

## Pubs Code Adjudicator's draft guidance consultation

**Suzanne Davies, director of Clifton Davies Consultancy Limited**, comments on the **Pubs Code Adjudicator's** draft Investigation and **Enforcement Guidance** consultation

**T**he long-running saga of the Pubs Code Adjudicator (PCA) continues to cause controversy, even after the Pubs Code came into force on 21 July, introducing the following overarching principles:

- Fair and lawful dealing by pub-owning businesses owning 500 or more tied pubs in England and Wales in relation to their tied pub tenants
- Tied pub tenants should be no worse off than they would be if they were not subject to any product or service tie

About 12,000 pubs are affected, namely those owned by Admiral Taverns, Enterprise Inns, Greene King, Marston's, Punch and Star.

The PCA Paul Newby, whose appointment has itself caused considerable controversy due to allegations of a conflict of interests, has a statutory duty to arbitrate disputes referred to him under the Code. He also has power to investigate where reasonable grounds exist to suspect that a breach of the Code has occurred and, in the case of a breach, to take enforcement action, including imposition of a financial penalty of up to 1% of the pub-owning group's annual turnover.

The most recent development has been the publication on 19 August of a government consultation on draft guidance on how the PCA will investigate alleged breaches of the Code and the enforcement action that will be taken.

This has unsurprisingly resulted in complaint from some quarters that the draft guidance has arrived far too late to deal with issues that have already arisen since 21 July. The PCA's attitude is that his office can continue to gather information and to arbitrate on individual disputes.


Come what may, given that the consultation runs until 30 September, following which the responses will need to be

considered and final decisions made on the views expressed, it is clear that it will be some time yet before the system is up and working as efficiently as planned.

Kate Nicholls, chief executive of the ALMR, appears to be taking a pragmatic longer-term view. She has been quoted as saying: "The adjudicator's new consultation will help give us a greater sense of clarity and should ensure all parties are aware of, and can feed into, the criteria regarding investigations and enforcements. The consultation is specifically looking at the process of investigating and taking action where there has been a breach of the Code, so this will not affect any ongoing or impending negotiations. We are pleased to see the consultation is fairly brief, which should minimise disruptions as pubcos and licensees adapt to the new regime. The important thing is to minimise disruption to ensure investment and growth is not undermined."

The consultation document is available on the gov.uk website. It seeks answers to questions on whether the draft guidance:

1. Provides clarity on the criteria the PCA will apply when considering whether to commence or continue an investigation.
2. Sufficiently explains the process that the PCA will follow when conducting an investigation.
3. Provides clarity on the considerations that the PCA will take into account in the exercise of its enforcement powers.
4. Sufficiently explains the nature of the statutory sanctions available to the PCA.

A response form setting out the above questions and inviting comment on how the draft guidance could be improved is available online at the gov.uk website. 



## Clifton Davies Consultancy Ltd



Clifton Davies Consultancy Limited is a consultancy business (not a law firm) which specialises in all licensing, gambling and regulatory issues affecting the pub and bar industry. David Clifton and Suzanne Davies are also consultants to Joelson JD LLP. The views expressed are given without any assumption of responsibility on their part. If you have any questions, do get in touch and they will be pleased to provide answers, either via this page or direct.  
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## Questions & Answers



**Q: I have a lease from a pub company with more than 500 tied pubs. Where can I get a summary of how the Pubs Code affects me?**

**A:** You can find it on our website. It's a very helpful Q&A guide to the Pubs Code published jointly by the ALMR, BII and FVLA. However, do bear in mind that you may need to seek specialist professional advice in relation to your own particular circumstances.

**Q: Has the government relaxed the recommended alcohol intake guidance?**

**A:** The answer is no, despite a number of press and media comments that could have led people to think otherwise. The chief medical officers' low risk drinking guidelines published in January set a recommended weekly limit for both men and women at 14 units, which represented a reduction of seven units for men. Amended guidelines published on 26 August retain those same limits, although other changes are made, on which we will report in a future edition of Pub & Bar. BBPA chief executive Brigid Simmonds is unimpressed with the new guidelines. She says: "The guidance fails the 'common sense test', and doesn't provide consumers with a fully objective picture, given that so many studies have shown that moderate drinking can form part of a healthy lifestyle."

**Q: What is the sugar tax on soft drinks?**

**A:** The government proposes to introduce a soft drinks industry levy across the UK as the 'first major step' towards tackling childhood obesity. It will be a levy on producers and importers, who are being given two years to lower the sugar in their drinks. They will not face the levy if they take action. HM Treasury is consulting on the technical detail of the levy over the summer, and will legislate in the Finance Bill 2017.