

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

About You

Name: [Redacted]

Organisation (if applicable): The Licensees Association

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 type="checkbox"/>	Tenant representative group
<input checked="" 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: Whilst clearly an improvement there are still concerns we have at The Licensees Association regarding how well the Pubs Code has operated between 1st April 2019 and 31 March 2022. We are still of the belief that tenants are being subjected to detriment and this is most clearly evidenced where Pubcos are issuing Section 25 notices when they feel it is likely a tenant will seek to go for a market rent. This has been further undermined by a recent adjudication that has fundamentally driven a horse and cart through the principle of negotiation in parallel. Where a tenant didn't rule out a tied rent the Pubco issued a section 25 receiving an MRO request. This is a clear detriment to the tenant (it's hard to imagine a greater detriment than losing your business), The principle of negotiation in parallel is clearly totally undermined by this, to ensure the section 25 notice could be perceived as detrimental the tenant would have to rule out seeking a tied rent at the request for an MRO. This defeats the object of the principle of negotiation in parallel. Whilst we are aware of the evidence given by pub company representatives to a recent Select Committee underplaying the extent to which S25 notices have been issued we have concerns about the veracity and relevance of this evidence. The issue is one of the main ones we are contacted about with tenants seeking advice on what to do to avoid the issuing of a S25 notice. It is the veiled threat of it being issued that undermines the security of the tenant who is often at risk of not only losing their livelihood, but also the family home. We know that pub companies do take into account whether a pub is seeking a market rent when issuing a S25 notice as evidence a recent Central London County Course case (Denis McCarthy v Unique Pub Properties Gamma Limited - Case No: H00CL168 14/6/2022) revealed in the evidence of pub company [Redacted]

- “[Redacted] went further and suggested that the Defendant is antipathetic to MRO leases which ran contrary to the Defendant's business model. This was pregnant with the innuendo that the real motive of the Defendant in serving the s.25 notice was to stymie the MRO request.”
- “[Redacted] agreed that a tenant can request a MRO tenancy which frees them from the tie and this may advance consideration of plans for the future of the pub.”
- “I was told that the decision in relation to the [Redacted] was taken at a meeting on the [Redacted] in relation to this pub.[Redacted]] agreed that the service of the MRO had probably focussed the group's mind as to the future of the [Redacted] ”

Further examples exist. The issue of disregard being another one. It is incredulous that there should be no disregard for tenants improvements on setting a market rent yet the disregard does apply to the setting of the tied rent. This is clearly another case where the tenant is subjected to a detriment.

The Code was meant to address an imbalance of power between tenant and landlord. Whilst it has made steps in the right direction there is still lots to do!

Secondly we have concerns as to how rigorously the principle of the the tied tenant being "no worse off" than the free of tie tenant is followed by pub companies and their RICS qualified representatives who sign off their rent proposal. Time and again we see inflated takings way in excess of that we believe achievable in the market at the relevant rent review date by the reasonable efficient operator (REO). Further to this we see understated expenses and this has only got worse since the pandemic hit. We recognise it's difficult to make assessments at the current time, but common sense seems to be absent in some examples. We have seen RAPs based on increased barrelage, expenses such as utilities and wages way out of line with the current market. We have an example where it's clear that the pub company has started with the rent they wishes to achieve and worked backwards. This is evident as we has two RAPs on the same pub having requested a second one. The rent was the same, the income and expenses markedly different!

We also have serious concerns about the benchmarking figures used and their relevance to this specific sector of the market. The BBPA figures recently released are seriously undermined by the methodology used and the supply of figures by Pubcos that include a mixture of tenancy and leasehold which have very different levels of expense (for example the repair obligation is far more onerous under a leasehold agreement) yet there is no differentiation within the figures meaning many expense codes will show a lower figure than that experienced by a leaseholder. Further to this the pub companies collate their own data and submit it to the BBPA, some of this the BBPA confirms that "The tables represent a composite of accounts presented to tenants by companies based on their experience across their entire estate, or a representative sample of their estate". As we have previously noted this "experience" tends to produce inflated income and suppressed expenses and it's these figures that are informing the BBPA benchmarking. Whilst the UKH figures are more robust only 3% of them are relevant to our sector. Indeed at a select committee the BBPA noted that the predecessor of the UKH Guide, that produced by the ALMR, was not appropriate when [Redacted] saw to a Select Committee "[Redacted] said that the BBPA did not consider the ALMR benchmarking study to be properly representative, as it collected data from only managed pubs and also from clubs and wine bars, which while perhaps useful as comparators, did not provide information of much use to traditional tenants or leaseholders". we are deeply concerned that there is an element of marking ones own homework here to the detriment of the tenant. We have communicated our concerns to the PCA and expressed our willingness to assist in any way we can to allow more representative and relevant figures to be produced.

We remain concerned that the issue of tenants loss of profit should they take a market rent following negotiation or independent assessment that takes the agreement beyond the review date hasn't not been addressed. The incentive of a POB to take to arbitration and prolong the process is clear to us, and all the more pertinent given the current economic climate when rents are falling under increasing cost pressures. It is beyond us to understand why this hasn't been addressed. it's a simple equation, easily evidenced. It also acts as a deterrent to MRO in itself considering a tied rent is backdated.

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 refer you to the answer above where there is clear evidence of concern of tenants being subjected to a detriment in seeking a market rent. The concerns tenants have to their security allows for a serious imbalance of power. Tenants know that seeking MRO increases the chances of them losing their livelihood and home. Tenants' worries are confirmed in the evidence of [Redacted] as shown above. This is not a concern without foundation and whilst it may be lawful it certainly is not fair. For pub company executives to downplay the concerns around s25 because they argue so few sites have been taken back misses the point. It is the concern so many tenants have about losing their income and home that actually prejudices their initial decision on whether to go for a market rent or not and may go some way to explaining the low percentage of numbers actually going fully free of tie. We are aware of members of ours that have been told by their BDM that "no decision has been made on whether the company would want to take the site back for their own management use. This leaves the uncertainty hanging and places the uncertainty in the minds of the tenant. The pub company needs to be much more transparent. Either they want a site back for their own use or not. Leaving tenants in limbo is not a justifiable position to hold and clearly is used by BDM's to plant the seed of doubt in the minds of tenants. It's an imbalance of power that the pub company employees are using to steer tenants because the pub company financially benefits from doing so and it undermines the freedoms afforded to tenants by the Pubs Code.

Further to this we have very serious concerns regarding the legislation requiring a change of circumstances trigger point to only apply if it doesn't affect all pubs in the country. The current crisis with utilities has brought this into sharp focus. Take this example which is very similar to a case we are currently looking at (figures changed to make easy reading and obscure the tenants' identity)

At RAP the divisible balance was £60K and rent set at £30k. The Pub company runs an energy club and levied at the time of the RAP £30k, they have now raised this to £60k wiping out the tenants' £30k profit. This is not a trigger as the tenant can arrange their own utilities, but this would be even higher cost. The pubco are aware of the numbers, they set them yet seem happy to knowingly let the tenant live on zero income. This should be a trigger event to at least allow the tenant to have the rent set at open market. It is not, in our view, acceptable for a POB to knowingly wipe out the tenants' income, knowing the divisible balance the rent is set on has been wiped out by a price increase they are levying. Their answer will be that the "price at the pump" should rise to reflect this. This is divorced from the reality of the situation tenants currently face. There is no longer the price elasticity to allow for this, especially given the pressure on discretionary spend for most of the population currently.

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: As noted above:

We have concerns as to how rigorously the principle of the the tied tenant being “**no worse off**” than the free of tie tenant is followed by pub companies and their RICS qualified representatives who sign off their rent proposal. Time and again we see inflated takings way in excess of that we believe achievable in the market at the relevant rent review date by the reasonable efficient operator (REO). Further to this we see understated expenses and this has only got worse since the pandemic hit. We recognise it’s difficult to make assessments at the current time, but common sense seems to be absent in some examples. We have seen RAPs based on increased barrelage, expenses such as utilities and wages way out of line with the current market. We have an example where it’s clear that the pub company has started with the rent they wishes to achieve and worked backwards. This is evident as we has two RAPs on the same pub having requested a second one. The rent was the same, the income and expenses markedly different!

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: We have been pleased to see the proactive approach the PCA has taken in seeking to disseminate information in a plain English manner in relation to the Pubs Code. The guidance is clear and matter of fact. It has improved understanding of the code. If we have one concern it is that the PCA doesn’t communicate enough with those of us who represent tenants and are genuinely not subject to landlord influence. Moving forward it is imperative that this free from influence voice is heard. At The Licensees Association we have a position of constructive dialogue and would encourage far greater levels of engagement from the PCA with both ourselves and others. I would suggest that a mimimim of bi-monthly discussions take place. At present the PCA reaches out to us very infrequently, at no point in the last year has she done so, though she or her office has replied to most letters sent.

