Pub Sector - England & Wales LEASED Code of Practice (1-499 Tied Pubs)

Signatories to the Code

The following companies are signatories to this code:

Adnams plc
Arkell's Brewery Limited
Butcombe/The Liberation Group
Daniel Batham & Son Limited
Daniel Thwaites plc
Everards Brewery Limited
Frederic Robinson Limited
Fuller Smith & Turner plc
George Bateman & Son Limited
Gray & Sons Limited
Hall & Woodhouse Limited
Harvey & Son (Lewes) Limited
Heavitree Brewery plc
Hook Norton Brewery Company Limited
Holdens Brewery Limited
Hyde's Brewery Limited
J.C. & R.H. Palmer Limited
J.W. Lees & Co. (Brewers) Limited
Joseph Holt Limited
Mitchells & Butlers plc
St Austell Brewery Company Limited
Shepherd Neame Limited
Timothy Taylor & Co. Limited
Trust Inns Limited
Wadworth and Company Limited
Wells & Co
WH Brakspear & Sons Limited

Adherence to this Code and associated self-regulatory structures is a condition of membership of both the British Beer & Pub Association (BBPA) and the Independent Family Brewers of Britain (IFBB).

The Code of Practice (leases)

The Code of Practice (referred to hereafter as the Code) describes the minimum requirements governing the operation of tied public houses by companies with less than 500 tied premises. Companies with 500 or more tied premises are governed by statutory legislation, namely the Pubs Code and Adjudicator regulations 2016.

The initial version of the Code was effective from the date the Statutory Code (Pubs Code etc. Regulations 2016) came into force (21st July 2016) and was not retrospective. An update was made on 1st April 2022 and this update replaces that version and comes into force on 1st January 2025 and not retrospective. The Code is supervised by the Pub Governing Body (www.thepubgoverningbody.co.uk). Individual companies are required to display the Code within the tenanted/leased section of their websites and ensure each of their lessees receive a copy.

The Code sets standards for landlord companies regarding the interaction with tied lessees throughout the life of their relationship with the company. Individual sections describe industry requirements for:

- Letting of Premises
- Rent Reviews
- Agreement Renewal
- Interaction with Landlord
- Operation of AWPs
- Use of Flow Monitoring Equipment
- Complaints Procedure
- Assignment
- Surrender of Lease

A full list of signatories to the Code is shown at the beginning of this document. The Pub Governing Body (PGB) strongly recommends that new entrants to the Licensed Trade only consider taking on a tied agreement with a company which subscribes to this Code (or is governed by the Statutory Code).

The PGB has developed a certification mark that can be used solely by signatories to the Code and whom submit a satisfactory compliance audit report to the PGB every year. This can be used on marketing and promotional materials.

Introduction

Types of tied agreements with companies owning less than 500 tied pubs and with the following characteristics, are specifically covered by this Code, irrespective of what they are called or how they are marketed. If you are taking on a tenancy agreement (typically shorter-term agreements where the landlord has responsibility for repairs and insurance) please refer to the tenanted version of this Code.

i. **Tied lease agreements**

Lease agreements are typically longer than the traditional tenancy agreements available in the market and tend to run from five years upwards. They can vary greatly from one agreement to another and usually come with greater repairing obligations. Lessees are "tied" for a range of drinks. Such lease agreements fall within the protections of the Landlord and Tenant Act 1954.

ii. Tied "Contracted Out" lease agreements

Companies may also offer fixed term lease agreements of more than one year that are contracted-out, i.e. not subject to protection under the Landlord and Tenant Act 1954. Tied contracted-out agreements are for fixed terms and are not capable of being renewed for a further fixed term. Companies will specify if there is a process by which a further contracted-out agreement may be granted. Subsequent terms are not required to be "contracted in".

The Lessee does not have a statutory right to be granted a further contracted-out agreement.

The treatment of contracted-out rent agreements under Pub Independent Rent Review Scheme (PIRRS) are dealt with under clauses 45 and 46 of this Code.

Types of agreements, which are <u>NOT</u> covered by this Code:

i. **Temporary agreements**

Temporary agreements of one year or less are not covered by the Code, often referred to as tenancies at will (TAWs) or temporary tenancies. These are short-term agreements, terminable on short notice, and which are used to cover either temporary arrangements or interim arrangements, while longer term agreements are finalised. Companies need to make clear in writing that the tenant is taking on a temporary agreement and is therefore not covered by this code of practice (if the lessee has been in the premises for one year or less).

ii. Free of Tie lease agreements

These types of lease are not covered by this code due to the lack of any form of tie to purchase products from the pub company.

