

GUIDE TO

# TIED RENT ASSESSMENTS & RENT REVIEWS





## STAR PUBS & BARS

Star Pubs & Bars is the Leased pub division of Heineken UK Ltd, the UK's leading cider and beer producer and a passionate supporter of the great British pub.

Our business relationships with our Licensees are built on trust and mutual profitability. Our approach is collaborative, fair and transparent and is based on mutual respect.

With your help, we want to run the best pubs and bars in the best locations and offer you the best support and training possible. We believe wholeheartedly in teamwork as it is by working closely together that we can achieve the greatest success.

This guide explains how rents are set, which is done in line with industry guidelines, and what to expect when it comes to rent reviews.



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## Setting the Rent

Star Pubs & Bars rent assessment process is designed to establish the correct and fair market rent for the pub. Rent is not based on the previous performance of the pub or on any guarantee of future trade.

SP&B will provide a Rent Assessment when advertising a pub vacancy, at the start of new Lease negotiations, at any rent review, when proposing a refurbishment project, or on the commencement of Lease renewal negotiations. The rent will be agreed between SP&B and the Licensee and will form part of the Lease.

## Valuation method

SP&B assesses the rent for each pub using the Profit Methods of Valuation which is recognised throughout the pub industry and follows the current guidelines set by a professional independent body, the Royal Institution of Chartered Surveyors (RICS). The guidelines are referred to as “The capital and rental valuation of public houses, bars, restaurants and nightclubs in England and Wales” and can be found on [www.rics.org](http://www.rics.org). Any changes resulting from a review of the guidelines will be adopted by SP&B following publication and applied to all Leases at initial letting, rent review or renewal.

SP&B takes into account the local market conditions and the pub’s trading potential when operated by a Reasonably Efficient Operator. This is referred to as the Fair Maintainable Trade (FMT). SP&B calculates the income that would be generated by a Reasonably Efficient Operator, and deducts the costs the operator would be expected to incur, to calculate the profit. This profit figure

is known as the Divisible Balance and is used to calculate a rent for the property, as show on the Rent Assessment advertised on pub vacancies, or provided at rent review or Lease renewal.

Once agreed, this rent is then fixed until the next rent review, or RPI anniversary if applicable to the Lease. This means that if the pub generates less profit than predicted, the Licensee will have lower income as the rent is not subsidised if trade is lower than expected (or costs higher), however it also means that any profit generated which is higher than expected, will increase income for the Licensee. It is therefore important to prepare a Sensitivity Analysis showing the effect of an increase or decrease in trade on the profit level, which must be included as part of the business plan.

The Rent Assessment comprises an estimated / outline profit and loss account for the pub, which ensures the rent proposed is completely transparent. The Rent Assessment will be produced, drafted and certified by a competent and experienced individual and will be reviewed and approved by a qualified member of the RICS.

To prepare the Rent Assessment correctly, SP&B will:

- Review the pub’s trading performance over the previous three years.
- Assess the income levels and associated costs of running the business, and benchmark these against industry data. The ALMR Benchmarking Report and the BBPA “Running a Pub” cost guides are useful benchmarking documents and can be found on their websites.

- Explain the rental valuation and the assumptions made in cases where trading history is not available.
- Calculate profitability based on tied product prices where products are subject to a tie, and on open market prices where products are not tied.
- Make an allowance to reflect the Licensees interest on the capital invested in the business. Capital will include any purchased fixtures and fittings, stock and working capital.
- Disregard any machine income where this income is shared with SP&B.
- Disregard any personal goodwill (the value of profit generated over and above market expectations of a Reasonably Efficient Operator) or any under-performance should the operator not reach the standards of a Reasonably Efficient Operator.
- Disregard the effect of any improvements made to the property that have been formally documented by a Licence to Alter, but not alterations which have been undertaken without our consent, or agreed as part of the initial Lease negotiation.
- Assume costs that are relevant to an owner operator running the business unless clearly specified to the contrary in the rental valuation. A different Rent Assessment can be provided on request if a Manager is to operate the pub on behalf of the Licensee.
- Assess comparable evidence for guidance in the preparation of the FMT (Fair Maintainable Trade), FMOP (Fair Maintainable Operating Profit) and split of the Divisible Balance between SP&B and Licensee. The Divisible Balance is the estimated profit when the costs and disregards are deducted from the income. Both parties should prepare rental proposals based on taking a share of this profit.