The issuing of arbitration cases is useful, but in many cases the lack of commentary about what this means for tenants means that the average tenant finds it difficult to ascertain principle behind the decision and the consequence of it. We would like to see more commentary from the PCA on arbitration cases to help tenants understand the consequences of the arbitration and how it relates to the tenant in relation to the code and their code rights.

Investigation into non-compliance is difficult for us to comment on as we are often only aware of investigations outside of those complaints we may have made post the investigation. It would be useful for the PCA to catalogue all investigations into non-compliance and complaints on an ongoing basis, this will help in acquiring evidence which currently may be being withheld.

Having said this we were pleased that in at least one case the PCA did flex her muscles in fining a pubco for non-compliance and we are aware that some tenants did recognise this proactive approach as encouraging.

We have serious concerns about arbitration of the Pubs code and have commented on one of these in our answer to Qu.1. Our belief is the arbitrator had a serious lack of knowledge of the intention of the pubs code and this led to a arbitration decision that drove a coach and horses through the principle of negotiation in parallel and led to a tenant suffering a serious detriment in the loss of their business.

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: We are relaxed about costs, fees and penalties at present. we would urge this is kept under constant review though. The pressures on publican's bottom line is intense at the moment with rising staff and utilities costs often wiping out their profit. BBPA estimates that two-thirds of pubs are currently failing to make a profit. Any action taken to alleviate cost pressure whilst ensuring access to Pub Code rights is encouraged. We would hate to find ourselves in a position that those in most need of help are the ones least able to access it. This is particularly pertinent when considering the financial imbalance between the landlord and tenant.

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 As BEIS are aware we aim to be constructive and are happy to be contacted further in relation to the matters we raised or other issues relating to the tenanted and leased licensed trade.



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

About You

Name: [Redacted]

Organisation (if applicable): British Beer & Pub Association

Address: 61 Queen Street, London EC4R 1EB

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

The British Beer & Pub Association is the leading trade body for our sector, representing companies across the UK, which between them own around 20,000 pubs and brew over 90 percent of beer sold in the UK. Member companies have many different ownership structures, including UK PLCs, privately-owned companies, independent family-owned brewers and UK divisions of international brewers.

The brewing and pub industry in the UK make a major contribution to the local and national economy. The sector generates £26 billion of economic value, £15 billion in tax revenues and supports over 900,000 jobs. It provides vital work and career opportunities for one in fourteen young adults currently in employment.

Our members include five of the six pub owning companies regulated under the Statutory Code. We work closely with the sixth. The remainder of our members who operate leased and tenanted pubs, continue to operate the voluntary code of practice and offer the independent dispute resolution bodies overseen by the Pub Governing Body. In all cases, the majority of tenants and lessees are satisfied with their pub company and would recommend them to others.

In 2019, the six pub companies, with the support of BBPA, commissioned a major piece of independent analysis from Europe Economics on the impacts and workings of the Code since its inception. A full copy of this report was submitted with our response to the first Statutory Review (2016-2019). Using data for the period 2019-2022, Europe Economics have published an updated report¹, a copy of which accompanies this submission.

¹ The Pubs Code: Europe Economics' updated analysis (August 2022)

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.*

Introduction

The operating landscape for pubs is vastly different to that of 2016, or 2019 for that matter and there have been fundamental changes in the nature of the market in which pubs operate. The Pubs Code has played an important role in embedding improvements in governance, transparency and processes.

Pub companies take a long-term view of the sector and want to see their pubs invested in and grow, with the growth of their own businesses and the success of partnership pubs seen as inextricably linked. On top of the Covid-related support, regulated pub companies continued to invest c.£100m in 2021 and 2020 in the development of sites as well as ongoing maintenance and repairs in their partnership pub estates.

Since the introduction of the Code there has been a widening range of different operating model agreements and flexibility in terms of tenancies. There is more choice than ever before in terms of the operating models that publicans can choose, if they wish to be free-of-tie. However, this compares with a steady decline in the number of tied agreements available, as the attractiveness of the model in terms of investment potential declines due to the uncertainty that is created by the MRO-option.

It is a professional industry in which pub companies compete for the very best licensees and people to run their pubs, and all new licensees go through formal training. Pub company behaviours are clearly supportive and collaborative as evidenced by the significant proactive rent reductions, and other support, that enabled many to survive through the pandemic.

One example of the improvements that have been made is the formal call cycles and professional meetings between BDMs and licensees which are a genuine two-way conversation, to help pubs grow their business. Tenants of regulated pub companies have an 80% satisfaction rate with professional nature of BDM meetings, the quality of these, and the fairness and transparency of support and advice given²

We believe that the significant issues that existed in 2013 have been largely resolved. Both transparency and the level of and quality of shared information are now embedded and there is a genuine partnership approach in which both the tenant and the pub company benefit.

Any attempts to widen the scope of the Code should be strongly resisted. Instead, as the Code matures, lighter-touch regulation and simplification must be the way forward to improve proportionality and reduce spiralling costs.

² Kam Media follow up Licensee Index Survey (regulated pub companies only), March 2022

PCA Tenant Survey – key findings

In June 2022, the Pubs Code Adjudicator published the findings of its latest extensive survey of pub tenants³ which found that:

- 79% of tenants are aware of the Pubs Code, reflecting a continuing increase in awareness.
- Over 60% of tenants were aware of the right to request Market Rent Only agreement at certain trigger points.
- 74% of tenants said they felt they had all the information required about their pub owning company Business Development Manager.
- 60% of tenants know how to contact their Code Compliance Officer

In broad terms, the PCA's latest survey reflects a tied pub sector in which the majority of tenants are largely happy with their pub companies and their dealings with them.

Recruitment of licensees

- Immediately prior to the pandemic (2019/20), applications to run tied pubs were up 11% on the previous year.

Support during COVID-19 pandemic

A key point to highlight is that this review period has been dominated by the COVID-19 pandemic – one of the few positives that came out of the pandemic for the pub sectors was the support demonstrated by the regulated pub companies for their tenants and lessees.

At the heart of the partnership model is a shared-risk agreement that has evolved over hundreds of years and it is one that forms a thriving part of Britain's pub ecosystem. Around 13,000 pubs in the UK are operated in this way, with just under 9,000 currently covered by the Statutory Code⁴

This partnership between pub owners and small business entrepreneurs focuses on creating and running profitable and sustainable well-invested pubs that thrive within their local communities bringing people together and fostering social cohesion, whilst ensuring that risk and reward is shared fairly.

This model clearly demonstrated its strength during the pandemic resulting in thousands of pubs having the best possible opportunity to recover strongly in the post-pandemic world.

- Whilst Government intervention was required in the wider commercial letting market, pub companies led the way in providing support for their tenants.
- Between April 2020 and the end of March 2022, pub companies provided an estimated £360m of rent reductions (£242m by the six regulated companies) and other charges waived, an average of £28,000 per pub over the two years.
- Average discounted rent as a percentage of total between April 2020 and March 2021 was 87% for tied pubs, and a further 21% between April 2021 and March 2022 (assuming same average rent).

³ PCA Annual Tied Tenant Survey 2022

⁴ This will increase by c.1000 if/when the Scottish Code comes into force and with purchase of Hawthorn by Admiral in relation to E&W Code.

- Adding deferred rents, discounts and other direct financial support in terms of refunds for spoilt beer and/or replenishing stock, PPE, signage and other re-opening cost support, this increased the average support to almost £33,000 per pub. This compares to an average annual rent in tied pubs of around £26,000.
- Regulated pub companies achieved a 70% satisfaction rate with the level of financial support provided to tenants during the pandemic and 75% in relation to the transparency of this support.⁵
- Pub companies only received a fraction of this in terms of any rent reductions from their own commercial landlords, with many receiving no rent discounts at all. Pub companies did though also provide free-of-tie pubs with support during the pandemic but, by the very nature of the different relationship and opting out of the shared risk model, this was understandably lower than for their tied pubs.
- Whilst 800 pubs in total sadly closed their doors permanently during 2020 and 2021, the number of business failures and closures was limited in the leased and tenanted pub estate and was considerably higher among the wider licensed hospitality sector.

The Market Rent Only option

It is important to note that the Pubs Code was not introduced with the aim of increasing the number of free-of-tie agreements, its aim was to ensure tied tenants are no worse off than free-of-tie tenants.

