within the industry. To rectify the imbalance that large pub Co's impose on their tenants and leaseholders.
27	Jun 10 2020 08:42 PM	The communication I have had with the PCA has been standoffish and without substance. They need to understand that the Pubs Cos are using their deep pockets and bully tactics to run roughshod over the code. If the PCA are unwilling to deal with the tied tennant on

		a less formal basis they will continue to allow the pub cos to bully the system.
28	Jun 10 2020 08:37 PM	I have only just become eligible for mro so not dealt with them yet
29	Jun 10 2020 07:58 PM	Talking to lisencees
30	Jun 10 2020 07:37 PM	-
31	Jun 10 2020 07:17 PM	Just about anything would improve on previous performance.
32	Jun 10 2020 06:14 PM	Please, please, please pay attention to the massive amount of information regarding unfair treatment of tenants by POBs - it has not been made up. There is a large amount of information available to you already, but do you want it?
33	Jun 10 2020 05:25 PM	At no point have the PCA approaches myself or any other tied Publican I know to ask their concerns. They just listen to the pub co and their puppets!! The PCA should be there for publicans NOT the pub cos who make millions out of us whilst we earn minimum wage or below for a 60+ hour week!
34	Jun 10 2020 05:15 PM	To actually listen to Publicans needs and not back the big boy pubcos.
35	Jun 10 2020 04:49 PM	Speak to Tennant's and not pub companies as all pub companies treat tenants like cash cows
36	Jun 10 2020 04:46 PM	I thought the recently appointed Chair of the PCA would at last be proactive in the role; I should have known better on the evidence so far. ANY communication would better than none at all....
37	Jun 10 2020 04:34 PM	Respond to comments on Twitter, actually force companies to act within the code

38	Jun 10 2020 04:20 PM	Communication with ACTUAL TENANTS not people who know nothing about the trade and care even less.
39	Jun 10 2020 04:13 PM	To be completely transparent regarding awards made. Often they are very difficult to decipher. This puts off the tennant in pursuing an eligible claim.
40	Jun 10 2020 04:11 PM	Prioritise tenants concerns over that of corporations.
41	Jun 10 2020 03:54 PM	PCA has not communicated well, especially during this crisis, the PCA is also widely considered a joke when it comes to tackling the big boys, a toothless old dog!!
42	Jun 10 2020 03:43 PM	No
43	Jun 10 2020 03:38 PM	much more communication in laymans terms discussing the general principles that must underpin the relationship and giving real examples of behaviour that is and is not code compliant
44	Jun 10 2020 03:11 PM	No
45	Jun 10 2020 03:07 PM	I would like them to respond to requests for information via telephone or email more quickly. I'm delighted the new head of the PCA is taking such a proactive approach with initiatives such as this, having a twitter account etc.
46	Jun 10 2020 02:53 PM	Anything given I have never seen any communication from them - so starting from a zero base anything would be an improvement!
47	Jun 10 2020 02:52 PM	They could market themselves better to remind us of their service
48	Jun 10 2020 02:47 PM	More details or help and support for leases

49	Jun 10 2020 02:27 PM	Not dismissing concerns of tenants - being realistic in what tenants are up against - not dismissing sums of over £3k as not material!
50	Jun 10 2020 02:01 PM	The pvc has members of the big pub groups it's more like a cartel than a working body as it is controlled by the big pub groups the small groups don't have a say
51	Jun 10 2020 01:56 PM	No
52	Jun 10 2020 01:45 PM	Help small business owners overcome big business by dealing with matters in a quicker and more effective way. At present going through an MRO and now in its 13th month still not completely resolved.
53	Jun 10 2020 01:44 PM	I have twice emailed the PCA with concerns over Punch Pubs - with no response - by the time they do respond I may well have lost the business.
54	Jun 10 2020 01:35 PM	Quicker answers to questions raised and faster results.
55	Jun 10 2020 01:35 PM	Call a police investigation into the whole corrupt system, causing publicans to loose everything they ever had
56	Jun 10 2020 01:30 PM	honestly and transparency communicating with the PUB TENANTS and listening to them, not greedy pubcos and third parties who CLAIM to have our best interests at heart!!
57	Jun 10 2020 01:26 PM	Personally I don't think the PCA are doing what they are supposed to be doing. The principal of this is to ensure tenants are treated fairly as if they were free holders & this is categorically not the case across the board!! Pubco's are rinsing tenants left right & centre & [Redacted]! Many are planning to close & will result in 100's of redundancies unless we get constructive & beneficial assistance & quickly!!
58	Jun 10 2020 01:23 PM	Talking to someone other than CAMRA!
59	Jun 10 2020 01:14 PM	until the PCA talk to our representative they will lack credibility. Talking to the BBPA, CAMRA, SIBA and UKH will not help. If this exercise through Hiveit is a way to try and avoid talking to our representative it will fail again. It seems those that represent us have a

