

# The S&N Pub Enterprises Lessee Charter



## 1 INTRODUCTION

- a Entering into an agreement to occupy a public house (or other licensed premises) is a major commitment. It involves a financial investment by the lessee. Specialist skills are also required to operate a successful public house profitably in a highly competitive market.
- b The Lease or Franchise Agreement (the Agreement) sets out the contractual relationship between the landlord and the lessee for the duration of the term of occupation, and it is therefore essential that prospective lessees have a complete understanding of the contractual obligations they are undertaking. Additionally, they must be confident that they have the necessary skills to operate the business profitably and in accordance with the agreed terms of the contract.
- c Scottish & Newcastle plc (S&N) will in some instances be the landlord of the subject premises. In most cases a subsidiary of S&N or a third party property owner will be the landlord. S&N Pub Enterprises (Management) Limited (SNPE) is the Managing Agent who acts on behalf of the Landlord. SNPE is the division of (S&N) responsible for the operation of its public houses.
- d The code of practice sets out SNPE's policy for its dealings with its public house lessees, which builds upon the BBPA model Code of Practice. It applies equally to lessees of other licensed premises (e.g. hotels), and references throughout this code to public houses apply equally to other licensed premises. **It does not form part of a legal contract and is not intended to form part of any legal contract.** Nor is the code intended to be a substitute for appropriate professional advice. All lessees and prospective lessees are strongly advised to seek independent legal advice, independent surveying advice on the structure of the building and other appropriate professional advice, prior to committing themselves to any lease agreement, or to any other change in their obligations.

## 2 SCOPE OF THE CODE

- a In relation to arrangements for the letting of public houses, the code applies to all lessees and prospective lessees of public houses, managed by SNPE, when each of the following apply:-
  - (i) The Agreement is granted directly by S&N (or by a company which is a subsidiary of S&N at the date of the agreement or by a Company who has a management contract with SNPE for the management of its tenanted and leased pubs).
  - (ii) The commencement date of the Agreement is on or after 21 July 1997.
- b In relation to other matters, the code applies to all lessees of S&N & SNPE operated public houses.
- c The code will apply only while ever S&N is the lessor (i.e. while ever the reversionary interest is vested in S&N or a company which is a subsidiary of S&N), and/or while SNPE is the managing agent.

## 3 GENERAL

During the whole of the term of the Agreement, SNPE will assist the lessee in promoting the business carried out at the house. At all times SNPE's representatives will deal with the lessee in a constructive, courteous, and professional manner.

## 4 DISCLOSURE OF TRADING AND OTHER INFORMATION

SNPE will provide the following information to prospective lessees:

- a Historic volume figures in writing of supplies of beer and other drinks by S&N to the house offered for lease. Where available the figures will cover at least the two years immediately prior to the commencement of negotiations. Should negotiations be protracted SNPE will provide updated figures in writing on request. All figures will be provided on the basis that the prospective lessee understands that historic figures are not necessarily an indication of future performance.
- b The basis on which the opening rent is agreed.
- c Details of any known significant and relevant defects in the physical condition of the premises.
- d Scottish & Newcastle UK's current regional price list.
- e SNPE's current policy on investment in its leased estate and the basis upon which further investment in the premises or business might be made.
- f Where available, details of the premises licence and any conditions relating thereto (including any enforcement action taken during the previous two years).
- g Information on any material change of commercial conditions likely to appear in the area. Prospective lessees, when completing their business plan, will be advised to make a full assessment of the competition.

## 5 EXPLANATION OF THE MAIN TERMS OF THE AGREEMENT

- a SNPE will give prospective lessees a written explanation in plain English of the main terms of the Agreement, including:-
  - (i) The basis of subsequent rent reviews and the rent review process.
  - (ii) The lessee's repairing obligations.
  - (iii) Each party's insurance responsibilities.
  - (iv) The purchasing obligations and tie.
  - (v) The discounts payable to the lessee under the Agreement.
  - (vi) Machine income sharing arrangements.
  - (vii) The duration (and applicability of any break clause).
  - (viii) Where applicable, restrictions on assignment and the process to be followed when a lessee wishes to assign their agreement.
  - (ix) Restrictions on sub-letting and shared occupation. (Under the SNPE standard lease agreement sub-letting and shared occupation are prohibited.)
  - (x) The legal consequences which are likely to arise if the lessee fails to comply with the terms of the lease.
  - (xi) In England and Wales the applicability of the Landlord and Tenant Act 1954.

b SNPE offers standard form lease agreements. For reasons of good estate management, variations in the standard form will not normally be considered. This will be made clear to prospective lessees and their legal advisers, in order to save time and unnecessary expense.