The MRO-element of the Code does however enable tenants to move from their existing tied agreement with their pub owning company to a free-of-tie-agreement on commercial terms where they can buy beer and other drinks from a third party. This option is available at certain trigger points during the lease and at renewal for certain agreements. It would result in the tenant moving to an agreement in which they are paying a market rent for the pub and no longer receiving the other benefits and support associated under a tied lease or tenancy. It is important to recognise that the success or failure of the Code should not be judged solely on how many MRO deals come into being, as this is only one element of the Code, not least because taking on a commercial lease with higher risk, greater upfront costs and less support may not suit the financial resources or operational expertise of the tenant or lessee. There are also a number of free-of-tie agreements which have been agreed outside the MRO process. Without doubt there are now many more types of agreement on offer from pub companies than there were before the legislation was introduced. These agreements are intended to suit the financial position of lessees and the skills they have when they take on an agreement.

In its 2019 report Europe Economics also highlighted the likely unintended consequences of the MRO-option. Whilst it increases the negotiating power for tenants, where one party no longer has certainty of contract, they argued that it is likely that the number of such agreements offered would diminish to the detriment of new entrants and market choice. Secondly, any transfer of value away from pub owning companies to tenants and third-party suppliers would be likely to be detrimental to investment by pub owning companies in their tied pubs in the long term. This could impact those remaining tenants who benefit from the model and ultimately the sector overall, as the resilience of the tied model to fluctuations in the economic cycle can be critical in difficult trading periods. The MRO-option may also be used by tenants and their advisers as a tool solely to

⁵ Kam Media, April 2022 – regulated pub companies only

negotiate an improved tied offer. Europe Economics concluded that, ultimately, this is not sustainable.

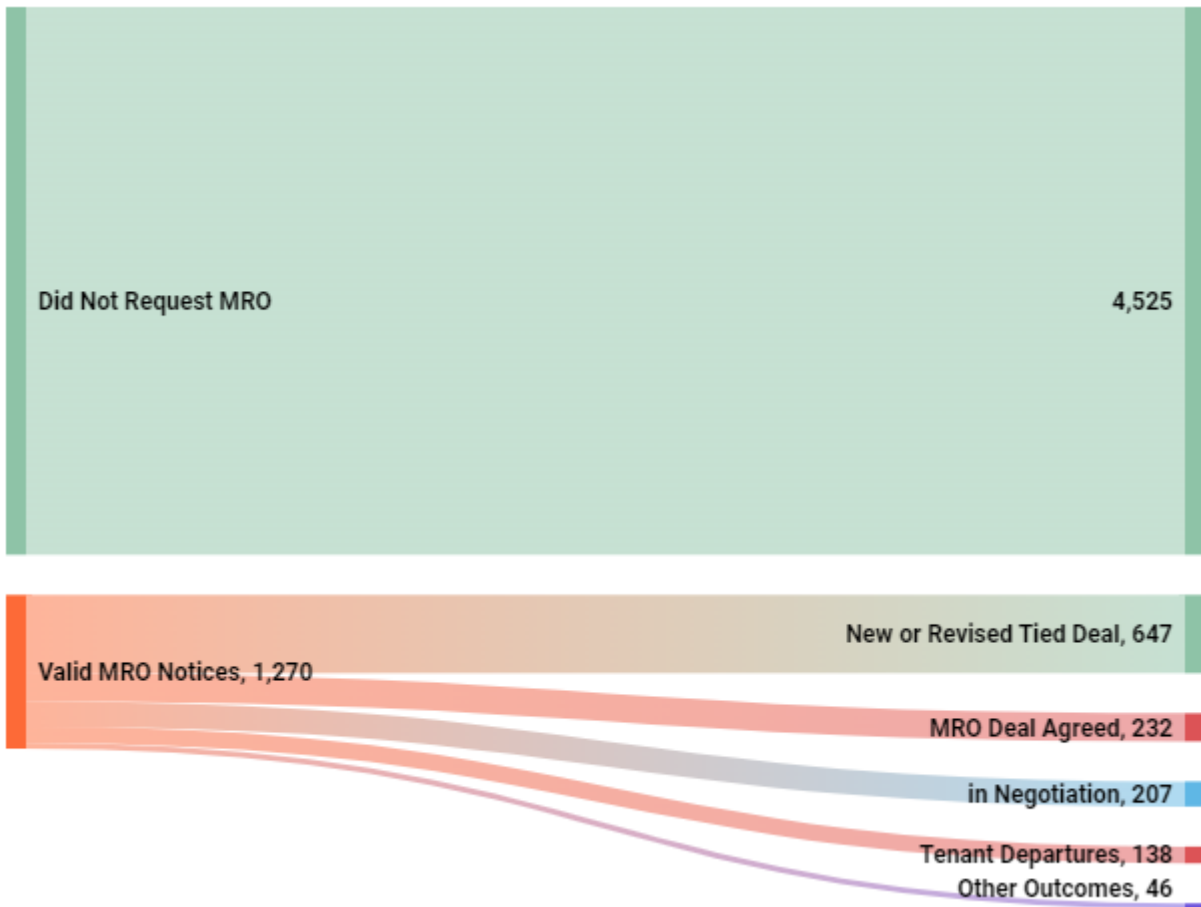
These unintended consequences will become more apparent if the Adjudicator determines that the MRO-agreement offered by a pub owning company to an existing tenant/lessee at a trigger-point, must be more favourable than a similar agreement that would be negotiated with a new tenant on a free-of-tie basis for that same pub on an open market basis. There is concern that arbitrations in some cases are seeking to accommodate what is *personally* affordable to an incumbent tenant beyond what is reasonable based on the current market. A key benefit of a tied model for a tenant is the low cost of entry compared to other agreement types, such as the free-of-tie model which would have much higher costs of entry. This is a business-critical issue for pub owning companies.

Take up of Market Rent Option (May 2022)

After a five-year period, all tenants/lessees in situ when the Pubs Code commenced with a right to an MRO-option will have had an opportunity to go down this route if they so wanted. Yet, the benefits from MRO remain unproven, have only been taken up a small number of operators and this hugely outweighs the potential lost opportunity for future entrepreneurs seeking to run their own pub under a partnership model, the adversarial nature of Code, and the huge regulatory cost that falls on the regulated businesses, thereby stifling their investment.

- Based on data from the six regulated pub companies, there have been a total of 5,795 potential trigger events since the introduction of the Code. Of these, only 1,270 (22%) resulted in a valid MRO notice being submitted to a pub company. This represents on average c200 applications per year since the Code came into force.
- Of these valid notices, less than a fifth (18%) resulted in tenants completing an MRO with the majority (51%) choosing to continue with a 'tied' agreement.
- There is a total of 232 tied tenants moving to MRO agreements in almost six years
- However there has been c.550 MRO-related referrals for arbitration by 31st March 2022 at huge cost and expense to all parties. These account for over 85% of all referrals for arbitration to the PCA.

Chart: Outcome of MRO trigger events 2016-2022



However, the number of MRO offers that have been subject to dispute, arbitration and even legal challenge has been significant, costing parties several million pounds and tying up huge amounts of resource. There have been c.550 MRO-referrals to the PCA for arbitration since the start of the Code (up until 31st March 2022) with 490 of these accepted for arbitration.

The consequence of the MRO-option has therefore been a restriction of investment by pub companies and ultimately has led to a number of sites either being operated under different models once the tenancy or lease has ended or being sold. This inevitability was highlighted by independent economists ahead of the Code coming into force, when almost 13,000 ‘tied’ pubs were operated by the six regulated pub companies, compared to under 9,000 covered by the Code in the current year.

The data collected from the six pub owning companies shows the number of MRO notices was greater in the initial years of the Code and has stabilised at less than 200 per year in more recent years.

Year	No of valid MRO notices
2016/17	316
2017/18	215
2018/19	200
2019/20	184
2020/21	156
2021/22	199

The six pub owning companies and the BBPA share the frustrations of other stakeholders around the length of time taken for many arbitrations to take place and the associated costs. Amendments to allow more time for negotiation are an important improvement to the Code but greater clarity and certainty on what constitutes an acceptable MRO-agreement would further reduce the number of arbitrations and the costs and timescales associated with these. As we have previously advocated for, this could be achieved by the accreditation of individual pub company MRO-compliant agreements. The BBPA and pub companies subject to the Code wish to see the Code foster greater levels of collaborative working between tenants and pub companies and relationships which serve both parties well and accreditation of agreements would further facilitate this.

Europe Economics report – 2022 update

In 2019, the six pub companies, with the support of the BBPA, commissioned a major piece of independent analysis from Europe Economics on the impacts and workings of the Code since its inception. A full copy of this report was submitted with our response to the first Statutory Review (2016-2019). Using data for the period 2019-2022, Europe Economics have published an updated report⁶, a copy of which accompanies this submission.

