

By email to [pubscodereview@businessandtrade.gov.uk](mailto:pubscodereview@businessandtrade.gov.uk)

## Introduction

Thank you for the opportunity to respond to this consultation.

CAMRA is the most successful single issue consumer group in Europe. We are a not-for-profit, volunteer-led organisation representing around 140,000 consumers across the UK. We have been campaigning for pubs, pints and people since 1971.

Our interest in the Pubs Code and Pubs Code Adjudicator (PCA) stems from our involvement in the campaign for statutory regulation of pub companies, to ensure that their tenants are treated fairly, lawfully, and are allowed to provide quality and choice for their consumers while keeping their pubs viable.

We have remained a key stakeholder in the evolution of the Code and look forward to continuing to work with both the Department for Business and Trade and the Office of the Pubs Code Adjudicator in the future.

Our submission focuses on where we feel improvements have been made over the third statutory review period, and gives further recommendations for improvements to the operation of the Code and Adjudicator as part of the post-implementation review.

If you have any questions about this submission or if you would like to discuss our response please do not hesitate to contact us on [campaigns@camra.org.uk](mailto:campaigns@camra.org.uk).

## **Part 1: Statutory Review questions**

### A: The Pubs Code

**Q1. How well do you think the Pubs Code has operated between 1 April 2022 and 31 March 2025? Provide any evidence you have to support your view.**

There have been improvements in the review period including to information provided to tenants, engagement with tenants and wider stakeholders, and the use of thematic reviews and supervised inquiries. These are welcome.

However, we believe that the effectiveness of the Code and Adjudicator is constrained by primary legislation which should be amended to significantly strengthen the Code and Adjudicator in order to provide truly effective regulation.

Fundamental changes are needed to ensure that tenants are treated fairly and have parity of information, negotiating power and access to recourse compared to their pub-owning businesses.

In addition, we believe that there were significant missed opportunities arising from the first and second review periods where many suggested reforms were not taken forward by government.

These include opportunities to improve information and tools available for tied tenants to help them in negotiations with pub-owning businesses.

We continue to believe that more fundamental changes are needed to the Code (through amendments to the underlying Regulations and establishing Act) to ensure that tenants are

treated fairly and have parity of information, negotiating power, and access to recourse compared to the regulated pub companies.

These improvements include:

- (a) examining whether the scope of the Code should be extended to include different operating agreements which exist within the sector which share similar features to those tied tenancies that are regulated by the Code at present; and whether tied tenants of pub companies operating fewer than 500 tied tenancies are at a detriment as a result of the current policy and should be included in the Code as they are in Scotland;
- (b) introducing Guest Beer Rights to the Code to give tenants the ability to source more beers from local and independent breweries on the open market;
- (c) requiring the publication of independent rent assessment decisions, to increase transparency and assist tenants in their own negotiations;
- (d) increasing the powers of the PCA specifically to give the PCA power as an arbitrator to specify compliant terms in respect of an MRO tenancy or a tied pub tenancy that is regulated by the Code.

**Q2. 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?** *Provide any evidence you have to support your view.*

A statutory Code is necessary to deliver on the principle of fair and lawful dealing, but we believe that significant improvements to the Code and Adjudicator are needed in order to ensure that this principle is fully realised.

CAMRA's most recent survey of tied tenants took place in July/August 2022, within the third statutory review period. Those tied tenants were asked whether they felt they were treated fairly and lawfully, and whether they felt they were no worse off than a free of tie tenant. In both cases, 73% of respondents felt that these key principles of the Code were not met.

Improvements to the operation of the Adjudicator and their office do not adequately address the shortcomings of the Code identified by us and other stakeholder groups during the first and second statutory review processes. More fundamental changes are needed to ensure that tenants are treated fairly and have parity of information, negotiating power and access to recourse compared to their pub-owning business.

The Government should hold a review of whether tied tenants of pub-owning businesses with fewer than 500 tenancies are at a disadvantage in terms of the principle of fair and lawful dealing; and extend the scope of the Code if necessary. This would ensure that tied tenants of pub companies operating fewer than 500 tenancies are being treated lawfully and fairly.

We also believe that the principle for fair and lawful dealing should also be extended to innovative agreement types and management arrangements.

There are also significant power imbalances under the current arrangements. For example, the Code should require the publication of independent rent assessment decisions, to increase transparency and assist tenants in their own negotiations.