## 6 BUSINESS SUPPORT AND BENEFITS TO LESSEES

a SNPE will provide prospective lessees with details of:-

- (i) The range of training courses available to both lessees and lessees staff.
- (ii) Business management advice provided by OSMs, together with, in the case of franchises, details of the accountancy and stocktaking services. For non-franchised agreements, lessees are advised to obtain their own stocktaking and book keeping professional services.
- (iii) Brand promotion, merchandising and the provision of/and maintenance of dispense equipment.
- (iv) Rating advice.

## 7 AMUSEMENT MACHINES

a SNPE will provide lessees with details of the arrangements for all gaming machine equipment, where applicable including:-

- (i) Terms of Supply
- (ii) Number and siting of machines
- (iii) How machine income and rental is calculated and apportioned.
- (iv) Arrangements for the collection of cash.

## 8 PERMISSION FOR CHANGE OF USE

The SNPE standard lease agreement contains strict restrictions on the use of the premises, normally restricting use to carrying on the trade of a fully licensed public house (or hotel). Notwithstanding the terms of the Agreement, SNPE will give due consideration to any request to extend the use of premises, (e.g. to allow use of spare bedrooms as letting bedrooms), where this will increase the profitability of the lessee's business.

## 9 RENT CALCULATION AND RENT REVIEWS

a Rent Calculation

In calculating the rent for each individual pub, SNPE prepare a hypothetical profit and loss for the pub based upon a good average lessee. The rent is then assessed by reference to similar pubs in similar locations, in the case of rent reviews, any structural alterations carried out by the lessee with the landlords consent (this does not include repairs and decorations which lessees are required to complete under the terms of the Agreement). The balance of the terms of the Agreement, such as repairing responsibility and the price the lessee pays for beer are also considered. The final rent assessment is made by agreeing the share of assessed profit before rent, the rent is typically around half but may vary between different pubs.

b Rent Review Process

In the open market rent reviews are normally settled by negotiation, if such a settlement is not reached then SNPE with the agreement of the lessee and on completion of appropriate documentation, will grant

the lessee the option to invoke a simplified scheme to settle the rent review at a fixed cost.

c Fixed Cost Arbitration Process

- (i) The lessee will have the option of invoking the scheme if the rent has not been agreed two months before the date of the review. The lessee will have four weeks within which to exercise the option.
- (ii) An independent expert will be appointed to determine the rent. Where the appointment is not agreed between the lessee and the Company, the President of the Royal Institution of Chartered Surveyors (RICS) can be asked to make the appointment.
- (iii) The independent expert's costs will be shared equally between the lessee and the Company. The costs to be shared are as follows:

a A fee payable to RICS, where it appoints the expert. The fee is currently £320 including VAT, but may be changed by the RICS from time to time.

b The expert's fee which will be 6% of the rent reserved prior to the date of the rent review, plus a contribution of £100 in respect of travelling and other expenses. (The percentage and the amount of the contribution may be varied by the Company from time to time, but any such variation will not apply to rent reviews for which the scheme has already been invoked).

- (iv) The lessee and the Company will be responsible for their own costs in respect of any advisers they appoint.
- (v) The lessee and the Company may each make one written submission and one written counter-submission to the expert. No submission or counter-submission may exceed 10 pages in length.
- (vi) The expert will not determine questions of law.
- (vii) The expert will set out a timetable for submissions and counter-submissions. The expert's decision will be given within four weeks of receipt of the counter-submissions.
- (viii) The expert's decision will be binding on the lessee and the Company.

This fixed cost, simplified scheme will apply only to periodic (normally three or five yearly) rent reviews, where the lessee chooses to invoke the scheme. The full arbitration process set out in the lease will continue to be available if the rent is reviewed for any other reason, or if the lessee opts not to use the fixed cost, simplified scheme.

## 10 SUPPLY OF BEER WHEN A PUBLIC HOUSE IS PURCHASED

When S&N purchases a leased house it will, in consultation with the lessee, draw up a plan to ensure the range of products available, suitably match the needs of the business.

