



PICA-Service

The Pubs Independent Conciliation & Arbitration Service

TERMS, CONDITIONS & PROCEDURE PAPER - JULY 2015

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1 Introduction

- 1.1 The Pubs Independent Conciliation & Arbitration Service is designed to provide a tied tenant or lessee whose pub company or brewery landlord is bound by the Pubs’ UK Industry Framework Code of Practice with a formal and binding dispute resolution process as a cost effective alternative to litigation through the courts or other dispute resolution procedures.
- 1.2 The PICA-Service provides a mechanism by which a Tenant can deal with a dispute between himself and his PubCo/Brewery concerning perceived breaches of the Pub Industry Framework Code of Practice or individual PubCo/Brewery code of practice or other complaints not specifically covered by such codes but which fall within the spirit of those codes.
- 1.3 The PICA–Service is a wholly owned subsidiary of the Pub Governing Body (PGB). The PGB is responsible for establishing the rules of governance and case protocols for both the Pubs

Independent Rent Review Scheme (PIRRS) and PICA-Service. It is provided by six of the industry's leading associations representing both tenants and landlords: the Association of Licensed Multiple Retailers (ALMR), Brighton and Hove Licensee Association, the British Beer and Pub Association (BBPA), the British Institute of Innkeeping (BII), the Federation of Licensed Victuallers Associations (FLVA) and the Guild of Master Victuallers (GMV). The PGB Independent Chairman is Sir Peter Luff.

2. **The framework of the procedure**

- 2.1 PICA-Service, given the date the Pubs' UK Industry Framework Code of Practice (IFC) came into effect, can only deal with alleged breaches taking place subsequent to the 30th June 2010. Complaints made by a tenant must be based therefore on alleged breaches taking place from 30th June 2010 onwards in accordance with the wording of the version of the Industry Framework Code of Practice, or an individual Pub Co/Brewery Code of Practice, accredited subsequent to 30th June 2010, and in place at the date of the alleged breach.
- 2.2 The process is not available to tenants at will or tenants with a tenancy of less than twelve months. PICA-Service will not, and can not, deal with legal issues nor will it deal with rent review or lease renewal rental issues. The latter will continue to be referred through the established PIRRS procedures. The conduct of the parties within rental negotiations, other than concerning modes of calculation and figures contended for which if in dispute should continue to be referred through PIRRS procedures, can nonetheless be referred to PICA-Service.
- 2.3 Each complaint referred to the PICA-Service for resolution will involve a decision by a Panel, rather than be by way of the findings of an individual. The PICA-Service panel is not automatically obliged to progress each and every complaint to a full hearing if such complaints very evidently do not constitute technical breaches of or breaches in the spirit of the Pubs' UK Industry Framework Code of Practice or the individual Pub Co's Code of Practice. All complaints will nonetheless be referred to the panel chair for panel consideration. Circumstances may arise which necessitate the need for him to consult with panel members either by conference call or by arranging an informal Preliminary Meeting or Preliminary Hearing in order to clarify whether a case meets with the necessary criteria to progress to a full Hearing or the manner in which a case is to be progressed. The Panel's decision to be final in such matters. The Panel's Award will follow a full Hearing, at which the parties are to be present.
- 2.4 Complainants are therefore advised to ensure that they set out their complaints succinctly and do not include reference to spurious issues which clearly have no relevance to technical breaches of or breaches in the spirit of the Pubs' UK Industry Framework Code of Practice or the individual Pub Co's Code of Practice.
- 2.5 They should similarly be certain to include all issues in their knowledge at the date their complaint is lodged. It is not permitted, unless in extreme mitigating circumstances, for tenants having gone through the process to then lodge further complaints concerning alleged issues which predate or should have been in their knowledge at the time of preparing for an earlier Hearing. Care is taken, PICA-Service having dealt with the administration and substantial costs involved in a Hearing, for the Service to ensure that tenants do not embark upon requests for subsequent multiple Hearings relating to matters in the complainant's knowledge or which should have been in their knowledge when their initial complaint was lodged with PICA-Service.
- 2.6 Whilst more detailed guidance is given within what follows to include detail of permitted timeframes the following represents a brief overview of the procedure adopted in a typical PICA-Service case. This list is not at this stage intended to be exhaustive:-
 - 1 Tenant identifies its grievances to the Pub Co or Brewery landlord and escalates their complaint through them in accordance with the landlord's internal grievance procedure.

