

About the Pubs APPG

Thank you for the opportunity to respond to this consultation.

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

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

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

Operation of the Code

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

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

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

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

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

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

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

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

“To get out of the tie would have cost me so much money that it was totally impractical.” – Dominic, licensee of the Chequers Inn

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

Principles of the Code

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

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

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

“Have received some help with rent and risk assessments but the cost of the tie is far outweighed by this and after 23 years here I have now been served a Section 25 to ensure I can't request MRO again, I had to give up on the original MRO request as the pubco dragged it out for so long I ran out of money to pay solicitors, Covid hit and my partner's cancer was starting to spread.” – Pubs APPG survey respondent

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

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

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

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

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

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

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

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

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

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

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

The Pubs Code Adjudicator

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

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

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

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

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

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

cause of the decline in pubs in this country. As they only interested in the short term and asset stripping our community hubs.” – Kaesy, licensee at the Waggon and Horses.

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

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

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

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

Matters outside the current scope of the Code

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

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

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

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

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

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

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

Contact

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

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