These improvements would improve the sustainability of tied tenancies and help ensure pubs continue to fulfil their role at the heart of communities and of local economies.

**Q3. 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? Provide any evidence you have to support your view.**

The Code is necessary to ensure that this principle is upheld. However, we believe that significant improvements to the Code are required in order to deliver a regulatory regime where tied pub tenants are truly not worse off than if they were not subject to any product or service tie.

CAMRA's survey asked tied tenants whether they felt they were treated fairly and lawfully, and whether they felt they were no worse off than a free of tie tenant. In both cases, 73% of respondents felt that these key principles of the Code were not met.

The same survey found that tenants of both regulated and unregulated pub companies overwhelmingly reported that their customers asked for drinks that they were prevented from stocking because of the tie, with only three of 68 respondents stating that they were not asked for these products. When asked about the price of beer and cider on the open market, 100% of those with a regulated tied tenancy, and all but one of the respondents with unregulated tied tenancies, stated that these products would be cheaper than through their pub companies.

A guest beer right is needed to give the tenant a further opportunity to improve their business and rebalance the relationship between tenant and landlord. This would uphold the second regulatory principle in the Act, that tied pubs are not worse off than they would be if they were not subject to any tie (with untied pubs able to source beer on the open market).

This has support from consumers, independent breweries (to whom the tied pub market is almost completely closed despite their growing number and popularity) and licensees – with 87% of those responding to CAMRA's tied tenant survey in 2022 support such a right. There is also support from Parliamentarians, with a guest beer right being the subject of a number of contributions from members in the House in recent months and years.

#### **B: The Pubs Code Adjudicator**

**Q1. How effective do you think the PCA has been in discharging its functions in relation to the Pubs Code between 1 April 2022 to 31 March 2025.**

*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*
- d) arbitrating disputes under the Pubs Code*

CAMRA has not had direct engagement with the PCA in relation to reporting non-compliance or arbitrating disputes as we directly represent neither tenants nor pub-owning businesses.

However, we have been grateful to the Adjudicator and their office for consistent engagement and dialogue about making sure enforcement of the Code is accessible and effective; and about making information and awareness of the Code and Adjudicator as widespread and accessible as possible for tenants.

Access to published arbitration decisions is essential for understanding key principles and 'golden threads' as the Code is interpreted. We are pleased to see decision notes continuing to be published.

It is welcome that the majority of cases received for arbitration were closed within a six-month period in the latest period for which figures are available.

In relation to investigations, we would like to see the PCA use resource freed up from faster referrals and arbitrations to spend more time investigating reports of unfair and unlawful practices under the Code.

We believe that increasing the powers of the Code and Adjudicator as outlined in this submission would see higher levels of trust and satisfaction in the PCA from tied tenants.

Increasing the powers of the PCA should specifically include giving the Adjudicator power as an arbitrator to specify compliant terms in respect of an MRO tenancy or a tied pub tenancy that is regulated by the Code. This stems from the High Court Ruling which found that under the Code as currently written the PCA can find terms unreasonable but cannot specify ones that would be acceptable in their place.

**Q2. Provide any additional comments on the effectiveness of the PCA in discharging its functions in relation to the Pubs Code from the 1 April 2022 to 31 March 2025.**

None.

C: Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016

These regulations set out the fees, costs and penalties related to the Code and the PCA. A summary follows.

For MRO disputes, the referral cost of a dispute to the PCA by the tenant or the pub-owning business is £200 and, unless the arbitrator finds the complaint to be vexatious, or the tenant to have unreasonably increased the costs of the arbitration, the Code limits the tenant's liability for the pub-owning businesses' costs in the arbitration to £2,000.

The same applies for other disputes raised by tied tenants, not related to MRO.

The PCA may impose a fine not exceeding 1% of the pub-owning businesses group annual turnover as the result of an investigation where the business has failed to comply with the Code or follow the PCA's recommendations.

**Q1. Do you think the regulations relating to costs, fees and financial penalties remain appropriate or should these be adjusted? Give one or more reasons for your answer and, if you believe these regulations should be amended, set out how.**

We do not believe that fees or costs for tenants should be increased.

In the third review period there has continued to be a low number of tenants exploring MRO provisions compared to the numbers eligible to do so.