- 2 If they do not obtain satisfaction the tenant then contacts PICA-Service Administrators concerning the complaint(s)
- 3 Tenant completes an application form and lodges this along with their complaint document with PICA-Service. This identifies what breaches of the Industry Framework Code of Practice or the Pub Co/Brewery Code of Practice it is alleged have been committed and includes details of the damages sought as a result of the alleged breach (es). The tenant at the same time lodges with the PICA-Service Administrators a registration fee of £200. Provided the complaint or part of the complaint is upheld the £200 will at the end of proceedings be returned to the tenant. The decision of the PICA-Service Panel to be final on this.
- 4 The Administrators provide the complaint to the landlord Company and impose deadlines to enable the landlords to conclude its internal grievance procedure if and as necessary and to lodge a response with PICA-Service.
- 5 The Tenant may then only respond in turn to the landlord's response if it is genuinely considered this contains incorrect or inadmissible material.
- 6 The PICA-Service Administrators arrange for the Hearing to take place. Both parties are to attend.
- 7 The PICA-Service Panel provides the parties with an Award summarising its findings.
- 8 If the Panel has found for the tenant on any issue the £200 registration fee will be returned to them. The panel will often also invite them to lodge a claim for the costs they have incurred in the preparing for the PICA-Service process, travel costs and subsistence within a specified timeframe.
- 9 In which case the PICA-Service panel subsequently makes its Award on costs.
- 10 If the Panel has found for the tenant the PICA-Service Administrators recover the costs awarded by the Panel from the landlord Pub Co or Brewery.

3 **The parties**

- 3.1 The entire procedure is to be conducted by a single named person representing each side. The tenant may deal with the matter him/herself or may appoint a third party to represent them. The Brewery/Pub Co is given the same option but it will not be acceptable, other than with the written consent of the other side, or in unusual circumstances by the specific dispensation of PICA-Service, for one person to deal with part of the procedure with a different individual or different individuals becoming involved at a different stage.
- 3.2 Reference to either party within what follows is as such intended to refer to and include such parties' representative under circumstances whereby a third party Representative has been appointed to represent them.
- 3.3 Reference is made at paragraph 2.6 to the various stages of the procedure. The parties should be aware of the fact they will need to present themselves personally at the Panel Hearing.

4 **Legal Status of Panel Decisions**

- 4.1 In order that PICA-Service can deal with a complaint both parties to a dispute must agree to be legally bound by the PICA-Service Terms and Conditions and by any decision and Award that the PICA-Service Arbitration Panel may make. Pub owning landlords who are members of the British Beer and Pub Association (the BBPA) have afforded such a commitment on an en block basis. Tenants applying to refer a complaint to the PICA-Service will be required to sign an application form in which they agree to be bound by this PICA-Service Procedure paper and the decision of the PICA-Service Panel in the matter. This will constitute a legally binding contract, and may be enforceable through the courts under the law

of contract in the event that following a Decision or Award one or other of the parties seeks to pursue a separate legal claim in connection with the same matter through the courts.

- 4.2 The referral of a complaint to the PICA-Service is not intended to involve a party in relinquishing any of its legal rights under a Lease or Tenancy Agreement, nor to prevent a party from seeking a remedy or enforcement of a decision which only the courts have the power to deal with.
- 4.3 By referring a dispute to the PICA-Service the parties accept that the Panel will act as an arbitrator, and that the Panel's decision will be final and binding on the parties without any right of appeal. There is however no connection with arbitration proceedings under the terms of the Arbitration Act 1996, or any Arbitration legislation, case law or legal precedents.