The key findings of the updated report are:

A market working well under the tie

There is a risk-and-reward system in place that provides streams of revenues for both tenants and pub companies. Whilst those revenue streams change according to the economic cycle, this is an advantage of the system and not a weakness. The recent COVID-19 pandemic has shown how in bad times the pub companies have been able to support the tied tenant.

An MRO option hardly being used

This is the weakest element of the Code; its principal and most important instrument is not gaining the attraction it was predicted to hold for tenants. There can be different explanations for this

⁶ The Pubs Code: Europe Economics' updated analysis (August 2022)

finding but the most reasonable and coherent explanation is the one that the lack of MRO usage by tenants relates directly to the lack of interest in using the option. This is most likely because those who opted for a tied model partnership when they took on their pub are still happy to operate within that partnership model because it continues to provide a number of elements which tenants see as beneficial.

A reduction in the availability of tied partnerships

Pub companies remain committed to the partnership model, but are also moving away from tied contracts and instead opting to offer other forms of pub contractual relationship, such as models of franchise and direct management. This jeopardises the ability of the pub sector to withstand times of acute stress such as that provided by the COVID-19 pandemic.

Pubs Code costs are substantial

As the table below shows, the cost of the Code (costs associated with the Statutory Code, as provided by the regulated pub companies) amount to £6.4m in 2021 (consisting of PCA levies plus other related costs). This is a significant amount. To put this in relation to the MRO 2021 activity, this is equivalent to £87,200 per free-of-tie agreement resulting from MRO notices; if both free-of-tie and new agreements are included this would give a £37,000 per agreement. Given the small amount of free-of-tie agreements reached through the MRO procedure (**Error! Reference source not found.**), this means that a high cost is borne for the potential benefit of just a handful of pubs.

The costs of the MRO-option provided for by the Code

	2021
Cost associated with the Statutory Code (£m)	6.4
Pubs and MRO agreements	
- Tied pubs under the Code	8,275
- Free-of-tie agreement	73
- New tie agreement	97
Cost per pubs and MRO agreements	
- Cost per tied pub (£)	769
- Cost per free-of-tie agreement (£)	87,198
- Cost per free-of-tie + new tie agreement (£)	37,444

Sources: Pub number estimates and MRO data from BBPA; Cost from pub companies' submissions to BBPA in 2022 on financial support provided to tenants.

It is recognised that not all activity is related to MRO, as the PCA has other duties. But conservatively assuming that just half of the costs of the Code are for MRO, the costs are still substantial: £43,600 per MRO (£18,500 per agreement). To put this into perspective, these figures are significantly higher than the average annual rent of a tied pub (£26,000). Estimates from the pub companies are that the proportion of Code costs associated with MRO activity is likely to be much higher, at 70-80% of their total costs.

Proposed changes to the Pubs Code

- An MRO opt-out should be a serious consideration if both parties willingly agree to this, to reduce uncertainty on both sides and incentivise greater investment. This would benefit tenants as well as companies as it would provide for an additional benefit of significant potential value whilst maintaining all existing Code rights. If an MRO opt-out *per se* were not taken forward,

then the investment waiver should be more flexible to something mutually agreeable by both parties.

- The accreditation of standard company-specific MRO agreements for each regulated pub company should be revisited and implemented as soon as possible. The PCA must move away from agreements having to be tailored to individual tenants.
- The PCA's office should actively find ways to reduce the administrative and compliance costs, recognising the spiralling administrative and compliance costs to companies. The cost per pub should be capped as should be third party fees.
- Consideration should be given to simplify the Code requirements. As an example, there are 84 pieces of separate information pub companies are required to provide to tenants under the Code. Clearer advice and guidance for pub companies would also be welcome.
- The inflexibility and triggers around passing through price rises is a significant challenge in the current high-inflation environment and does not work, particularly where purchasing energy supplies on behalf of tenants.
- Any scope creep by the PCA and any attempts to widen the scope of the Code should be strongly resisted. As the Code matures, a more light-touch approach must be taken forward. Indeed, the Government should maintain a medium-term goal for when the additional regulatory cost burden of the PCA and statutory regulation is no longer required and each statutory review should include a fully updated economic impact assessment.

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.

We believe the Code is entirely consistent with this principle, and the principle is reflected in the behaviors and operations of the regulated pub companies.

The information requirements and transparency for incoming tenants and for existing tenants at rent review and renewals mean that all tenants have absolute clarity on what is being offered and the supporting information behind this. There are clear timescales for key decision-making points and the obligations on pub companies to deliver against these. The MRO-option arguably goes beyond fair and lawful dealing allowing tenants to move to a different agreement at certain trigger points and giving tenants additional negotiating power. In addition, the PCA and arbitration routes ensure that a tenant has further recourse if any issues, including those in relation to rents and lease terms, cannot be resolved amicably. These structures are funded by the pub companies at significant cost.

The updated Europe Economics report draws out further evidence that the principle of fair and lawful dealing is being followed, using the comparison of arbitration referrals for MRO-related and non-MRO-related matters. They highlight the PCA data that sets out the outcomes of non-MRO-related referrals to PCA arbitration. Their interpretation of there being few non-MRO referrals is that it suggests an absence of practices in the industry that are considered to be unfair or unlawful. The data show that there were only 76 accepted arbitration referrals across all pub companies in the year to March 2022, and just seven awards on substantive issues which would have been non-

MRO-related.⁷ The latter figure represents less than 0.1% of the regulated tied pubs in 2021. We agree with Europe Economics that this finding supports the argument that the majority of tied tenants are broadly content with their tied contracts, and that fair and lawful behaviour is not solely demonstrated by a shared risk-reward partnership model but also by ongoing day-to-day dealings with tenants, such as information provision, transparency, BDM support and advice etc.

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.

In broad terms, the Code itself, supported by the oversight of the PCA and recourse to low-cost dispute resolution mechanisms, provides significant benefits to tenants that are not available in the free-of-tie and wider commercial lease market.

However, this “no worse off” principle has always been somewhat problematic in terms of measurement and we believe that interpretation by the PCA has been incorrect. This has been compounded by misplaced expectations in some instances. For example, a three or five-year tied tenancy is a very different agreement to a standard free-of-tie lease. More generally there are different repairing obligations and liabilities, different levels of initial investment required, a different balance of risk and reward and different levels of support and additional services that companies offer as part of tied deals, which are more akin to a partnership/franchise approach. Free-of-tie leases tend to be more arms-length relationships as in other parts of the commercial lease sector. This means that switching a tenant to an MRO agreement is never as straightforward as simply removing the beer-tie.

For a tied agreement, with a new entrant or in the early parts of an agreement, the pub company will be taking on greater risk and may invest significantly in supporting the tenant to help ensure the success of the business. The pub company then benefits from greater revenue (through greater beer sales) if the pub is successful and achieves a return on this investment. Similarly, during a downturn in trade (such as was evidenced during the pandemic), lower fixed costs protect the tenant, but mean lower income for the pub company who then enjoys part of the benefit of busier periods. The nature of the tied arrangement and the knowledge and expertise of the pub company in more difficult times will often mean additional support will be provided to tenants during these periods.

This is all pertinent to the “no worse off” principle because the balance of risk and reward and the intangible aspects of the tied relationship (often referred to as SCORFA⁸ benefits) versus a free-of-tie lease, are all part of the consideration, but there is no formulaic approach to measuring these and not a like-for-like comparison.⁹ Any comparison must also be considered over the lifetime of an agreement. Essentially the market for the two agreements is different and therefore there will be different costs involved. Some have argued these are unreasonable barriers, when in reality they will represent what the market would expect in the event that the pub was marketed as free-of-tie.

⁷ This counts ‘Final Award on Substantive Issues’ given in respect of ‘Business Development Managers’, ‘Gaming Machines’ and ‘New tenant information’. Source: PCA (2022) ‘PCA Arbitration Data - Quarterly Release (January - March 2022)’, p.7 [\[online\]](#).

⁸ Special Commercial or Financial Advantages

⁹ A report by the Scottish Government in 2016 highlighted that many tied and partially tied tenants undervalued the SCORFA benefits available to them.

As we highlighted in our submission for the first Statutory Review of the Pubs Code, there continues to be a real concern, that there is an expectation by the PCA and some tenants, borne out in arbitration cases, that pub companies are expected to modify their standard, open-market, free-of-tie agreements to provide additional benefit for current tenants seeking to go down this route. This seems to be on the basis of considering what is personally affordable for the individual tenant. We believe this is a misinterpretation of the 'no worse off' principle as the intention of the legislation was not to ensure going free-of-tie meant the tenant is better off than staying tied, or indeed better off than other free-of-tie tenants/lessees entering the market. It also undermines the whole tied model as it is increasingly unattractive for companies to offer tied agreements that could result in this outcome.