The PCA's 2025 tenants' survey found that just 4% of the total sample of tenants had submitted a formal MRO request; with many stating that it was not financially feasible to do so.

Of tied tenants CAMRA has previously surveyed, the cost of adjudication has been cited as one of the reasons for tenants considering using the MRO provisions but not completing the process.

We are concerned that any increases in (i) charges for referrals and/or (ii) liability for the costs of pub-owning businesses in arbitration would further deter tenants from engaging in the MRO process.

For similar reasons we do not support increasing charges or liabilities for tenants under other parts of the Code.

We support increasing the maximum fines that the Adjudicator can impose on pub-owning businesses that have failed to comply with the Code or follow the PCA's recommendations. We believe that this is necessary in order for the fines to be a suitable deterrent.

## **Part 2: Post-implementation review questions**

### **A: Questions for all**

#### **Policy objective**

The Pubs Code was introduced to address problems between tenants and pub-owning companies. Specific evidence submitted to Select Committees by publicans cited a number of issues in the way they were treated by their pub-owning company. These problems were grouped into five categories:

1. Lack of transparency: a failure to provide evidence to support the pub-owning company rent assessment assumptions, on likely trade for example, which later proved to be overestimated.
2. Cost of tied products: lack of transparency in the pricing of beer and other products such as insurance.
3. Compliance with agreements: a range of reported practices which suggest the pub-owning company is abusing the relationship.
4. Levels of 'dry' rent: tenants complained that rent increases took into account increases in trade following improvements they themselves had made to the business.
5. Other issues of fairness: for example, the use of upward only rent review clauses that do not take account of wider circumstances affecting trade; the sale of a pub freehold to another company with no notice so the tenant is faced with a new landlord and new tied arrangements and cases of infrequent and inconsistent communications from the pub company's business development manager.

**Q1. One of the objectives of the Pubs Code was to ensure fair treatment and lawful dealing of tenants by pub companies. To what extent do you believe this has been achieved?**

- a) strongly agree**
- b) agree**
- c) neither agree nor disagree**
- d) disagree**
- e) strongly disagree**

*Give reasons for your answer.*

Disagree.

Whilst the introduction of the Code and PCA has undoubtedly delivered significant improvements for tied pub tenants, we do not believe that truly fair and lawful dealing has been achieved.

We believe that the Government must significantly strengthen and improve the Code, including by amending the legislation which underpins it, in order to deliver fully effective fair treatment and lawful dealing.

When CAMRA last directly surveyed tied pub tenants in the third review period 73% of respondents felt that these key principles of the Code were not met when asked if they felt they were treated fairly and lawfully. (July-August 2022).

**Q2. The MRO option intended to provide tenants with greater bargaining power by allowing tenants the option of a free-of-tie agreement to enable them to make a straightforward comparison and choice between the tied and free of tie business model in certain circumstances. This also gave more of an incentive for pub companies to work harder so that a tenant will remain tied. This meant that one of the objectives of the Pubs Code was to ensure that tied tenants were no worse off than they would be if they were not subject to any product or service tie. To what extent do you believe this has been achieved?**

- a) strongly agree
- b) agree
- c) neither agree nor disagree
- d) disagree
- e) strongly disagree

*Give reasons for your answer.*

Disagree.

There is still a large disparity between the number of tenants that are eligible and interested in exploring an MRO offer, and those that achieve an MRO contract.

We remain extremely concerned that this is an area where regulated pub companies may be attempting to avoid their Code responsibilities by seeking to deter tied pub tenants from going free-of-tie or trying to extract an unfair amount of capital from them before they can accept an MRO offer.

For example, there continues to be reports of eyewatering dilapidations bills being used by regulated pub companies to deter tenants from pursuing an MRO offer.

The powers of the PCA should be increased to give them power as an arbitrator to specify compliant terms in respect of an MRO tenancy or a tied pub tenancy that is regulated by the Code. This stems from the High Court Ruling which found that under the Code as currently written the PCA can find terms unreasonable but cannot specify ones that would be acceptable in their place.

The Code should be amended further to produce a public register of tied and Market Only rents so tenants are not disadvantaged by not having access to rents on comparable pubs when negotiating.

The Code should also require regulated pub companies to publish tied price lists to ensure tenants negotiating a tied rent can decide which company is likely to offer the most favourable deal.