5 The PICA-Service Administrators

- 5.1 The PICA-Service shall be administered by PICA-Service Administrators and their team. All correspondence, documents and contact with the PICA-Service by parties utilising the service should be addressed to 'the PICA-Service Administrators.'

6 The Panel

6.1 Appointment of the Panel

- 6.1.1 Each complaint referred to the PICA-Service for resolution will involve a decision by a Panel, rather than by way of the findings of an individual. The selection of the members of a Panel to hear a particular dispute is a matter for the chair of the PICA-Service panel to determine in each and every case. The members of a Panel will be drawn from the extended Panel of individuals selected and approved by the PGB such individuals, having undertaken the requisite PICA-Service Panel training, will include those with comprehensive experience of the licensed trade, and may or may not also include lay members.
- 6.1.2 Each Hearing Panel shall consist of at least three Panel Members along with the PICA-Service Panel Chairman or an acting Chairman representing him.
- 6.1.3 The Chairman in appointing Panel Members shall have regard to such considerations as are likely to secure the appointment of an independent and impartial Panel. To this end the Administrators will enquire of prospective Panel Members whether they have any conflict (or potential conflict) by way of having in recent times represented, worked for or had any other involvement with any of the parties involved in the dispute on whose Panel they have been selected to sit which may result in them having a conflict of interest. If they have then the Chairman will replace them with another individual drawn from the extended Panel who does not have such a conflict (or potential conflict) of interest.
- 6.1.4 In assessing or determining whether a conflict of interest may exist this will be given a natural and plain interpretation such as would be applied and understood by a reasonable, objective individual in knowledge of the facts.
- 6.1.5 The parties will be given advance detail of the panel it is intended hear their case and each will have the right to object to one member of such panel if circumstances exist that give them rise to justifiable doubt as to their impartiality or independence. Such objection should be set out in writing to the PICA-Service Administrators within seven days of being advised of the make up of the panel. Any objection must be supported by detailed reasons and the issue as to whether or not to replace the panel member in question is a matter solely for the panel Chairman.

- 6.1.6 Within 7 days from the date of receipt of a detailed challenge the Chairman shall notify the parties of his decision either to replace or remove the Panel Member or to take no action.
- 6.1.7 The decision whether or not to replace a Panel member shall be at the sole discretion of the Chairman. The Chairman will not be required to give reasons for his decision.
- 6.1.8 If the Chairman determines that a the Panel Member involved in a hearing should be removed from the Panel but not replaced, the remaining Panel Members shall have the power in their sole discretion to continue the Hearing and to make any Decision or Award, notwithstanding the failure of one of their number to participate throughout the full duration of the Hearing. In determining whether to continue with a Hearing or to continue to any Decision or Award without the participation of one of their number the other Panel Members shall take into account the stage the proceedings have reached, the reasons for the non-participation of one of their number, and such other matters as they consider appropriate in the circumstances.
- 6.1.9 In the event that the remaining Panel Members determine not to continue with a Hearing, the Hearing will be suspended and the Chairman will empanel a new Panel to consider the application afresh. In those circumstances the parties shall not be required to pay any additional fee to the PICA-Service.