Principles of the Code

1. Companies which subscribe to the Code agree to:

   - abide by its terms and to act at all times in the spirit with which the Code has been compiled;

   - act with integrity and honesty at all times and conduct business in a professional, fair and legal manner;

   - be transparent about their terms of business and other dealings, particularly any charges made or costs passed on, and the way in which rent has been assessed;

   - offer contracts that are fair, reasonable and comply with all legal requirements;

   - deal with complaints speedily and fairly, in accordance with a clearly defined internal dispute mechanism and with access to independent dispute resolution, where appropriate, if such a mechanism fails to resolve the complaint.

2. The Code also places obligations on lessees to ensure that they are fully equipped to make informed commercial decisions. It includes requirements or recommendations for lessees to take independent professional advice.

3. The Code also sets out a requirement for prospective lessees to undertake training to ensure that they fully understand the implications of a pub lease.

Pre-Entry Requirements for Lessees

4. Pub operating companies are under an obligation to ensure that Pre-Entry Awareness Training (PEAT) is completed by proof of certification from the prospective lessee before the final terms for the premises are agreed.

5. Prospective lessees must always demonstrate that they have taken proper independent professional advice prior to accepting a lease, and that such advice has been used to prepare a business plan.

6. PEAT is also an essential part of the final interview process and will help the applicant prepare. It is the company's responsibility to ensure that PEAT is completed at least five days in advance of the final interview at which Heads of Terms are agreed.

7. Prospective lessees must prepare a Business Plan which will include estimations of incomes and related costs, together with projected profit and loss (P&L) calculations. Prospective lessees should consult their financial advisors on the effects of changes on the business plan, both positive and negative.

8. Business plans should be prepared independently by the lessee or prospective lessee and are not to be confused with the pub owning company's rent assessment. Further information on the form and content of rent assessments and the role of P & L accounts is contained from Clause 28 onwards.

9. Lessees and their advisers' attention should also be drawn to Royal Institution of Chartered Surveyors (RICS) guidance which provides advice to valuers[1] on the matters to which they should have consideration.

10. Companies will advise prospective and existing lessees about the availability of Industry Benchmarking Reports, which may assist with the preparation of their business plan and in particular, assist with market comparisons under RICS guidance.

11. Some of the above requirements may be waived (but NOT the business plan), at the company's discretion, in cases where the prospective lessee is suitably qualified through experience and achievement to rely on their judgement, or is a company of sufficient standing.

12. Companies will require prospective lessees to sign an exemption agreement signifying that the requirements for pre-entry training and/or professional advice have been waived in accordance with the statement of qualification for exemption made by the prospective lessee. Companies will provide details of any other training courses they require to be completed, prior to the lessee taking on the agreement.

13. A waiver may be applied (providing the applicant has undertaken PEAT within the last 5 years) where:

    - Applicants are multiple retailers with a number of other pub or bar premises.

    - Applicants can demonstrate at least three years recent experience of running a successful tenanted or leased pub business.

    - Applicants have an existing lease with the company.

14. Where a lease imposes a repairing obligation on the lessee, the applicant must prove to the company they have carried out a full structural survey of the premises.

[1] RICS Guidance Paragraph 7.18: "The supply tied tenant, aside from paying property rent and in some cases a share of machine income, also pays the wholesale prices of the supplying landlord, which are usually higher than those the lessee would pay in the open market. The lessee may compare its own property with the circumstances of being free of a supply tie and consider the profit achievable under those circumstances."

Minimum Requirements for Company Information

15. The key principles set out below must be followed to ensure sufficient information is provided to enable the "reasonably efficient operator"[2] to understand the nature of the pub business being offered and how this will be embodied in a lease agreement.

16. Information provided by the company should be sufficient to allow a thorough evaluation of the business opportunity and the preparation of a detailed business plan to enable a considered commercial decision to be made. Prospective lessees should be advised as to whether protection is afforded under Part II of the Landlord and Tenant Act 1954, as amended, for premises in England and Wales, or whether the agreement is "contracted out" in accordance with the procedures set out in the Act (see introduction for a fuller description).

17. A summary of the general terms of the agreement under discussion must be provided to the prospective tenant before the final interview. This will involve the types of tenancy agreements available and the period of tenure, any purchasing obligations such as a beer tie, together with discounts available, amusement machine tie and any other product ties, and whether they would be willing to consider discussing amendments and whether standard terms are open to negotiation'.