**Q3. How has the Pubs Code and the work of the PCA impacted tied pub tenants? Can you provide any specific examples?**

Having a statutory Pubs Code had provided vital protections for tied pub tenants to ensure that pub companies are not taking more than is fair or sustainable from the profits of their tied tenants. This has been an improvement on the previous tied system in England and Wales which was unregulated by legislation and created an imbalance of power as pub companies develop a monopoly over the supply and cost of tied products, leaving licensees paying increasingly high prices for a restricted range of stock.

This had an impact on the earnings of tied tenants and the viability of tied pubs, reducing the amount available to tenants to invest in their businesses, stimulate the local economy and create jobs through expansion.

Despite the benefits of statutory rights and protections through the existing Code and Adjudicator, and the improvements that have been made in the power imbalances between licensees and pub-owning businesses as a result, there are still fundamental improvements that need to be made to the Code in order to truly deliver on the principles of the primary legislation.

Making improvements to the Code and strengthening the Adjudicator's powers, as outlined elsewhere in this submission, would lead to more effective regulation, a better balancing of relationships and is therefore likely to deliver further benefits to tied pub tenants to ensure they are no worse off than those who are free of tie.

**Q4. Have there been any areas where the Pubs Code and/or its enforcement by the PCA has fallen short of its objectives? If so, elaborate.**

The effectiveness of the Code and Adjudicator is constrained by primary legislation and regulations which should be amended to significantly strengthen the Code and Adjudicator in order to provide truly effective regulation.

Fundamental changes are needed to ensure that tenants are treated fairly and have parity of information, negotiating power and access to recourse compared to their pub-owning businesses.

In addition, we believe that there were significant missed opportunities arising from the first and second review periods where many suggested reforms were not taken forward by government.

These include opportunities to improve information and tools available for tied tenants to help them in negotiations with pub-owning businesses.

We continue to believe that more fundamental changes are needed to the Code (through amendments to the underlying Regulations and establishing Act) to ensure that tenants are treated fairly and have parity of information, negotiating power, and access to recourse compared to the regulated pub companies.

These improvements include:

- (a) examining whether the scope of the Code should be extended to include different operating agreements which exist within the sector which share similar features to those tied tenancies that are regulated by the Code at present; and whether tied tenants of pub companies operating fewer than 500 tied tenancies are at a detriment as a result of the current policy and should be included in the Code as they are in Scotland;

- (b) introducing Guest Beer Rights to the Code to give tenants the ability to source more beers from local and independent breweries on the open market;
- (c) requiring the publication of independent rent assessment decisions, to increase transparency and assist tenants in their own negotiations;
- (d) increasing the powers of the PCA specifically to give the PCA power as an arbitrator to specify compliant terms in respect of an MRO tenancy or a tied pub tenancy that is regulated by the Code.

**Q5. How has the Pubs Code and/or the PCA influenced the relationship between pub-owning companies and tenants?**

The PCA's annual tied tenant surveys have shown that the numbers of tied tenants satisfied with the relationship with their pub-owning business has increased since the Code was introduced. However, these surveys also show a significant minority remain dissatisfied.

When CAMRA last surveyed tied tenants in July/August 2022, almost half (49%) stated that their relationship with their pub company had worsened since 2019, with 42% saying there was no change, and only 4% saying their relationship had improved in this time.

Making improvements to the Code and strengthening the Adjudicator's powers would lead to more effective regulation, a better balancing of relationships and is therefore likely to deliver further improvements to the relationship between tenants and pub-owning businesses.

**Q6. To what extent do you think that the MRO right has led to a change in behaviour by pub-owning companies in their relationship with tied tenants and more broadly? Provide any evidence you have to support your view.**

We are concerned that the operation of the Market Rent Only provisions of the Code are not as effective as they could and should be.

The Code should be strengthened to make sure there is a fair and balanced relationship between pub-owning businesses and tied tenants in relation to the Market Rent Only process. Improvements should include:

- publication of independent rent assessment decisions
- a publicly available register of tied and MRO rents
- a publicly available register of tied price lists
- giving the PCA the right to specify terms within an MRO offer that would be compliant
- ensuring a fair and consistent approach to dilapidations
- powers to fine pub-owning businesses that unreasonable prolong MRO negotiations
- alternative appeals routes

Further details on each of these suggestions are provided in response to Question 12.