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- Provide you with details of volumes purchased directly from SP&B over the last three years, if available. A precise history of turnover and overheads will not always be available as this information may rest with the existing or previous Licensees, or a pub may have been closed for a period of time.
- Will supply details of comparable properties that have been used as part of the rent assessment, specifying the relevant information used in the comparison.

Although the shadow profit and loss account forms the basis of the Rent Assessment, it is not intended to be, nor must it be taken to be, a projection of profit. The evaluation of the business prospects and its profit potential are the Applicant/Licensee responsibility and the Rent Assessment is not a substitute for a properly prepared business plan.

SP&B will seek to comply with any reasonable requests for further information from you or your professional advisers relevant to the rent assessment. Where the information is not available, we shall explain the reason why.

## The Rent Review

SP&B recognises that the Rent Review process can be daunting and create uncertainty for Licensees. SP&B will be open, transparent and fair throughout the Rent Review and be sensitive to any concerns which a Licensee may have.

The mechanism and dates of any rent reviews are specified in the Lease. Our Rent Assessments are based on the terms of the pub's specific Lease and the level of market rent that would be achieved if the pub was available to let to a Reasonably Efficient Operator in the open market at the date of the Rent Review. As a result of the Rent Review, the new rent could be higher or lower than before, however, many older tied Leases refer only to increases in rent following rent reviews. SP&B does not enforce upward only rent review clauses on tied Leases and if you wish, you can request that the relevant clauses in the Lease are amended to reflect this. If such an amendment to the Lease is requested it will be done through a Deed of Variation, and you will be charged a fee to cover the administration expenses involved. Details of this fee can be provided on request by email to [realestate@starpubs.co.uk](mailto:realestate@starpubs.co.uk). Alternatively, provided that terms can be agreed, SP&B will allow you to enter into a new agreement on terms that are no less favourable than your previous Lease, removing any mention of an upwards only rent review.

## Steps to agree the Rent Review

As your Rent Review date approaches, SP&B will take the following actions for tied Leases:

- Aim to agree all Rent Reviews with Licensees through discussion and negotiation.
- Arrange to meet and inspect the property. At the meeting we will collect further information about the pub, including costs, sales, latest accounts, the competition and any factors that need to be brought to our attention regarding the Rent Review.

- Recommend you seek independent advice and undertake your own Fair Maintainable Trade assessment of the business.
- Write to you as least seven months before the Rent Review date to advise you of our rent proposal and provide all the information required by the Pubs Code, including your right to request an MRO (Market Rent Only) Option Lease.
- Ensure the rent proposal has been produced, drafted and certified by a competent experienced individual and approved by a qualified member of RICS confirming it has been produced in accordance with the RICS guidelines in force at the time.
- Arrange to meet with you and/or your independent professional advisors to discuss the proposal in person.
- Conduct all negotiations in a professional, constructive and courteous manner.
- Aim to reach an agreement on rent at least two months prior to the Rent Review date. However, if there is a genuine difference of opinion between us then this may require more meetings or time. Where settlement by negotiation has not been possible, it may be necessary to refer the matter for third party determination.
- Arrange for the preparation and signing of two rent memorandums once the rent is agreed, one for each of us to retain.



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## **If we fail to reach agreement on the rent for the purposes of the Rent Review**

In the majority of cases, rents are agreed through discussion and negotiation. If, however, we are unable to agree the new tied rent, the procedure for resolution is outlined in the Lease. The usual routes for resolution include one of the following:

1. The Pub Independent Rent Review Scheme (PIRRS); or
2. An independent expert; or
3. Formal arbitration

For the avoidance of doubt, if the Lease does not make reference to PIRRS, you still have the right to choose referral to PIRRS. SP&B agrees to be bound by its decision.

If the Rent Review is to be settled using one of these three independent routes, SP&B strongly recommends that Licensees take appropriate professional advice when preparing their case.

Where the Rent Review is being determined by a third party using one of these routes, Licensees or their professional advisors can ask SP&B for relevant information, which we will not unreasonably withhold, however it may require a confidentiality agreement.