18. Information should be provided to prospective tenants regarding the treatment of cask conditioned beer, for example as an allowance within the expenses or an adjustment to the gross profit line. When calculating the selling price and margins for cask ale, tenants should check information on saleable pints made available by the beer supplier and make the necessary adjustments to wastage allowances and/or gross profit in any business plan or P&L account as appropriate. Details should also be given regarding repairing obligations, payment terms, rent review frequency and ownership of fixtures and fittings. Companies will also advise whether there is a superior landlord where the company does not own the freehold of the premises.

19. At or before the final interview, companies must ensure the lessee completes and signs a lease interview checklist in respect of the property. An example is included at Annex 1 of this document. Please note that as practices differ from company to company, tenancy interview checklists will not follow a standard format – however this does not affect the fact that the company must ensure the lessee completes such a checklist ahead of taking on the agreement.

[2] RICS Guidance Paragraph 2.10: "A concept where the valuer assumes that the market participants are competent operators, acting in an efficient manner, of a business conducted on the premises. It involves estimating the trading potential rather than adopting the actual level of trade under the existing ownership, and it excludes personal goodwill."

Pub Premises

20. A full description of the pub building together with associated land and buildings included in the lease will be provided, including details of the premises licence and any conditions attached thereto as well as any enforcement action taken during the previous two years, where known. It may also include details of any Early Morning Restriction Order (EMRO) or Late Night Levy where known, and information about local planning developments that will affect the premises.

21. Details of any restrictions on the uses to which the premises may be put which relate to its operation as a public house (e.g. ACV status, planning constraints on types of trading and/or hours, disclosure of Use Classes – Sui Generis -Class of its own (e.g. public house, wine bar, drinking establishment with expanded food provision, hot food takeaway, live music venue, concert hall, theatre) or Class E – Commercial, Business and Service (e.g. shop, restaurant, café, gym, creche) will be provided.

Business Development Managers (BDMs)

22. Companies will set out provisions and commitments governing the competence and future progression of BDMs or equivalent role; including on-going training.

23. Companies will set out the role of BDMs and the support and professional guidance they will provide, including the content and application of the Code and associated self-regulatory mechanisms. Under the Code, companies will ensure all BDMs have completed appropriate training. Companies must ensure this is completed within twenty-four months of the BDM being appointed in their role. This will include procedures for rent reviews. In keeping with the code, BDMs are required to act in a professional and responsible manner in their dealings with lessees.

24. It is recommended that Companies supply lessees with a written record of a meeting with their BDM whose contents covered any of the following areas; rent proposals and negotiations, major repairs, business plans and capital investment projects. The record to be provided within 14 days of the meeting.

Business Support

25. Companies will explain how the relationship between the company and the lessee will be conducted during the operation of the lease so that the business opportunities presented by the outlet can be exploited to mutual benefit.

26. Companies will describe the range of support programmes and advice which may be available through the company. Such support might typically include:

    - Commitment to assess capabilities and training needs of lessees and staff.

- Licensing and legal issues.

- Business management advice (lessees will be advised to obtain professional services in areas such as finance, stocktaking and book-keeping).

- Brand promotion, merchandising and provision/maintenance of dispense equipment.

- Outlet promotion and marketing.

- Procurement benefits.

- Rating advice.

- Property support – external decoration, signage, building repairs.

27. Companies will set out their policy for dealing with requests for assistance from lessees arising from circumstances where it can be demonstrated that their business has been adversely affected by a material change in circumstance beyond their control. This is defined as an event that brings about a permanent change to trading conditions (documented by one year's worth of evidence), is not capable of prevention or remedy by other means, specifically affects the tenant's pub, and is not a result of an increase in tax, duty or regulatory compliance costs. The lessee must make their request for assistance in writing to their BDM. Companies will respond within thirty-five calendar days, unless a further timescale is mutually agreed.

28. Where assistance is given in the form of either a rent concession or increased discount on tied products that are considered to be permanent it is recommended that they be documented by way of a formal binding agreement. Prior to selling a tied outlet subject to a sitting lessee it is recommended that Companies check that any such permanent concessions or increased discount arrangements have been documented by a formal binding written agreement.

Rent Assessment

29. Rent assessments are used by pub owning companies in the preparation of rent negotiations (see Annex B). Please note that the example assessment at Annex B is the minimum amount of information that must be provided to the lessee by the company.