As outlined elsewhere in this submission, the Government should investigate whether tied tenants of companies operating fewer than 500 tenancies should be brought into the scope of the Code and if so whether MRO rights should be extended to them.

Further changes to the Code should be considered to make sure tenants seeking to exercise their Market Rent Only rights are not discriminated against by pub-owning businesses during or after that process. The Government should consider a study into these situations and whether changes to the regulatory regime are required to prevent and remedy any unreasonable behaviour from pub-owning businesses towards tenants who have exercised their Market Rent Only rights.

The following table is adapted from the Impact Assessment published alongside the Pubs Code regulation in 2016.

### Summary of costs and benefits

Cost	Type	Amount (£ million)	One-off or recurring
<b>Adjudicator set up costs</b>	Direct cost to business	0.54	One-off
<b>Adjudicator operating costs</b>	Direct cost to business	1.60	Recurring annually
<b>Other compliance and familiarisation costs</b>	Zero net cost	0.00	Recurring annually
<b>Cost of independent assessments for MRO</b>	Direct cost to business	2.00	Recurring annually
<b>Free-of-tie rent assessments for pub-owning companies</b>	Direct cost to business	0.30	Recurring annually
<b>Free-of-tie rent assessments for tenants</b>	Direct cost to business	0.06	Recurring annually
<b>Closures</b>	Indirect cost to business	16.70	Recurring annually

This table summarises the main costs associated with setting up, maintaining and enforcing the Pubs Code.

These values are presented in 2013 prices and have not been adjusted for inflation. The costs presented above are an estimation of what costs would be prior to implementation of the Pubs Code.

More details about these costs and how they are calculated can be found in the Impact Assessment.

### Q7. Do you think the Pubs Code and its enforcement provides value for money?

- a) strongly agree
- b) agree
- c) neither agree nor disagree
- d) disagree
- e) strongly disagree

Strongly agree.

CAMRA believes that the Pubs Code and Adjudicator provides value for money. Robust regulation is essential for a well-functioning tied pubs sector and to ensure that communities and consumers are well served by viable and sustainable pubs in their communities.

We believe that it is reasonable for large pub-owning businesses that are regulated by the Code to shoulder modest costs through the levy in order to ensure equity and fairness in this market.

We have concerns that a return to self-regulation by repealing the Code and Adjudicator would have economic consequences that would damage the Government's growth mission through having less viable and less sustainable pubs, leading to higher rates of pub closures.

Improving the powers and effectiveness of the Code and Adjudicator would deliver improved value for money in the future.

**Q8. Provide details of any areas where you think there is scope for savings to compliance costs.**

CAMRA believes that any savings to compliance costs should not compromise the ability of the PCA to deliver effective, quick and robust regulation within a statutory framework. A dedicated regulator is needed to give tied tenants and consumers more widely confidence that there is fairness in the tied pubs sector between individual licensees and larger pub-owning businesses.

The Regulators Code is a set of principles that supports and enables regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated entities. The principles of the Regulators Code are that regulators should:

- carry out their activities in a way that supports those they regulate to comply and grow
- provide simple and straightforward ways to engage with those they regulate and hear their views
- base their regulatory activities on risk
- share information about compliance and risk
- ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
- ensure that their approach to their regulatory activities is transparent

**Q9. How well do you think the Pubs Code and its enforcement has followed the principles set out in the Regulators Code?**

- a) strongly agree
- b) agree
- c) neither agree nor disagree
- d) disagree
- e) strongly disagree

*Give reasons for your answer.*

Agree.

The Pubs Code Adjudicator has developed effective and innovative ways to engage with tied tenants, pub-owning businesses and wider stakeholders in the beer and pub sector to hear their views.

Methods of communication have adapted since the introduction of the Code in order to ensure information and guidance is more easily accessible.

We are clear that information, guidance and engagement in this way would not be possible if we return to a system of voluntary self-regulation to manage the power imbalances in the relationship between pub-owning businesses and tied tenants, as businesses would have a vested interest in making any self-regulatory system harder to access and less transparent.

However, as outlined elsewhere in this submission we believe that significant strengthening of the Code is required in order to deliver more effective regulation and better protection for tied tenants.

### **Need for government intervention and regulation**

**Q10. To what extent do you agree with the following statement: Government intervention through the Pubs Code is still necessary.**

- a) strongly agree**
- b) agree**
- c) neither agree nor disagree**
- d) disagree**
- e) strongly disagree**

*Give reasons for your answer.*

Strongly agree.