6.2 Replacement of a Panel Member

- 6.2.1 If at any time during the consideration of an application by a Panel a Panel Member notifies the PICA-Service that they have or may have a potential conflict of interest, or if any party to the dispute notifies the PICA-Service that they consider that any member of the Panel engaged in considering that dispute has or may have a conflict of interest then the Chairman of the PICA-Service panel may in his absolute discretion determine that the Panel member in question should be replaced by another member of the extended Panel, or if the timing does not permit a Panel member to be replaced, that such Panel member immediately stands down from the Panel in question. The Chairman's decision whether or not to replace or remove a Panel member will be at his sole discretion and in the event that a Panel member is either replaced or removed this shall not in any way affect the validity of any decision or enforceability of any Award by the Panel.
- 6.2.2 If following a Panel Decision the PICA-Service becomes aware that a Panel Member had a conflict of interest which was not disclosed prior to the Panel reaching its Decision and which, in the sole opinion of the PGB, renders the Decision unsound then the Board may in its absolute discretion determine that the Decision and any Award be set aside, and that the parties be offered a fresh Hearing, in which case no further fees shall be paid by the parties to the PICA-Service in connection with the conduct of the fresh Hearing.
- 6.2.3 The parties need to recognise the fact that circumstances may arise, owing to sudden illness or other unforeseen circumstances such as travel disruption, where a selected panel member is not able to take their place. This may preclude the Administrators from affording to the parties the advices referred to in paragraph 6.1.5 above. The Chairman of the PICA-Service panel may under such circumstances in his absolute sole discretion determine whether or not to replace the panel member and with whom notwithstanding the fact that in such emergency he may not be able to advise the parties in advance of his selection. Should the Panel member not be replaced the remaining Panel Members shall have the power in their Chairman's sole discretion to continue the Hearing and to make any Decision or Award, notwithstanding the failure of one of their number to participate throughout the Hearing. Whether or not the panel member is replaced shall not in any way affect the validity of any decision or enforceability of any Award by the Panel.

6.3 Exclusion of Liability

- 6.3.1 The parties to a complaint referred to the PICA-Service waive, to the fullest extent permitted under law, any claim against the PICA-Service and any persons appointed by the PICA-Service as Panel Members based on any act or omission in connection with the handling and hearing of any complaint and any Decision or Award made as a consequence.
- 6.3.2 In the circumstances described in paragraphs 6.1.9 and 6.2.2 the PICA-Service will have no liability or obligation to the parties in connection with any costs that the latter may have incurred, and its sole liability shall be to empanel a new Panel and arrange a fresh Hearing.

7 Referring a complaint to the Pica-Service - Scope of Application

- 7.1 Given the date that the Pubs' UK Industry Framework Code of Practice came into effect, the PICA-Service can only deal with alleged breaches of the IFC taking place after the 30th June 2010. Complaints brought to the PICA-Service must therefore be based on alleged breaches taking place from the 30th June 2010 onwards in accordance with the wording of the version of the Industry Framework Code of Practice or an individual pub company/brewery code of practice accredited on or after the 30th June 2010 and in place at the time of the alleged breach.
- 7.2 The PICA-Service will not deal with applications concerning general legal issues, nor with rent review or lease renewal rental determinations. These latter matters continue to be dealt with by PIRRS. The conduct of the parties within rental negotiations (other than concerning modes of calculation and figures contended for, which if in dispute should continue to be referred through the PIRRS procedures) can nevertheless be referred to the PICA-Service.
- 7.3 In the event that circumstances arise which necessitate the need for the PICA-Service to call a preliminary interim Panel meeting in order to clarify whether an application meets the necessary criteria for acceptance by the PICA-Service, or the manner in which an application is to be progressed, the Chairman is empowered to convene an interim Panel from amongst the extended panel to consider such issues and provide a decision on the matters in question. Any such preliminary decision will be final and binding, and there will be no appeal on such a decision.

8. Preliminary issues

- 8.1 An aggrieved tenant must ensure that they have registered their grievance in writing with their Pub Co or Brewery and have given their landlords a reasonable opportunity of resolving the problem through their internal grievance procedures prior to referring the matter to the Administrator of PICA-Service.
- 8.2 The PICA-Service is intended to operate in cases where the relevant PubCo/Brewery internal grievance procedure has not within a reasonable time resulted in a satisfactory resolution of the dispute so far as the Tenant is concerned. The PICA-Service will, on receiving an application to refer a complaint to the service contact the relevant PubCo/Brewery concerned and require that they confirm within 14 days that the complaint had first been notified by the Tenant to the PICA-Service and that the PubCo/Brewery has indeed completed its internal grievance procedures concerning the matter. In the absence of a response being received within the 14 day period the PICA-Service will accept the application.
- 8.3 If a response, within the time constraint indicated in paragraph 8.2, details that the internal grievance procedures have not been completed the Pub Company/Brewery concerned will be afforded a further twenty-one days to bring the matter to a conclusion effectively meaning that they have a window of 35 days from the initial contact from PICA-Service to resolve the matter. In the absence of both parties

advising the PICA-Service Administrators of a satisfactory outcome within the timescale indicated above the latter will commence proceedings.