30. All initial rent assessments and assessments for periodic reviews and renewals must be conducted in accordance with the RICS guidance prevailing at that time.

31. Lessees are encouraged to seek advice from a suitably qualified trade valuation advisor before accepting a proposed rent.

32. The guidelines for rent assessment are established independently by RICS and applicable to all leases. RICS keeps its rent assessment guidelines under review. Amongst other matters which the guidelines may take into account are any resulting legislative changes and court rulings.

33. Any resultant changes arising from such developments of the guidelines will be adopted and applied to all leases on review as and when they are published.

34. Companies are to ensure that they make lessees aware that any authorised improvements carried out by the lessee at their expense, are properly documented through a landlord's 'Licence to Alter' and signed by both parties. This will enable the correct procedure under the RICS guidelines for dealing with these works when negotiating the rent.

35. A "Rent Assessment Statement" shall be provided for all new lease agreements and for the purposes of rent reviews. It will contain sufficient detail to enable a prospective lessee to take proper professional advice upon the terms, conditions and effect of the lease being offered. The Rent Assessment statement will be based on reasonable assumptions and will be produced, drafted and approved by a properly competent individual. The rent assessment will enable the lessee to estimate potential profit and loss. Such P&L accounts are not intended to be, nor must they be, taken as projections of profit. Evaluation of the business prospects and profitability are a matter for the lessee and business planning.

36. The rent assessment model will be based on a lawful application of statute and common law. Companies will ensure that the prospective lessee is aware of the basis of the rental assessment (Fair Maintainable Trade) and how the market rent for the property is established. The setting of initial rent and its subsequent review will be handled fairly being based on sustainable trade levels with reasonable allowances made for costs.

37. Details of product volumes purchased directly from the company over the past three years will be provided to prospective lessees where available. Precise history of turnover and overheads will generally not be available, as such information rests with the existing or former holders of the lease.

38. Companies will ensure that a responsible officer of the company or its agent involved in obtaining and/or evaluating the supporting material provided in preparing the rent assessment, will have visited the premises in question within at least three months prior to the assessment being undertaken.

39. Companies will seek to comply with any reasonable request for further information relevant to the rent assessment from the lessee and/or their professional advisors. Where such information is not available the reason for this must be disclosed.

40. When calculating gross profits for tied pubs the prices charged to the lessee by the pub owning company in the relevant tied price list should be used, and allowance made for wastage where appropriate.

Rent Review and Renewals

41. All relevant information, including a rent assessment, must be provided for both a rent review and agreement renewal. Companies will provide a specific timetable for the process involved in rent negotiations, rent review and renewals (the procedure for contracted-out leases is dealt with in sections 45 and 46). Initial rent renewal proposals should be issued no less than six months before the review date.

42. Where the agreement does not include periodic rent reviews, then a lessee may at any time request a rent assessment following the conclusion of an agreed rental term.

Pub Independent Rent Review Scheme (PIRRS)

43. In the event that a rent review remains in dispute when the company and the lessee have produced their final rent proposals and internal resolution procedures have been explored, the lessee has the right to refer the matter to an independent expert through PIRRS or arbitration.

44. Referrals to PIRRS can be made in respect of the following events:

    - Rent reviews.
    - Settling the rent upon the intended grant of a contracted-out lease agreement to an existing lessee.

45. A link to PIRRS will be available on the leased/tenanted section of company websites (www.pirrscheme.com).

46. Irrespective of the terms of the lease agreement, the lessee has the right to elect for a referral to PIRRS and agrees to be bound by the expert valuation delivered through PIRRS (as does the company). This will not remove the right to arbitration as provided for within individual agreements, but the lessee will waive such a right if the option to refer to PIRRS is taken.

47. With regard to tied contracted-out leases, companies must advise the lessee no less than six months prior to the expiry of a contracted-out lease whether the lessee will be offered a new agreement. If both parties agree to take forward a new contracted-out agreement, the lessee will have the right (where agreement on rent cannot be reached) to make an application to PIRRS for independent assessment of the rent reflecting the terms of the lease agreement, subject to the conditions below.

48. An application to PIRRS to determine the rent for a contracted-out agreement for an existing lessee in the premises will only be permitted if the referral is made no more than six months and not less than three months prior to the expiry of the contracted out term, there having been no breach of the existing lease agreement and all other terms of the new lease (aside from rent) have been agreed. As stated in the introduction to this Code, the lessee does not have a statutory right to a new contracted out agreement.