Where the information is not available, we shall explain the reasons.

## **Pub Independent Rent Review Scheme (PIRRS)**

SP&B supports the Pub Independent Rent Review Scheme (PIRRS), which is a low cost and independent scheme, specifically designed to resolve rent review disputes of pubs. Under the Landlord & Tenant Act 1954, third party determination may be used (of which PIRRS is an option) to decide the rent on the renewal of an agreement where the only unresolved issue is the rent.

Provided that a dispute has not already been referred to arbitration or an independent expert, Licensees can choose to have the rent issue resolved via PIRRS. Please note that doing so requires a Deed of Variation of the Lease (the cost of which is included in the PIRRS referral fee) which surrenders any rights to take the Rent Review to independent expert determination/arbitration.

PIRRS will refer the case to an independent Valuer and both parties will be asked to provide relevant information. The rent figure which is established by the PIRRS Valuer is final and binding on both SP&B and the Lessee. Fixed fees are payable to the Valuer at the start of the case. Details of the fees are available on the PIRRS website [www.pirrscheme.com](http://www.pirrscheme.com)

Whatever the outcome, the Valuer cannot rule that one party should pay the other party's costs. Whilst PIRRS involves lower costs than arbitration or an independent expert, it was not established as an alternative to negotiation. It should therefore only be used after genuine attempts to reach an agreement on the rent through negotiation have failed. Even after a referral to PIRRS both parties should continue to negotiate and seek an agreed settlement.

## **Independent Expert**

As an alternative to the arbitration process, parties can choose to have the rent calculated by an independent expert. An independent expert will give an opinion of the open market rent under the terms of the Lease and will be binding on both SP&B and yourself.

The cost of engaging an independent expert must be agreed directly with the Valuer, and both parties enter into a contract to pay the Valuer's fees. The fees can be open ended and become expensive if the case becomes complicated or protracted, however they are generally lower than the cost of the full arbitration process. The costs of engaging an independent expert will usually be split equally between SP&B and the Licensee.

## **Arbitration**

Arbitration is a structured legal process that is widely used to determine Rent Reviews for all types of commercial property. It should be noted that arbitration can be both expensive and time consuming. The process can be technical and procedural, so it is strongly recommended that Licensees appoint an experienced Valuer to ensure that their views are best represented. The Royal Institution of Chartered Surveyors can recommend an appropriately qualified Valuer. It is important to note that the arbitrator can order one side or the other to pay all or part of the costs incurred as a result of arbitration, including costs incurred by the other side. With this in mind, it is possible for either party to make a 'best offer' which may influence who will bear the costs of the arbitration.



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## Market Rent Only (MRO) Option

The Pubs Code grants the right for Licensees to request an MRO Lease at rent review, Lease renewal or at certain trigger events. If you request an MRO Option rent assessment in line with the Pubs Code, SP&B will provide you with the MRO rent assessment and draft Lease.

An MRO Lease offers a commercial Lease for the pub and removes the requirement to buy tied products directly from HEINEKEN. Products brewed by HEINEKEN must still be stocked, but can be purchased via any supplier. This is a hands-off commercial arrangement which changes the basis of the relationship and support between SP&B and the Licensee.

The information throughout this guide and in the Pubs Code relates to tied Leases and does not apply to MRO Leases once they have been signed. This includes levels of contact from BDMs, Licensee Support and rent review processes. The terms of the relationships will be set out in the Lease and a draft of this Lease is available on request.

Requests for MRO must be made in a specific format within certain timescales at set points during the Lease, or at a Trigger Event as detailed in the Pubs Code. SP&B recommends you take professional advice if you are considering an MRO Option.

If an MRO rent quote has been requested and cannot be agreed, a referral can be made to the Adjudicator. Further information on the process can be found in the Pubs Code etc Regulations 2016 available at [www.legislation.gov.uk](http://www.legislation.gov.uk)

If you're unsure about any of the points raised in this guide, do email [realestate@starpubs.co.uk](mailto:realestate@starpubs.co.uk).



Lounge Bar

Welcome to THE CROWN  
EAT • DRINK • RELAX

THE CROWN  
use local...

Beer Garden	MANSFIELD
JOKES	Relaxation

PROUD TO SERVE  
COSTA

We recommend

Room check in



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