- 8.4 It is stressed that, whilst the PICA-Service Administrators are empowered at their absolute option and discretion to vary timetables, time should otherwise be regarded as being of the essence as far as the parties to the dispute are concerned. This proves to be necessary in order to ensure that the parties deal with all matters in a timely manner and cannot be seen to be acting in contempt of the PICA-Service procedures.

9 Submitting a Complaint

- 9.1 A Tenant wishing to refer a complaint to the PICA-Service must contact the PICA-Service Administrators who will provide them with the application form and a copy of the current procedure paper.
- 9.2 The Tenant must complete and sign the application form and return it to the Administrators together with their cheque for the registration fee of £200 and their Complaint document.
- 9.3 By signing the application form the Tenant agrees to be bound by the PICA-Service Procedure paper and to abide by Panel's Decision and any Award. The Tenant also agrees to maintain confidentiality in all matters to include all information furnished by the parties to each other in the course of utilising the PICA-Service. The Pub Co/Brewery are similarly bound by such confidentiality.
- 9.4 The Tenant will if at all possible, to accompany the signed Tenant's application form, provide copies of all relevant documentation on which the tenant intends to rely in support of their case. This may include a copy of the signed Lease or Tenancy Agreement under which the Tenant occupies the premises, or such other documents as are relevant to the complaint including for example deeds of variation, licenses for alteration, licenses to assign, rent review memorandum, machine agreements and copies of emails, meeting minutes and correspondence with the relevant PubCo/Brewery in connection with the subject matter of the complaint. All documentation supplied must be supplied in triplicate.
- 9.5 Should it not prove possible for the Tenant to provide all relevant documentation at the time of their application for any reason or because the Tenant believes such documentation to be in the possession of the PubCo/Brewery the Tenant should inform the Administrators of this, and the reasons why, where applicable to enable the Administrators if necessary to make a request to the relevant PubCo/Brewery concerned to provide copies of any relevant documentation held by them.
- 9.6 The PubCo/Brewery will respond promptly to any request from the Administrators for the provision of documentation that cannot be sourced by the Tenant in connection with an application. Copies of any documents or information requested by the Administrators should be supplied in triplicate by the PubCo/Brewery and a copy sent by them to the Tenant.

10. The Tenant's Statement of Complaint

- 10.1 The Tenant will provide to accompany the application form a written Statement of Complaint setting out full details of the complaint. The Statement must comprise no more than ten pages of A4 in no less than font size 10. Should there be the unavoidable need for the 10 page limit to be exceeded to enable the Tenant to fully present their case adequately then a specific dispensation must first be requested from the Administrators explaining the reasons behind the need for the additional pages. The Administrators' decision as to whether to grant such request shall be final.
- 10.2 The Statement should be set out in numbered sections and paragraphs for ease of reference. It is permissible for relevant attachments to be appended to the Statement in addition to the 10 page limit, and these should be in the form of numbered appendices. The use of such appendices should not

however be taken as an opportunity to artificially extend beyond the 10 page limit the size of the Statement. The Statement should specifically identify any page or paragraph within the appendices that the Tenant specifically wishes the Panel to refer to, and to provide the appropriate reasoning for referring to that particular document, section or paragraph.