An effective Pubs Code and Pubs Code Adjudicator is vital to protect tenants in tied pub businesses by stopping pub-owning businesses taking more than is fair or sustainable from the profits of their tied tenants, and ensuring that tied tenants are no worse off than those who are free of tie.

This regulation is crucial in ensuring fair treatment, transparency, the protection of tenant rights and to make sure pubs remain open and thriving at the heart of their communities.

For these reasons a statutory Pubs Code has come into force this year in Scotland. It would be a retrograde step for Government intervention in England and Wales to be weakened or removed at the same time as other jurisdictions are recognising the need for robust regulation.

**Q11. In your opinion, what would be the potential consequences of removing some or all of the Pubs Code regulation?** Give reasons for your answer.

We very strongly oppose the scrapping or weakening of the Code in England and Wales.

Regulation needs to be robust and seen to be independent by tied tenants and others in the sector. Self-regulation has been proven not to deliver effective safeguards and protections for tenants. This is a view that has been shared by ministers and parliamentarians in Scotland where the statutory Scottish Pubs Code has come into force earlier this year.

A return to a tied pubs market that is unregulated by legislation and without an independent arbitrator would have significant economic impact upon tied tenants, the viability of pubs, and could further restrict consumer choice.

**Q12. Are there any aspects of the Pubs Code that you believe should be revised or updated to better serve its purpose?**

Further to suggested changes to the Pubs Code outlined above, we would like to see the following improvements.

*Scope:*

The scope of the Code should be expanded to capture more tied tenants to include of pub companies operating fewer than 500 tied tenancies to ensure that tied tenants of these pub companies are treated lawfully and fairly.

The Government should investigate whether those tenants of a pub-owning business operating fewer than 500 tenancies were experiencing significant detriment compared to those tied tenants who do fall under the Code; and to make a decision based on the findings.

This could include pub-owning businesses with fewer than 500 pubs exempted from MRO considerations but being subject to all other parts of the Code.

*Guest beer right:*

The tied pub market is almost completely closed to small brewers, despite their growing number, restricting consumer choice.

Introducing Guest Beer Rights to the Code, similar to that within the Scottish Code, will give the tenant a further opportunity to improve their business and rebalance the relationship between tenant and landlord.

This would also uphold the second regulatory principle in the Act, that tied pubs are not worse off than they would be if they were not subject to any tie (with untied pubs able to source beer on the open market).

Introducing such a measure would also improve consumer choice and has support from parliamentarians, having been the subject of various debates and questions in the House in recent months.

*Ensuring a fair and consistent approach to dilapidations:*

We remain concerned that this is an area where regulated pub companies may be attempting to avoid their Code responsibilities by seeking to deter tied pub tenants from going free-of-tie or trying to extract an unfair amount of capital from them before they can accept an MRO offer. We would urge the PCA to continue to use their investigatory powers to explore if there is a fair and consistent approach being adopted by regulated pub companies.

*Publication of independent rent assessment decisions:*

We believe that a provision should be added to the Code to require independent rent assessment decisions to be published.

Decisions relating to the outcomes of independent rent assessments are not governed by CI Arb rules, and therefore not bound by confidentiality agreements. These decisions should be published to allow tenants access to information on rental decisions which they can use to support their own rental negotiations.

Individual tenants will only know the results of an independent assessment relating to their own pub, whereas regulated pub companies will have access to all decisions from across their tied estate. While each case will relate to the specific scenarios of the pub, this may help tenants find cases similar to theirs, and help them make a more knowledgeable assessment of what their market or tied rent should be when heading into negotiations.

#### *Increasing the powers of the Adjudicator:*

In the High Court Ruling *Punch Partnerships (PTL) Ltd & Star Pubs & Bars Ltd v The Highwayman Hotel (Kidlington) Ltd* [2020] it was found that:

*The Pubs Code statutory framework does not give an arbitrator who finds a MRO proposal is non-compliant the power to order specific terms to be included by the pub-owning business in its MRO revised response. The arbitrator can identify that an offer is unreasonable because it does not contain a particular term (for example as to a specified tenancy length), but cannot order a particular term must be included in a proposed MRO tenancy in the revised response (such as a minimum tenancy length).*

While we respect the ruling from the Court on the Code as currently written, CAMRA believes giving the PCA the right to specify terms within an MRO offer would be more reflective of the original intention of the Code. We believe that the current situation hampers the PCA's ability to arbitrate effectively and prolongs the length of time that cases may be open for, if multiple terms are considered to be non-compliant, and the PCA cannot specify a solution.