Indexation

49. Where a lease refers to indexation of rent by reference to an index (e.g. RPI/CPI), companies will confirm that the agreement specifies which index is to be used, the date on which the rate will be assessed and applied, as well as the frequency of any adjustment. Companies will notify their lessees that the adjustment in the rent may be upwards or downwards, according to the movement of the index at the time. Companies should encourage lessees to take advice on the effect of indexation on their business plan and their income over the rental period.

Upwards Only Rent Reviews (UORR)

50. UORR clauses must not be included in new tied lease agreements or subsequent renewals.

51. Some existing agreements may contain UORR clauses and, in such circumstances, companies will make it clear that they will not enforce them. In addition, if lessees want a side letter/deed of variation to that effect it can be provided, though at the lessee's expense. Companies will also provide lessees with the opportunity to convert to new agreements without an UORR at no less favourable commercial terms if terms can be agreed.

Wholesale Price List

52. The pub owning company's current and relevant price list will be supplied (under the terms of the agreement for tied and other products) which will include notification about any imminent changes. An outline of trading terms (e.g. credit/payment terms) will also be provided. Pricing and any changes to price lists will always be communicated to the lessee in a fair, timely and transparent way.

53. Where beer is supplied under a tie, details of the range of products available will be provided, including the prices charged by the company for these products, qualifications for discount and whether the company will allow a guest beer supplied direct from any other supplier to be purchased outside the tie.

54. Where wet products other than beer are also supplied, the terms of the purchase obligations attached to these products will be made clear according to the type of agreement.

Insurance

55. Companies must make it clear whether the company will maintain and meet the cost of insurances for the building or whether the cost of such insurance is to be arranged by the company and re-charged to the lessee. Where the company makes a charge, the following clauses in this section apply.

56. Full details of the insurance schedule (to include all aspects of cover provided), a summary of cover and the charges payable to the company will be given to the lessee together with any excess applicable. Companies will "price-match" on any like-for-like policies (based on realistic comparable terms) identified by the lessee and will provide all necessary information on request to enable a comparable quotation to be sought.

57. In the event that the lessee is able to demonstrate that such insurance can be secured at a lower price, for the same degree of cover, the company will recompense the difference in the charge.

58. Companies re-charging for insurance cover will do so only in accordance with the policy and this charge will be clearly and separately shown in the shadow P & L account that is included in the rent assessment statement. Companies will make specific reference to the insured risks to the pubs to which the charge refers.

Amusement Machines

59. Companies will explain the procedure with regard to the supply and operation of tied amusement machines on the premises[3].

60. Relevant information will include the terms of supply (whether or not a machine tie exists), number and siting of machines, arrangements for the collection of cash, machine-management support provided and details of how the landlord/lessee share of machine income will be assessed.

61. Companies will specify the distribution of machine income between the company and the lessee.

62. Companies may not apply royalty charges or up-front access payments.

63. The basis of the calculation of any management or administration fees charged must be transparent, clearly explained and justified. The detail of the charges to be applied

[3] This will include Category C and D machines, skill with prize machines, pool tables and similar equipment.

and the services that it will cover, must be provided to the lessee in advance of an agreement being signed or a charge being applied. Administration charges must be reasonable and must relate solely to the operation and maintenance of those machines covered by the purchase obligation. Such charges must be deducted before the agreed distribution of machine income is made.

64. Lessee income which derives from amusement machines under a purchasing obligation will not be included in the rent assessment statement and will be shown below the "Divisible Balance". Where such income is not subject to a purchase obligation, the net income may be included in the pub income and assessed for rent. The net income is that accruing to the lessee after rent, maintenance and other such charges are taken into account.

Flow Monitoring Equipment (FME)

65. Pub operating companies may have a right to install flow monitoring equipment within premises depending on the terms of individual lease agreements granted. Where the Pub owning company does have such a right they are at liberty to introduce such equipment.

66. Pub operating companies are responsible for the installation costs, maintenance and calibration of FME.

67. Pub operating companies are under an obligation to share data derived from FME with the lessee. This is a useful management information tool. Access to such data is to be available online and/or through a request to the BDM.