If the tied model is working correctly for both parties (and tenants are indeed no worse off), then arguably it would be expected that only a small proportion of tenants would go down the MRO-route. Indeed, it is still the case in this latest review period that the vast majority of MRO applications so far have resulted in the tenant remaining on their existing agreement or on a new tied agreement. However, as highlighted by Europe Economics in their 2019 report, there is also the risk that tenants who have benefited from the support and investment from the pub company in the early years of their agreement (or in lean trading times) and are now more experienced operators achieving higher sales, wish to move to a different agreement. This again highlights that the Code and MRO-option can go beyond the "no worse off" principle when considered across the lifetime of the agreement. As Europe Economics note: "over time this may challenge the traditional dynamics of the tied pub model". This will be compounded if companies are required to offer more favourable terms to an incumbent tenant than they would on the open market to a new tenant.

One of the conclusions in the updated Europe Economics report also addresses this question. They note that the evidence suggests that the MRO-option is rarely exercised and does not often result in free-of-tie agreements when it is. Whilst acknowledging that this might be because of difficulties accessing MROs, a lack of awareness, or the costs of free-of-tie agreements, they believe that a primary reason for this is that the tied-partnership model is already effective in balancing the choices of tenants (e.g. about their appetite for risk and reward) with the commercial interests of pub companies. Tenants who choose to enter a tied-partnership contract are likely happy to do so, as it provides a number of options which tenants see as beneficial for them. They conclude that the MRO-option provided for under the Code is therefore not always necessary.

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.*

It should be acknowledged that the PCA continues to have a difficult job due to the complexity of the regulations, and different expectations from parties around what the legislation does and does

not allow for. We believe, however, the PCA has sufficient and proper powers to enforce the Code effectively and many regulatory tools at her disposal to do this.

Aside from the MRO-element, we believe the PCA's office has generally performed in a satisfactory manner, notably during the pandemic with the agreement to pause Code processes during those periods that pubs were closed.

There has been good interaction between the PCA's office and the BBPA, and the Code Compliance Officers forum has proven to be a positive mechanism for dealing with collective issues arising in relation to the smooth functioning of the Code.

The PCA has also challenged the industry to raise best practice, often beyond the strict requirements of the Code, to give extra reassurance and benefit for tenants. However, we would note that there is a balance to be struck in terms of the cost and benefits in some instances.

The biggest areas for improvement we would argue centre around the MRO-process and what constitutes an acceptable MRO-agreement. Greater clarity on key aspects, consistency of arbitration awards that do not go beyond the original intent of the legislation and risk undermining the tied model itself are crucial. This clarity and certainty for all parties is required to avoid unnecessary, often lengthy and expensive arbitrations that continue to be a feature of the Code's operation.

Whilst the use of external arbitrators as a means to speed up the process is welcome, there remain issues on the high costs and the relevant experience of some arbitrators of the tied pub sector.

We believe these improvements can be achieved by the Government giving greater direction to the PCA to improve clarity and understanding on key Code issues.

Examples include:

- PCA accreditation of individual pub companies' MRO compliant leases so that they can be presented as such to publicans, avoiding the need for time-consuming and costly arbitrations, or expensive fees to tenants' advisors.
- Clarification on the issue of "affordability" in the context of reasonableness – it is a major concern if MRO arrangements that are not personally affordable to a tenant are deemed unreasonable yet the arrangements reflect common terms in a free-of-tie lease. Without doubt, the ideas and innovations identified by many tenants help to create the vitality and uniqueness of the great British Pub, but the leased and tenanted model with a beer supply agreement will not survive if it is over-regulated to the point of no longer being a viable proposition for pub companies.
- To the point above, it was explained by Fiona Dickie, the Pubs Code Adjudicator, at the BEIS Committee hearing in July 2022, that the existing tied lease should not form the starting point for determining a MRO agreement; she confirmed that that point had been confirmed by the High Court in June 2020 and is therefore a matter of settled law. There is a clear misconception held by some stakeholders that simply removing the drinks-tie from an existing tenancy agreement automatically creates a MRO arrangement; this misunderstanding should be corrected and explained.

Finally, we feel that as an accountable body, the office of the PCA should report publicly against a set of meaningful performance indicators, supported by the introduction of service level agreements for both tenants and pub companies. To that end, we welcome the recent publication

of a three-year strategy by the PCA and note the inclusion of KPIs and Success Criteria. However, we were extremely disappointed to see that none of the deliverables address the need for lighter-touch regulation or control of costs.

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.

It is essential that this second review should consider where the spiralling cost and administrative burdens imposed by the Code can be reduced and where investment is being curtailed or stifled to the ultimate detriment of all parties and to local economies.

One of the simplest ways to achieve this would be an opt-out to the MRO if agreed by both parties. The MRO element, whilst potentially advantageous to a small number of very experienced or multiple operators, was never intended by Government to be part of the Code when bringing forward the initial legislation. It is now a drag on investment and business growth, incurs significant costs, and creates conflicts which would otherwise no longer exist. Over 85% of arbitration referrals to the PCA are MRO-related.

It is this element of the Code that is primarily the reason for the huge increase in costs faced by pub companies and which ultimately impacts investment in pubs. Original compliance costs were estimated at c £100 per pub. The following table shows estimates for the latest compliance year in terms of direct PCA costs and other Code-related costs. In total, this equates to over £700 per pub)¹⁰:

Statutory Code: Average annual costs for 2021

	£
PCA annual levy: <i>current year</i>	3,251,229
Arbitration/legal/admin costs	1,679,977
Staff costs	1,434,282
Annual total	6,365,488

Source: *Pub company estimates/BBPA*

The existence and continued success of the Voluntary Code and its associated dispute resolution systems is evidence that having an MRO-option is not the answer to a successful partnership. For example:

- Across the sector overall tenant/lessee satisfaction rates with their pub company is over 7 in 10, but this rises to more than 8 out of 10 for those covered by the Voluntary Code¹¹
- Pub companies covered by the Voluntary Code pay only c.£20 per pub to cover the costs of code oversight by the Pub Governing Body and the two independent dispute resolution mechanisms for rent (PIRRS) other code disputes (PICAs).

¹⁰ This excludes some elements of wider training and materials developed internally

¹¹ Kam Media Licensee Index, October 2021

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

Annex A: UK pub numbers

Background

The two main sources of pub numbers used by the industry are CGA's drinks places database and the Valuation Office Agency ratings database and its Scottish equivalent (used by BBPA and Oxford Economics). National Statistics also have a tally of pub businesses registered for VAT purposes, but this does not provide a full census of actual pub numbers. Periodically BBPA also collects data directly from members on pub openings and closures and pub numbers by operating tenure.

There is no single definition of a pub and both CGA and rating agency data require a degree of manipulation and assumptions to be made. As information is only available and updated periodically, there will also be significant time lags in terms of the status of individual outlets. Both data sources show a similar trend in overall pub numbers over the last decade, but there remain significant differences on a year-by-year basis. The latest information suggests around 1-4 pubs have closed per day over the last three years.

	CGA outlets (GB)	Ratings data/BBPA Handbook (UK)	net closures	net closures	per week	per week
	(1)	(2)	(1)	(2)	(1)	(2)
2010	58,985	55,400				
2011	58,252	54,700	733	700	14	13
2012	57,345	53,800	907	900	17	17
2013	55,916	52,500	1,429	1,300	27	25
2014	54,194	51,900	1,722	600	33	12
2015	52,750	50,800	1,444	1,100	28	21
2016	51,532	50,300	1,218	500	23	10
2017	50,373	48,350	1,159	1,950	22	38
2018	49,616	47,600	757	750	15	14
2019	47,888	47,200	1,728	400	33	8
2020	45,959	46,800	1,929	400	37	8
2021	45,219	46,350	574	450	11	9
2013-18	-6,300	-4,900	1,260	980	24	19
2018-21	-4,397	-1,250	1,466	417	28	8

Pubs by tenure

Assessing pub closure rates by tenure (e.g. tenanted/leased v independent) is even more problematic as pubs may operate under different models during their lifetime and under different ownership. Tenanted/leased pubs include fully tied, partially tied and free-of-tie. Pubs also close temporarily and re-open and in recent years there has been significant growth in hybrid models in the market that fall between traditional leased and tenanted model and managed pubs. These 'managed operator' and other franchise style agreements, making classification more problematic. Freehold owners may also lease a pub to a multiple operator who then directly manage the pub. Pubs may become restaurants, new pubs are built and are also converted from other retail units. As noted above, significant time lags in relation to the data updates means caution is required.