We would therefore ask that the Code is amended to give the PCA power as an arbitrator to specify compliant terms in respect of an MRO tenancy or a tied pub tenancy that is regulated by the Code.

#### *Alternative appeals routes:*

The legal and financial barriers to tied tenants as opposed to regulated pub companies who enjoy the benefits of in-house lawyers and larger reserves continue to be a barrier to appeals through the courts. We believe that the Government should consider options for developing (a) an alternative route and/or (b) a legal fund to help tied pub tenants to bring appeals to the High Court if a suitable alternative appeal route cannot be found.

#### *Tied and MRO rents register:*

We believe that the Code should be amended to require pub-owning businesses to produce a public register of tied and Market Only rents of their properties.

Tenants are at a significant disadvantage in rent negotiations because they do not have access to rents on comparable pubs. This creates a situation where regulated pub companies have data from their whole tied pub estate for comparison, surveyors have other information from previous clients, but tenants navigating the system do not have access to rents on comparable pubs.

A public register will level the playing field in terms of the information available to all parties and will also be an important source of benchmarking for tenants when negotiating rents.

### *Tied prices register:*

We believe that the Code should be amended to require regulated pub companies to publish tied price lists.

A tenant seeking to take on a tied pub or negotiating a tied rent does not have access to information on tied beer prices from all regulated pub companies so that they can decide which company is likely to offer the most favourable deal.

Regulated pub companies should also be required to publish which of their pubs have access to beer distribution systems such as SIBA Beerflex.

The current imbalance of information in relation to tied beer schemes and prices reduces the ability of tenants to negotiate fair rents. It also prevents any competition between the regulated pub companies on their tied prices.

### *Powers to fine regulated pub companies that unreasonably prolong MRO negotiations:*

The MRO process, in most instances, should not require a protracted negotiation. Currently, there is little incentive for a regulated pub company to resolve an MRO request quickly, especially if the tenant is looking to move to an MRO contract rather than negotiate their tied rent.

Pub companies should not be permitted to draw out proceedings to keep collecting tied rent. A specific power in the Code to give the PCA powers to fine regulated pub companies that do this could serve as a powerful deterrent against such behaviour.

**Q13. Management-operator agreements, also called turnover-share agreements and hybrid agreements are agreements where the operator receives a percentage share of the pub's turnover to pay themselves and employ staff, but does not pay rent, and is supplied with products from the pub-owning business. The PCA has said that some of these agreements may meet the definition of tied pub for the purposes of the Pubs Code but does not plan to enforce compliance at this time.**

**Share any views you have on the use of hybrid agreements across the sector, including any actual or potential risks of harm to operators associated with these agreements. Provide evidence to support your view.**

We strongly believe that the Code needs to be amended to include new agreement types to better protect everyone running pubs in the sector, and that this approach is preferable to weakening or removing statutory regulation altogether.

We consider, for the purposes of the Code, that pub tenants operating under a mixed tenanted/franchise model that does not meet the criteria for exemption under the Code (as a genuine franchise model) but are subject to extensive product ties (and therefore bear features of a traditional tied tenancy) should have Code rights extended to them.

The Department should undertake a study to ascertain whether significant detriment is being experienced by tenants on retail/franchise operating agreements that justifies an adjustment to the scope of the Code.

Unintended consequences

**Q14. Do you think there have been unintended consequences following the introduction of the Pubs Code.**

- a) strongly agree**
- b) agree**
- c) neither agree nor disagree**
- d) disagree**
- e) strongly disagree**

*Give reasons for your answer.*

Agree.

As outlined above, the introduction of the Code has seen an increase in conversions to other management, retail and hybrid agreements. We believe that this is likely to be in order to avoid being subject to the Code's provisions. We urge the Government to consider extending the Code to include these agreements in order to improve protections for those involved in working in these new agreement types with pub-owning businesses.

B: Questions for tied tenants

No response.

C: Questions for pub-owning businesses (regulated)

No response.

D: Questions for pub-owning businesses (unregulated)

No response.