		message that the PCA is afraid to hear and they cannot do their job until this changes.
60	Jun 10 2020 01:12 PM	I wasn't aware of it as a new tenant from June 2019.
61	Jun 10 2020 12:54 PM	Actually communicate with us by letter or email
62	Jun 10 2020 12:47 PM	On-line forums so that we can raise concerns and see what common problems we have.
63	Jun 10 2020 12:43 PM	It isn't clear to the layman exactly what the purpose of the PCA is, and how it is supposed to benefit tenants rather than Pubcos. Too much confusion around obtaining a MRO valuation.
64	Jun 10 2020 12:39 PM	Clear and concise information about what powers you have to protect Landlords. We feel we are all on our own and hold no power against these large Billion dollar organisations. They treat us like we are not worthy of their time.
65	Jun 10 2020 12:36 PM	The PCA is known for giving very imprecise answers that are not at all helpful. Further, the PCA sticks rigidly to its remit and does not, for example, direct tenants to other support groups that may help them.
66	Jun 10 2020 12:23 PM	Talk to the tenants
67	Jun 10 2020 12:22 PM	Talk to tenants not pubco's !
68	Jun 10 2020 12:20 PM	Helping tied tenants with rent at this moment in time would be a great help
69	Jun 10 2020 12:19 PM	We would like PCA be on a publican's side, not on PubCo's side.
70	Jun 10 2020 12:18 PM	Stop being so patronising. Listen properly and do not ignore what you've been told by tenants and most of all don't tell CCO's what to do and walk away as if they will/have complied

71	Jun 10 2020 12:08 PM	For tenants representatives to have equal position and regular meetings with the PCA on an equal footing to the POB's Compliance Officer
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DATED

PUB COMPANY PLC (1)

LESSEE LIMITED (2)

and

(3)

DEED OF VARIATION

Address

THIS DEED is made on(date).....

BETWEEN:

(1) *PUBCO* (Registered Number) whose registered office is situate at
.....address..... (the "Lessor") ;

(2) *LESSEE* (Registered Number) whose registered office is situate at
.....address.....(the "Lessee") ;

(3) *IF ANY* ofaddress.....
.....("The Guarantors")

WHEREAS :

- (A) This Deed is supplemental to the lease ofdate.....("the Premises") short particulars of which are set out in the schedule hereto ("the Lease")
- (B) The premises are now vested in the Tenant for the residue of the term granted by the Lease and the reversion expectant upon the determination of the term granted by the Lease is vested in the Landlord
- (C) The Landlord and the tenant have agreed to vary the terms of the Lease in the manner hereinafter appearing

NOW THIS DEED WITNESSED as follows :

With effect from the date hereof the Lease shall be varied to the intent that from that date the rent reserved by the Lease shall be varied from £..... per annum subject to review as provided in the Lease and any relevant provisions of the current statutory code ("the Existing Rent") to £..... per annum subject to review as provided in the Lease and any relevant provisions of the current statutory code ("the New Rent") and to give effect to such variation:

the Tenant covenants to pay the New Rent with the effect from the date hereof at the times and in the manner provided in the Lease for payment of the Existing Rent
the Landlord and the Tenant agree that with effect from the date hereof all the provisions of the Lease shall take effect in relation to the New Rent as they previously took effect in relation to the Existing Rent

The Guarantor consents to the variation of the Lease as above and confirms that its covenants contained in clause of the Lease shall continue in full force and effect notwithstanding such variation and covenants that the same shall extend to the Tenant's obligations as varied by the Deed

In consideration of Tenant paying the New Rent with effect from the date of this Deed the Lease shall be further varied to the intent that from that date the Landlord agrees to release the Tenant from all tie obligations contained within the lease including, but not limited to, the "Machine Tie" and the "Purchasing Obligations" contained in the Schedule of the Lease in relation to all tied products, including beer, cider, wine, spirits and minerals ("the Released Products")

Save as varied by this Deed the covenants and conditions contained in the Lease shall remain in full force and effect

IN WITNESS of which the parties have executed this Deed and delivered it on the date above written

Schedule
(The Lease)

Date	Term	Parties
 years	(1) Pub Company (2) Lessee Limited (3)

SIGNED as a DEED by
PUB COMPANY
acting as a Director and its Secretary (or Two Directors)

Director

Director/Secretary

SIGNED as a DEED by

.....

in presence of :

Name (in BLOCK CAPITALS)

Address

SIGNED as a DEED by

.....

in presence of :

Name (in BLOCK CAPITALS)

Address