Despite this and as shown in the tables below, both CGA and BBPA numbers show a clear trend in declining **tenanted/leased pubs** (whether tied or free-of-tie) over the last decade; down from over 45% of pubs to between 29-38% of total pubs, depending on which measure is used. The number of **independent pubs** has also fallen, but at a slower rate and hence as a share of total pubs has increased. The total number of **managed pubs** had remained fairly constant. However, in the last 5-6 years there has been growth in the total numbers of managed pubs. Whilst this has coincided with the introduction of the Statutory Code of Practice for companies operating tied pubs, broader market dynamics will be a factor as well.

It is also important to note that most tenanted/leased pubs will historically have been smaller, wet-led community pubs outside of primary trading areas. They have therefore been particularly hard-hit by changing consumer demographics and trends, regulatory changes and rising tax. A recent study by ONS suggests that these types of pubs are more likely to close. Permanent closures will ultimately be due to the economic viability of the pub as a business and relative asset values, not the operating model. Indeed, as the recent Europe Economics study demonstrates, the tied pub model supports licensees through lean trading periods. This is also reflected by BBPA survey data that shows that most tenanted/leased pubs sold by member companies in recent years have been sold as going concerns although ultimately a number of these have subsequently closed.

Pub Numbers by tenure

BBPA estimates (all pub companies operating less than 30 pubs are classified as independent)

	Managed	Tenanted / leased	Independent	Total	Managed	Tenanted / leased	Independent
2010	7,700	25,200	22,500	55,400	14%	45%	41%
2011	7,600	23,700	23,400	54,700	14%	43%	43%
2012	7,600	21,500	24,700	53,800	14%	40%	46%
2013	7,500	20,800	24,200	52,500	14%	40%	46%
2014	7,800	19,500	24,600	51,900	15%	38%	47%
2015	8,500	17,800	24,500	50,800	17%	35%	48%
2016	9,200	17,100	24,000	50,300	18%	34%	48%
2017	9,400	16,300	22,650	48,350	19%	34%	47%
2018	9,200	15,600	22,800	47,600	19%	33%	48%
2019	9,900	13,900	23,400	47,200	21%	29%	50%
2020	9,800	13,900	23,100	46,800	21%	30%	49%
2021	10,000	13,300	23,050	46,350	22%	29%	50%
10-year change	2,400	-10,400	-350	-8,350			

CGA estimates

	Managed	Tenanted / leased	Independent	Total	Managed	Tenanted / leased	Independent
2010				58,985			
2011				58,252			
2012	9,765	27,224	20,355	57,344	17%	47%	35%
2013	9,719	26,320	19,877	55,916	17%	47%	36%
2014	9,753	24,492	19,949	54,194	18%	45%	37%
2015	9,676	23,569	19,505	52,750	18%	45%	37%
2016	9,826	21,913	19,793	51,532	19%	43%	38%
2017	9,902	21,035	19,436	50,373	20%	42%	39%
2018	10,160	20,170	19,286	49,616	20%	41%	39%
2019	10,175	18,963	18,750	47,888	21%	40%	39%
2020	10,190	17,656	18,113	45,959	22%	38%	39%
2021	10,603	17,022	17,594	45,219	23%	38%	39%
Change since 2012	838	-10,202	-2,761				



SIBA RESPONSE TO THE STATUTORY REVIEW OF THE PUBS CODE AND THE PUBS CODE ADJUDICATOR

AUGUST 2022

ABOUT SIBA

The Society of Independent Brewers (SIBA) was established in 1980 to represent the growing number of independent breweries in the UK. Today SIBA has around 700 brewery members, responsible for 80-85% of the country's independently brewed beer. SIBA acts as the voice of independent brewing and represents its members in the press and with Government. In addition it runs a commercial operation called Beerflex which is a one stop shop for Pub Companies allowing access to a tied market for our members at the discretion of Pub Operating Businesses (POBs) on a fairly restricted level.

ABOUT OUR MEMBERS

SIBA's membership encompasses a broad range of brewers from very small nano-breweries to larger firms owning pubs, taprooms and shops. Forty percent of SIBA members own, lease or rent pubs, in most cases with estates of fewer than 10 businesses.

Its members produce approximately 6% of the beer consumed in the UK, while the vast majority of UK beer production is in the hands of four global breweries, which account for around 88% of the entire market. The balance in between is made up of other internationally owned brands and a number of large, regional 'family' brewers.

Small breweries in the UK employ about 6,000 full time equivalents and directly contribute around £270 million to GDP each year. The brewing sector as a whole is a major contributor to the Treasury, responsible for approximately 30% of overall alcohol receipts. Small breweries employ a considerable number of people and generate a disproportionate amount of Treasury revenue through other direct taxes as a result. They also contribute directly to local economies, local communities and are forces for good in the world.

The industry was hit hard by the Covid-19 pandemic which saw a 40% fall in production during 2020 and remained 16% below 2019 levels in 2021.¹ Over the past two years, we have seen many breweries closing for good and more are on the verge of shutting.

¹ SIBA Craft Beer Report 2022 -[link](#)



ABOUT BEERFLEX

A wholly-owned subsidiary of SIBA, SIBA Beerflex is an established purchasing and supply arrangement for POBs providing a limited route to market and access for brewers. It enables the delivery of independent local beer, predominately to Tied Pub Tenants (TPTs) through their POBs but to other customers as well. SIBA Beerflex operates without profit and ensures that small independent brewers have some access to tied pub estates, retailers and POBs where they wouldn't otherwise. Where permitted by their POB, it allows TPTs to serve a non 'tied' local beer on their bars bringing choice, diversity and quality to local consumers. Beerflex ensures that consumers can enjoy a local beer in many pubs across the UK where they wouldn't otherwise due to the beer tie, offering around 1,700-2,500 different beers from about 350 different breweries.

Most tied pub estates find it difficult to deal with the myriad of small brewers in the UK. Beerflex offers a solution, being a 'one stop shop' for both TPT's and POBs. The UK marketplace for small brewery beer is highly foreclosed and SIBA Beerflex provides a partial, if imperfect solution to that problem which benefits TPT's, POBs and the brewers who choose to use it, as well, of course, as the pubs' customers seeking a local beer.

At this time, of the POBs regulated by the PCA, SIBA Beerflex currently trades with Admiral Taverns, Greene King, Punch and Star Pubs and Bars with permitted access varying from 6% to 23% of their total pub estates.

MARKET ACCESS

Lack of access to market for small independent brewers has always been a significant issue. They have been heavily reliant on pubs to sell their products; pre-Covid 80% of what they produced was packaged into large containers (casks and kegs) and sold directly to pubs. Numerically in the UK about 30% of pubs are tenanted or leased by large breweries or Pub Cos, with 29.3% of the total beer sales volumes in Great Britain through tenanted pubs.² By volume, this is a larger percentage than for any other alcoholic product, with spirits and wines representing 14% each.³

In comparison only about 5% of the volume of beer produced by small brewers is sold in tied pubs⁴ and 52% in the free trade. In the ontrade overall, five large companies are responsible for 78% of the volume of beer sold. While SIBA Beerflex is one way in which independent brewers can find access, it only represents 3.5% of small breweries' volumes and only has access to 12% of total pub estates of Beerflex customers. This means that small brewery access is severely limited and only granted on strict terms. Yet surveys have shown that three quarters of drinkers think it is important that local pubs offer a range of craft beer from small

² BBPA Statistical Handbook 2021

³ ibid

⁴ SIBA Craft Beer report 2020 - <https://www.siba.co.uk/SIBA-British-Craft-Beer-Report-2020.pdf>



breweries.⁵ The Government should explore ways to improve access to market for small producers through improvements to the Pubs Code.

CONTACT INFORMATION

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The Society of Independent Brewers

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[Redacted]

[Redacted]

SIBA'S KEY POINTS

1. Introduce greater flexibility for tenants, transparency for consumers and fairer market access for independent brewers.
2. Introduce a Guest Beer Right as part of the Pubs Code to enhance TPTs' ability to meet their customers' demands and thus widen consumer choice as well as price competition.
3. Review the price trigger and allow a separate outside beer supplier price increase to avoid price trigger events.
4. Reconsider the stocking requirement for pubs going Free of Tie.
5. Improve data transparency for breweries and publicans to enhance the functioning of the market and re-balance the power relationships.