68. Lessees are responsible for the cost of electricity.

69. Protocol in the event of a suspected breach of the tie is as below:

    i. Where FME data records any discrepancies between dispensed volumes and those purchased from the pub company, the pub company or agent authorised to act on behalf of the company will visit the premises to conduct an investigation.

    ii. If FME data provided through FME shows a variance between volumes dispensed and those purchased from the pub owning company, a calibration of the system by a suitably qualified person, must be carried out before any investigation is raised. The lessee must be invited by the pub operating company representative, or their authorised agent, to attend the re-calibration of FME. Following calibration (i.e. the system is working properly) FME information obtained prior to the calibration remains valid.

    iii. Where FME data indicates that a breach of the tie agreement has occurred, Pub operating companies must provide one or more pieces of supporting

evidence, in addition to this data, before a charge can be levied against a lessee's trading account.

70. Additional evidence, as referred to in Paragraph 69 (iii) may include, but shall not be limited to, one or more of the following:

- Discovery of product not purchased from Pub owning company
- A signed admission by the lessee
- Non Pub company marked packaged product on site
- Letter of undertaking
- Stock reports
- Significant turnover discrepancies versus accounts
- Surveillance information
- Third Party supplier documentation
- Test purchasing
- Proof of tampering
- Container balances
- Container tracking
- Refusal of access to any part of the property without due reason by the signatory to the agreement

71. Where a breach of the tie agreement has occurred, pub operating companies are permitted to impose a penalty charge as specified in the agreement. Pub operating companies are not permitted to raise a charge to the trade account without the lessee's prior knowledge.

72. Where tampering with flow monitoring equipment is discovered, pub operating companies are entitled to recover from the lessee, costs relating to any necessary repairs.

Capital Developments

73. Where the company is to undertake and to be responsible for the financial cost of a capital development project (and the agreement provides for this), they must make clear to the lessee the implications of such a development on the rent payable and the lessee's financial responsibilities for fixtures and fittings.

74. Lessees are advised that they should always discuss with the company, obtain a "Licence to Alter" and take professional advice before undertaking any capital investment projects at their cost.

Dilapidations

75. Companies will supply prospective lessees or assignees with details of the repairing obligations contained in the lease agreement. It is recommended that a schedule of condition is attached to the lease. Details of ongoing repairs and maintenance obligations are also to be provided.

76. During a lease agreement, companies can issue a Schedule of Dilapidations; it is recommended that a schedule is produced at least once every 5 years. In this event the company will afford the lessee ideally 12 months, but no less than 6 months, to put right the works, save for any repairs that require immediate repair under health and safety legislation, needed to prevent damage to the building, void any insurance claim made by either party or are business critical.

77. At the end of the agreement a breakdown of dilapidations must be provided to the lessee ideally between 18 and 12 months but no less than 6 months prior to the expiry date of the lease to allow the lessee time to address the repairs.

78 [Companies and Lessees should refer to the Pub Dilapidations Advisory Group Best Practice Guide to the management of pub repairs and dilapidations.]

Assignment of Leases

79. Companies will respond to a request to assign in writing within a maximum of 20 working days of receipt of the written request and will explain the contractual implications for disposal of the business. Full details will be provided regarding procedures, professional support and advice available and all relevant fees.

80. The company will ensure that the potential purchaser (assignee) is supplied with the same information as would be supplied by the landlord at the commencement of a lease and is able to take his/her own proper business decisions about the business being offered.

81. The companies are under an obligation to ensure that assignees comply with the pre-entry requirement procedures by:

- Demonstrating they have taken proper independent and professional advice (legal and business advice).

- Completing Pre-Entry Awareness Training (PEAT) or applying a waiver if the criteria are met.

- Being in possession of a Personal Licence or having a Designated Premises Supervisor.

- Producing a business plan (waivers cannot be applied to this request).

82. Companies will not agree to an assignment unless the above requirements have been complied with, but consent will not be unreasonably withheld.

83. The lessee selling the lease (assignor) shall comply with all the requirements made of them to provide trading and other information to either the company or the prospective assignee under the terms of the lease.

84. Where a lease imposes a repairing obligation on the lessee, the assignee must prove to the company they have carried out a full structural survey of the premises.

Termination

85. Companies will advise whether there is a contractual obligation on the company and / or incoming tenant, for the purchase of an outgoing tenant's fixtures and fittings on termination and / or at the end of the term of the tenancy and if so, what arrangements for payment should be made.

86. In the event that a company terminates a tenancy or does not grant a new tenancy as a result of either;

    (a) disposing of its interest in the property so that there is no incoming tenant available to consider purchasing the tenant's fixtures and fittings; or
    (b) it taking the property into its own occupation

    Then the company will purchase the tenant's fixtures and fittings.