## 11 UNDERTAKINGS BY SNPE MANAGEMENT

From time to time, SNPE's representatives may, in the course of discussions or negotiations (e.g. concerning a lease agreement, or development proposal), give certain undertakings. In order to avoid any misunderstanding at a later date, SNPE's representatives are instructed that undertakings on matters of importance must be confirmed in writing to the lessee. Undertakings (whether legally enforceable or not) will be honoured by SNPE only where they are confirmed in writing. Lessees are strongly advised to await confirmation in writing before acting in reliance on any undertaking which they believe to have been made to them.

## 12 OBLIGATIONS ON S&N AS THE LESSOR AND/OR SNPE AS MANAGING AGENT

- a Obligations imposed by the Agreement on S&N as the lessor or SNPE as managing agents on behalf of the lessor will be fulfilled fully and promptly whenever possible.
- b As required by the Agreement, SNPE expects the lessee to notify SNPE promptly of problems requiring action on its part.

## 13 LESSEES EXPERIENCING OPERATIONAL DIFFICULTIES

- a The terms under which a lessee occupies an SNPE public house and operates the business are incorporated in the Agreement, which also sets out the legal contractual terms of the business relationship between the parties. Both parties are legally bound by these terms for the duration of the Agreement.
- b SNPE recognises that circumstances can arise where competent lessees experience business difficulties which are, in certain respects, beyond their control (e.g. the closure of a major business on which the pub depends for a substantial proportion of its trade).

A lessee facing such circumstances - as a result of which they are unable to meet their obligations under the Agreement - should, in the first instance (and before the position becomes critical) contact SNPE's Operations & Sales Manager who will then arrange for:

- (i) A detailed review of all aspects of the current business carried on at the outlet.
  - (ii) An assessment of the actual or potential impact on the business.
  - (iii) A review of alternative market opportunities for the outlet and the viability of any expenditure needed to exploit these opportunities.
- c Following this appraisal, SNPE management will discuss with the lessee appropriate solutions, together with the cost of these and their impact (if any) on the terms upon which the landlord and the lessee entered into the Agreement.
  - d SNPE also recognises that in some instances business difficulties can be encountered which cannot be addressed on the above basis and

an early termination of the Agreement may be the most appropriate solution if further trading or capital losses are to be avoided by either or both parties.

- e SNPE senior management will consider such instances on a case by case basis, and discuss the available options fully with the lessee. The outcome of the review, and of subsequent discussions, will be confirmed to the lessee in writing.
- f SNPE will enter into this process on the basis that the lessee will co-operate fully in a joint effort to improve business performance, in particular by:-
  - (i) Sharing all relevant information with SNPE.
  - (ii) Considering all suggestions for improvement with an open mind.
  - (iii) Giving enthusiastic support to all jointly agreed initiatives.

## 14 EARLY SURRENDER OF THE AGREEMENT

Under the terms of the S&N standard non assignable, non major repairing Agreements the lessee's rights to give notice to quit are limited, (six to twelve month's notice to expire at the end of a term.) However, where a lessee, notwithstanding the terms of the Agreement, wishes to leave early, SNPE will normally, subject to acceptable terms being agreed, accept an early surrender of the Agreement, provided a suitable replacement lessee can be found, and subject to payment of SNPE's reasonable costs.

Where an Agreement is assignable, except in exceptional circumstances, SNPE will not normally consider surrender.

## 15 MEDIATION

Any problem should be raised, in the first instance and as soon as the lessee becomes aware of it, with the Operations & Sales Manager responsible for the outlet, allowing speedy resolution. Thereafter a lessee who believes that SNPE, or its representatives, have failed to comply with the terms of this code of practice should write to the Operations & Sales Director who will meet the lessee to mediate on the complaint. A lessee, who is dissatisfied with the finding of the Operations & Sales Director, should write to the Managing Director, Scottish & Newcastle Pub Enterprises, 2 - 4 Broadway Park, South Gyle Broadway, Edinburgh, EH12 9JZ, who will appoint another senior manager, unconnected with the complaint, to investigate the matter on his behalf.

If a lessee is dissatisfied with the final finding, the lessee should write again to the Managing Director who will then arrange for the appointment of an independent arbitrator (the terms of the scheme detailing how the arbitrator will be appointed and the terms of reference are available upon request).

**This code does not form part of a legal contract and is not intended to form part of any legal contract.**