⁵ SIBA/YouGov poll, January 2022 asked those who ever drink beer how important, if at all, they think it is that local pubs offer a range of craft beers from small breweries and 75% said it was very or fairly important



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.**
- 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.**

SIBA welcomes the opportunity to respond to this consultation on the statutory review of the Pubs Code and the PCA. The period covered by this review has been the most challenging in modern times for the pubs, brewing and wider hospitality sector, with pubs being forcibly closed for a significant part of the period April 2019-March 2022. The industry has not yet recovered and is now facing new threats and uncertainty from the combined impacts of inflation, cost increases and unreliability of supply.

To help the industry to adapt and survive these challenges, SIBA believes that the Pubs Code needs to be changed to introduce greater flexibility for TPTs, transparency for brewers and consumers and fairer market access for independent brewers.

It is striking that the terms of reference for this review have reduced the number and scope of questions in the consultation. Notably excluding questions about changes that could be made to make the Pubs Code more effective and to the regulations. SIBA believes there is an opportunity for the Government to make changes to the Pubs Code to improve fairness, flexibility and transparency. In Scotland the new Pubs Code includes a guest beer agreement that SIBA strongly recommends should be included in the Pubs Code in England and Wales. We also believe that changes should be made to the stocking requirement and the price trigger. In addition, to improve customer knowledge and transparency, products should clearly indicate if they are owned or part owned by a company that has significant control over a brand or product. Equally the PCA should ensure that TPTs have full access to the latest Beerflex beer list and that the rules of engagements for independent brewers is improved. We also recommend that those who successfully go free of tie should be listed on the PCA website to improve transparency and the operation of the market.

GUEST BEER AGREEMENT

The Tied Pubs (Scotland) Act is introducing a mechanism to allow a guest beer agreement, so that local brewers and TPTs can provide beer from independent breweries in the pub. In the



Scottish Pubs Code, POBs will be required to offer their tenants the opportunity to sell at least one guest beer of the tenant's choosing and the tenant can change this as often as they choose. The tenant will also be able to source, stock and sell their guest beer. The draft Scottish Pubs Code proposes that a TPT must request the agreement in writing and POBs must respond no later than four weeks after the request.

We would urge the Government to consider the progress of the Pubs Code in Scotland as a model for further changes to the Pubs Code in England and Wales as a matter of urgency. Such a mechanism would provide a further opportunity to ensure TPTs are no worse off, improve consumer choice and support local small businesses. Under the no worse off principle, the Code and the PCA has often focused on price. While this is important the Code should also include choice as well as price to ensure that the TPTs is no worse off.

Although a guest beer provision was included the Beer Orders, the UK Government decided not to include a guest beer agreement in the 2015 Act as it felt it would undermine the tied model. The overriding concern outlined in the Government response to the consultation⁶ was that TPT would not use this as an opportunity to buy a local beer but instead purchase a high volume lager. Either the TPT would purchase the same lager they already had at a cheaper price outside of the tie or a different high volume product offered by a competitor.

The Scottish Code has put in place measures to avoid these concerns by limiting the guest beer to a brand of beer of no more than 60,000 hectolitres in a year which means it will not apply to high volume lager. Similarly the UK Government could consider other measures such as restricting it to those breweries eligible for the Small Brewers Relief scheme to ensure that a local beer from an independent brewer is served on the bar.

The following clauses could be inserted into the 2015 Act to provide a guest beer agreement:

1. The code must require a pub-owning business to offer to enter into a guest beer agreement with a tied-pub tenant in certain circumstances.
2. The code is to specify the circumstances in which the offer must be made.
3. A guest beer agreement is an agreement that—
 - (a) allows a tied-pub tenant to—
 - (i) sell to the pub's customers, at a price of the tenant's choosing, at least one beer from a small brewery eligible under the Small Brewers Relief scheme chosen by the tenant and bought outside their tied arrangements
 - (ii) change the chosen beer as frequently as the tenant wishes,
 - (b) allows the tenant to do those things without penalty, and
 - (c) satisfies any other criteria specified in the code.

⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/352266/bis-14-873-pub-companies-and-tenants-government-response-to-consultation.pdf



PRICE TRIGGER

Beer from a small independent brewery is extremely unlikely in most cases to be a significant component of any tied pubs' wet sales, therefore a price change on one of these products should not act as a trigger event.

However, an unintended consequence of the significant price trigger has been that POBs have in some cases restricted the price paid to small independent brewers for fear of triggering an MRO event, even though, as they are not a significant component of any tied pub's wet sales, they are unlikely to do so. Indeed in the PCA's response to the BEIS consultation it noted that it had received "no arbitration referrals in relation to the Significant Increase in Price gateway."⁷ The Pubs Code Compliance Reports from POBs review that there has not been any rent assessment or MRO based on a Significant Increase in Price. Yet this feature has led to financial stress in the independent brewing sector and consequent diminution of product choice as brewers withdraw brands from the list when they decide they cannot supply them at the dictated price.

The current calculation also puts small brewers at a particular disadvantage limiting any increase to 3% compared to 8% for other alcoholic drinks or 20% for non-alcoholic drinks or services. This means that a craft cider or craft gin supplied to a tied pub could increase their prices by 8% while beer from a small craft brewery is limited to 3%. The Government should make changes to separate out beer from outside suppliers to allow small breweries to sell their products at a fair market price.

STOCKING REQUIREMENT

Under the Pubs Code a stocking requirement can be applied by a POB who is a producer of beer or cider in an MRO proposal. Currently it is only available to three of the six companies regulated by the PCA with one not requiring it as part of the MRO process,⁸ and therefore it could be argued it unfairly benefits some companies over others.

Although it cannot require the tenant to procure the products from any particular supplier or prohibit the sale of other beer and cider, by its very nature it will take up limited space on a bar and therefore place restrictions on the sale of other products. The requirement also only considers brands and does not necessarily take into consideration the volumes that can result from enabling lines to be tied to specific brands. For example, it may lead to favourable access for mass produced lagers from a POB's own products compared to those from smaller producers.

⁷ PCA response to the BEIS consultation on proposals to amend the Pubs Code, September 2021, P7 - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1039468/PCA_response_to_BEIS_consultation_to_amend_the_pubs_code.pdf

⁸ Marston's does not currently include a stocking requirement - <https://www.marstonpubs.co.uk/docs/governance/2020/PubsCode/Pubs-Code-MRO-FAQ.pdf>



The two companies that do specify a stocking requirement have different methodologies for calculating it. One stipulates a defined period of time and anticipated future demand⁹, both of which could vary significantly just before an MRO application and while trading as a free of tie pub. The other states as a requirement a number of the draught and cask lines and a percentage of packaged products will be part of the stocking requirement.¹⁰

The Government should review the reasonableness of the stocking requirement and its impact on those seeking MRO. SIBA has suggested a guest beer agreement and if this is accepted and a stocking requirement is maintained it should be a “reverse” guest beer – allowing the POB to have one line in a free of tie pub.

TRANSPARENCY

Given the myriad of different models and policies introduced by the POBs, it is difficult for independent brewers to know which pubs they can approach to offer their products. This point was made during the recent BEIS Committee evidence session¹¹ where POB representatives discussed the range of business models and the choice of beer offered to pub landlords. They told the Committee that this ranged from access to SIBA Beerflex to free of tie lines in pubs and the freedom to buy beer elsewhere. Others under the “Uber” model of franchise pubs had the offer of a range of cask ales and craft beer selected by POBs. One spoke of their “guest-led strategy”. The vast majority of independent brewers are not aware of which pubs operate these particular policies and where they may be able to access TPTs. SIBA believes that the Code and the PCA should introduce clear rules of engagement and a guest beer right which would rectify this confusion. In addition, the PCA should ensure that for those POBs that trade with SIBA Beerflex, the up to date list is provided to all TPTs as specified under Part 2, section 11 of the Pubs Code and detailed in Schedule 1, paragraph 20.

Equally on the bar it is not always clear to the consumer who ultimately owns the brewery producing the beer that is served. This can result in the appearance of competition and choice but yet only one or two companies owning all of the products. For example, if we take the ten top selling craft beers in the UK for the ontrade in 2020¹², with one exception, these are all either owned by or have significant investment from Global brewing companies. To improve transparency and customer knowledge, SIBA recommends that POB and TPTs must clearly indicate the ownership of brands on the bars.

Important statistics on the number of MRO requests is currently hosted by a third party organisation on its website. To retain transparency the PCA should consider compiling and hosting these statistics on the PCA and Government website so that all the relevant information is maintained on a single site. When a TPT goes free of tie, the PCA should,

⁹ <https://www.greenekingpubs.co.uk/sites/default/files/2020-04/Greene%20King%20-%20MRO%20FAQs%20-%20Jan%202020.pdf>

¹⁰ <https://www.starpubs.co.uk/code-mro-qa>

¹¹ <https://committees.parliament.uk/oralevidence/10586/html/>

¹² <https://www.morningadvertiser.co.uk/Article/2020/11/12/Best-selling-alcohol-brands-2020>



subject to the agreement of the TPT, publish their details on the PCA website in order to facilitate stocking by the TPT and ensure the efficient operation of the market.