87. The company should aim to pay to the tenant the value of the fixtures and fittings within 14 days of their vacating the premises unless there are debts owed to the company (which may include outstanding dilapidations) that exceed the value of the trading deposit. However, both the trading deposit and fixtures and fittings value (net of any debt) should be returned to the tenant within a target time period of 4 weeks of vacation.

Surrender

88. Companies will set out how they will deal with any requests for surrender of the lease outside agreed notice periods.

Complaint Resolution

89. Companies should explain the procedures to be adopted where either party feels that a complaint has not been dealt with satisfactorily or that the provisions of the Code have not been followed.

90. Where the tenant believes that he/she is the aggrieved party they should make their initial complaint in writing to their BDM. If a satisfactory conclusion cannot be reached the tenant should write to the BDM again, asking for the complaint to be escalated. The written complaint must be formally investigated and concluded at an appropriately senior level of management in the company concerned, and at a level of management higher than that at which the relevant decisions were initially taken. The written complaint must be formally concluded by the senior manager within thirty-five working days of receipt, unless another timeframe is mutually agreed.

Pub Independent Conciliation & Arbitration Service (PICA-Service)

91. For other types of disputes, with the exception of contractual rent review, where a resolution is not considered possible or is not achievable, the complaint may be referred either to the Courts or, where the complaint concerns the adherence to the Code, to PICA-Service for independent resolution, provided that the company complaints dispute mechanism has first been completed.

92. PICA-Service provides an independent service, available at low cost to lessees. Disputes may be referred either after pursuing remedies through the company and failing to reach a satisfactory resolution, or where the company fails to respond to an initial written outline of grievance, and in accordance with PICA-Service protocols.

93. Where the process described in Paragraph 90 does not bring about a conclusion satisfactory to the lessee, the company is obliged to give the lessee the right for a referral of the dispute to an independent panel through PICA-Service, or through arbitration, or through due legal process in the courts.

94. Where the lessee elects to refer the dispute to the PICA-Service, as part of the application process the dispute will not be able to progress to the final hearing stage if the lessee does not sign an acceptance form to the terms and conditions of the service. The relevant company will be required to sign an acceptance form to the same effect and will abide by the findings of the Panel.

95. The acceptance of PICA-Service terms and conditions cannot forfeit the lessee's or landlord's rights under the lease agreement, nor can the acceptance of the terms and conditions prevent the parties seeking further redress through the courts. However,

it is expected that both parties participating in PICA-Service will abide by the findings of the PICA-Service Panel.

96. A link to PICA-Service will be made available on the leased/tenanted section of company websites (www.picaservice.com).

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Annexes

There are two annexes attached to this Code of Practice - one dealing with the interview checklist, and the other the rent calculation.

Annex 1 - Interview Checklist

To ensure every applicant has the opportunity to ask questions and to cover all the points in the main Code document that need clarification, the following interview checklist has been prepared to aid companies. This is not an optional document, however it should be adapted to fit the circumstances under which the pub is let by the operating company. It would be good practice for the BDM or equivalent to have gone through the list with the applicant prior to the final interview, in order to help them prepare questions. PEAT, unless waived, is also an essential part of the final interview process and will help the applicant prepare. It is the interviewer's job to ensure that PEAT was completed at least five days in advance of the final interview.

Annex 2 -Rent Assessment Statement

Annex 2 contains the rent assessment. This document shows the minimum information required. Some companies will expand the assessment statement to include other items of expenditure, or a more detailed product breakdown of wet turnover. It should be made clear by the interviewer how the following paragraph is dealt with within their company. It should either be by an allowance within the expenses or an adjustment to the GP line:

'When you are calculating your selling price and margins for cask (real) ale, remember to check the information on saleable pints made available by your beer supplier. You then need to make the necessary adjustments to wastage allowances and/or GP in any business plan or P&L account as appropriate, depending on the product mix of your business.'

Annex 1 – interview checklist

In respect of (Property name and address)

Date: Venue:

Attendees:

1. Consideration of Application Form:

- Experience of applicant's personal circumstances and ability to hold licence
- Level of Premium
- Review of applicant's business plan (must be signed/dated by applicants)
    - proposal for business short and longer term
    - profit and loss accounts for at least two years
    - cash flow forecasts
- Confirmation of applicant's financial position
    - proof of finance seen
    - reference information
- Copy of personal licence received
- Copy of BII Certificate of Pre-Entry Awareness Training received dated at least 5 days ago.