PART B: THE PUBS CODE ADJUDICATOR

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.**

SIBA is not in a position to comment on these points.

PART C: PUBS CODE (FEES, COSTS AND FINANCIAL PENALTIES) REGULATIONS

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.

SIBA is not in a position to comment on these points.



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

About You

Organisation (if applicable): UKHospitality

Address: 6th Floor, 10 Bloomsbury Way, London WC1A 2SL

	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 checked="" 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: In our view, the Pubs Code has operated relatively well overall between April 2019 and March 2022, and the situation in the tied pub sector has improved since 2013. In light of the extremely difficult situation all hospitality operators have faced during the pandemic (and subsequent economic pressures), it should be highlighted that the tied pub model has allowed for a significant amount of support, concessions, and investment to be given to tenants during this period, particularly in contrast to challenges faced in some purely commercial landlord-tenant market dealings around rent and other issues. We are of the view that the scope of the Pubs Code threshold should remain at 500 pubs. The established Pub Governing Body code of practice for those operating under 500 pubs works very well, in terms of providing simplicity for tenants and companies whilst at the same time providing strong levels of protection.

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: We believe the Pubs Code is consistent overall with the principles of fair and lawful dealing.

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: We believe the Pubs Code is consistent overall with the above principle.

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: In our view the Pubs Code Adjudicator has operated relatively well between April 2019 and March 2022.

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: We have no specific comments on the above at this stage, aside from the overarching point that fees and costs should be monitored regularly (in particular during periods of economic uncertainty and pressures) to ensure fees and costs remain fair and proportionate for all parties.

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



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

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I want my response to be treated as confidential

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

About You

Name: [Redacted]

Organisation (if applicable): The Forum of British Pubs

Address: Offices 2-3, Ashley Hall, Ashley Rd, Ashley, Altrincham, Cheshire, WA14 3QA.

	Respondent type
<input type="checkbox"/>	Tied pub tenant
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<input type="checkbox"/>	Charity or social enterprise
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<input type="checkbox"/>	Legal representative
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<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: As a result of the industry's poor behaviour and bad practices which large pub company tenants were subjected to and following a number of government reviews which took place over the years. The trades failure to self-regulate led to a small number of conservative MP's rebelling and the Pub code was brought in with these key principles as stated by the then Minister of state who introduced the code.

"It is my job to strike a balance which ensures that tied tenants of the largest pub-owning businesses are no worse off than free of tie tenants, that there is fair and lawful dealing between pub owning businesses and their tied tenants and that all this takes place without placing undue burdens on business"

- 1) That a "tied tenant would be no worse off than a free of tie tenant"
- 2) That the code would be based on "fair and lawful dealing."

The failure to achieve these two principles would suggest that the code and adjudicator have failed,

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:

In terms of Removing unfair business practices from the sector, what we have seen is a number of new unfair practices introduced since the introduction of the code, so the PCA seems to be spending most of its time dealing with these new issues rather than the original ones it was set up to regulate on. This should come as no surprise as any new regulation will create new issues and have unforeseen impacts, something the government seemed to recognize as the Minister for Small Business, Industry and Enterprise, at the time Anna Soubry stated that

"The best insurance is to get the pubs code in place. The government accepted an amendment to the Enterprise bill that places a duty on the adjudicator to report cases of unfair business practices that are aimed at avoiding the code. It will be open to the adjudicator to make recommendations to the secretary of state to address any unfair business practices. I know I have upset the pubco's; I will be up front about that because I know I have not given them what they wanted. I have, I hope, satisfied the proper concerns communicated by tenants, and we are going to work on that."

So, the minister agreed there may be issues, but the PCA had a duty through an amendment to the code to report cases of unfair business practices that are aimed at avoiding the code. In addition, the PCA was also able to make recommendations to the secretary of state to address any other resultant unfair business practices, so fair and lawful dealing could be achieved, with any unfair

business practices either in avoiding the code or otherwise being addressed by the Pubs code adjudicator and I would assume then be dealt with in the 4 yearly reviews.

Despite being provided with evidence of many areas of unfair business practices the PCA has failed to act on any of them.

Examples have been given on the following **unfair business practices**.

1. The continued upward rent increases being demanded by pub companies “Upward only rent increases,” despite the trading conditions being poor and impacting the fair and maintainable trade following the pandemic, we have dealt with 47 rent reviews since early 2021 all have seen an increase in rent, this is an unfair business practice
2. The continued wide variance of RICs surveyors rent valuations which should be based on fair and maintainable trade, carried out by qualified professionals with variances of tens of thousands of pounds between the surveyor operating for the tenant and the surveyor operating for the pub company, we have written to RICs and the PCA about this, this is an unfair business practice
3. Area managers, BDMs vastly inflating the estimated earnings for new tenants based on historical trading figures rather than the latest ones and the exploitation of already vulnerable people, (many are either young and inexperienced or desperate, redundant, or out of a job) they are lying to these people, this is an unfair business practice
4. Failure of POBs to provide information to TPT’s, specifically the duty paid information on large pack alcohol (beer) – The code does not compel POBS to give tenants this information this is an unfair business practice
5. Dilapidations are being weaponised to put tenants into a weak financial position at the point of contract negotiation, where Dilapidation costs (and survey reports) are being inflated by POB’s and their surveyors at renewal or lease end - The code does not allow Tenants to act over these reports this is an unfair business practice. We have also seen documentation falsified in some cases and examples were given to the PCA, [Redacted] this is an unfair business practice
6. POB’s and or their representatives forcing up costs in the intended low-cost PCA Statutory arbitrations, this is an unfair business practice
7. Unsafe pubs – health and safety compliance issues not being tackled by the pub company and leaving the tenant in an unsafe building, faulty heating, lighting, this is an unfair business practice
8. Continued exploitation of publicans on short-term agreements, 20-15 year agreements have now all but vanished and 5 year deals seem to be the norm, allowing them to spend money on buildings and the proliferation of unsecure renting arrangements with little chance of a return on investment meaning many of the more professional operators have quit the industry or secured a free house or regional brewer owned pub, again this is an unfair business practice
9. Proliferation of pub management models, which seem to be based of franchise style agreements, we brought these to the PCA following the UBER judgement as we think they are clearly designed to avoid the code this is an unfair business practice.

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

Making pub operating business tenants no worse off than a free of tie tenant was to be achieved through the tenant's choice to take a Market rent only option where they paid a fair but potentially higher rent but were then free to buy the product's they sold on the open market just like a free house, with all existing terms remaining the same.

Government repeatedly stated that they required the cooperation of Members of both Houses in achieving this, in the words of Baroness Neville Rolfe:

*"We want to try to do this the right way. The market rent only option is the **central plank of the Pubs Code**. It is a fundamental change for the industry and, I believe, a powerful new tool for tenants.*

"We are trying to bring in a system that is simple, clear and well understood. We have looked at the provisions in the Act and come forward with a consultation that we feel is fair, right, simpler, easier and better."

"Noble Lords need to understand that the Government are trying to do this in a way that is less bureaucratic and more effective."

This principle has obviously failed as only about 3% of those eligible for MRO have managed to achieve it. It is not fair, not simple and seems to be more bureaucratic judging on the time and expense it takes to achieve, with many giving up and accepting a new tenant agreement instead.

This is not surprising when an ex senior minister described the Pubs code as "Weak Legislation designed to Fail"

In 2021 we have also seen 290 pubs demolished or converted for other use, so 5 a week and another 500 were classed as long term closed according to CAMRA, in 2022 so far these numbers seem to be accelerating.

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 PCA is doing its best to provide advice on guidance, the issue being it is so far removed from the pub tenants it is supposed to protect, relying on surveys and vested interest groups for its information that the data and information is not practical and useful for pub tenants, both in terms of the content and the way it is presented. Tenants don't trust or interact with the PCA in a meaningful manner.
- b. Very poor as it dismisses most cases referred to it as not impacting on the code, there is to our knowledge no record of the number of complaints referred to the PCA or how they are dealt with.
- c. I don't think anyone knows for the reasons above, the PCAs interpretation of the code and what is an unfair business behaviour mean very little meaningful action is taken to improve matters for tenants.
- d. The PCA does not arbitrate!

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 code and the MRO option was supposed to be a simple process with a £200 price tag, the complicated process, need to take on advisors to navigate it and the costs associated with a long process mean that costs spiral and many tenants can't afford to engage in the code processes which were meant to level the playingfield.

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