2. Discussion of Lease Terms:

- Length of lease
- Explain Landlord & Tenant Act - is agreement contracted in or out?
- Discussion of rent offered by applicant/agree rent by negotiation with regard to the maintainable business of the pub
- Frequency rent is payable
- Rent review provisions - explanation of rent review procedure and specific timetable
    - Is the rent indexed to RPI/CPI (explain)
    - Periodic Review at end of each agreed term (normally 3, 5 or 6 years)
- Benchmarking reports BBPA, ALMR, BII
- Dispute procedure - explanation of PIRRS and PICAS
- Explain assignment procedure
- Building insurance - who pays the building insurance - explain process
- Tenants Insurance - explain their obligations - etched glass, public liability, employer's liability, loss of cash etc.
- Repair obligations – refer to lessee agreement list - explain who is responsible for what
- Dilapidations - how this process works
- Alterations – what can a lessee alter without permission under the lease - explain joint improvements with tenants - explain permissions to re-decorate (if any) and why
- User clause – normally just pub, but can have restaurant or letting added where appropriate
- Opening Hours- agree opening hours
- Tie - explain the extent of the tie - explain beer flow meter procedure if in place
- Machine Income - explain terms of supply/share of income

3. Other Property Matters:

- Rating - explain re rates and any experts the company has to help with review of rates
- Discussion of physical state of property and any plans company has to invest
- Discussion of other company outlets operating in locality especially If an investment is Imminent

4. Business Matters:

- Ensure applicant has had details of:

- past three years history of goods supplied
- past three years turnover figures (if previously managed house)
  - rent assessment
  - copy of the premises licence and any restrictions it contains/recent enforcement action
- details of any restrictions on the usage of the property
- copy of all wet product price lists
- blank copy of the agreement on offer
- beer flow monitoring equipment procedure where applicable

- Terms of Trading – credit facilities, etc
- Discussion of previous operators of property
- Explanation of Discount Schemes if applicable to agreement
- Explanation of Capital Investment Policy if applicable
- Discuss ongoing training given to BDMs and the business support the applicant can expect from them

5. Estimated Ingoing Costs:

- Explanation of ingoing costs
  - Rent in advance £
  - Deposit £
  - Inventory £
  - Stock/glassware/working capital £
  - Premium where applicable £
  - Letting Fee £
  - Improvements/repairs £
  - Estimated total ingoing £

6. Procedural Matters:

- Heads of Terms Letter sent is successful application - needs to be signed and returned
- Explain procedure for completion day
  - lease must be properly completed
  - rent/deposit/fees/inventory should be paid via solicitors or brokers in advance
  - valuers for both parties will usually check stock/inventory on day of change
  - explain transfer of undertakings procedure
  - explain minimum training requirements if applicable
  - explain open book accountants' procedure if applicable
- Re-iterate the requirement to have sought professional advice before signing agreement

7. Final

- Confirmation of rent agreed £
- Confirmation of proposed change date if possible

I/We the undersigned confirm that the above subjects have been fully discussed
I/We were given the opportunity to ask questions on all aspects of the premises.
I/We were supplied and given an explanation of the contents of the Code of Practice.

Applicant Signature	Date
Interviewer Signature	Date

Annex 2 – rent assessment statement

Rent Assessment Statement (Without Prejudice) Pub X				
TRADING HISTORY (where applicable)				
Product	**Measure**	**Year**	**Year**	**Year**
Beer	Barrels			
Minerals	Litres			
Wine	Litres			
Spirits	Litres			
WET TURNOVER				
Product	**% of Wet Sales**	**Turnover £**		**Total**
Beer				
Minerals				
Wine				
Spirits				
Dry Turnover (food)				
Accomodation				
Machine Income				
Other Income				
Total				£
GROSS PROFIT				
Product	**%**			**Total**
Wet				
Dry				
Accomodation				
Machines				
Other Income				
Total				£
EXPENSES				
	% Turnover			**Total**
Wages				
Rates				
Utilities				
Repairs				
Marketing/Promotion				
Professional Fees				
Service charge				
Interest on Capital				
Other Costs				
Total				£
TENANTED RENT CALCULATION				
Pub Trading profit				
Less AWP Machine Income				
Net Divisible Profit				
	% To Rent			
Current Rent				
Rent Payable Future				£
Please Note - this valuation is hypothetical. It is based on assumptions and does not guarantee future or present performance of the business. Operators are always advised to take independent advice unless their own experience permits them to be entirely confident of their own assessment.				