- 10.3 The Tenant should in their Statement and supporting documentation supply all information on which they intend to rely in support of their complaint. This includes any expert evidence, which should be in the form of a written statement from the relevant expert or experts. Any evidence not supplied at this stage may not, at the Panel Chairman's discretion, be admitted later unless the Tenant is able to show to the satisfaction of the Panel that it was not possible to provide the evidence at the time of preparing the Statement.
- 10.4 The Tenant must within their Statement identify the relevant section of the IFC or individual PubCo/Brewery code of practice it is contended has been breached (either in practice or in spirit), and identify with reasons the costs or losses which it is alleged the breach or breaches have caused to the Tenant. Complete clarity is regarded as being essential.
- 10.5 The Tenant should ensure that they demonstrate to the Panel that any amount claimed is fair, reasonable and equitable in the circumstances and provide where possible supporting documentation. Any costs claimed by the Tenant should be supported wherever possible by annotated original receipts or invoices (not photocopies), and where appropriate by calculations showing clearly how any costs claimed are arrived at.
- 10.6 Complainants are advised in their own interests to ensure that they set out their complaints succinctly and do not include reference to spurious issues which clearly have no relevance to technical breaches of or breaches in the spirit of the Pubs' UK Industry Framework Code of Practice or the individual Pub Co's Code of Practice.
- 10.7 They should similarly be certain to include all issues in their knowledge at the date their complaint is lodged. It is not permitted, unless in extreme mitigating circumstances, for tenants having gone through the process to then lodge further complaints concerning alleged issues which predate or which should have been in their knowledge at the time of preparing for an earlier Hearing. Care is taken, PICA-Service having dealt with the administration and substantial costs involved in a Hearing, for the Service to ensure that tenants do not embark upon requests for subsequent multiple Hearings relating to matters in the complainant's knowledge or which should have been in their knowledge when their initial complaint was lodged with PICA-Service.
- 10.8 Tenants must be complete as to their coverage of all relevant matters relating to their complaint. It is not acceptable for them to withhold relevant information purely on the basis that they perceive this weakens the strength of their complaint.
- 10.9 Tenants are strongly advised to record by dates, hours and minutes time spent in preparing their complaint and attending a Hearing as, if the panel find for them, they may be invited to lodge a claim for their costs or for a part of their costs. They will under such circumstances be expected to provide this information to support their claim.
- 10.10 The Panel will not usually travel to the subject licensed premises to carry out inspections, and this fact should be borne in mind by the parties when preparing their statements and responses, as they may wish to include photographic evidence as appendices where relevant.
- 10.11 In the event that discussions have taken place between the tenant and the PubCo/Brewery/brewery in relation to the matters which are the subject of the complaint and there have been negotiations that have involved offers or counter offers neither party may disclose details of any offer or counter offer as

part of their evidence without the prior written consent of the other party. Neither side should be disadvantaged by having made genuine attempts to settle their dispute between them.

10.12 The PICA-Service reserves the right not to accept an application or notify it to the relevant PubCo/Brewery until all relevant documents have been received from the Tenant supporting the application.

10.13 As soon as all relevant documents together with the application fee have been delivered to the Administrators copies will be supplied to the relevant PubCo/Brewery together with a timetable for responses.

11 The Pub Co/Brewery response

11.1 The PubCo/Brewery will have 21 days to respond to the Tenant's Statement with a written response statement setting out full details of the PubCo/Brewery's response to the complaint.

11.2 The Response must respond purely to the contents of the Statement, and should be sent to the Administrators in triplicate. The Response should comprise of no more than 10 sides of A4 in no less than font size 10. Should there be the unavoidable need for the 10 page limit to be exceeded to enable the PubCo/Brewery to fully present their response then a specific dispensation must first be requested from the Administrators explaining the reasons behind the need for the additional pages. The Administrator's decision whether to grant a request shall be final.

11.3 The Response shall be set out in numbered sections and paragraphs for ease of reference and where possible the paragraph numbers should correspond with those utilised in the tenant's Statement, of Complaint so that the responses effectively dealing with individual points made by the Tenant can easily be cross referenced by the Panel.

11.4 It is permissible for relevant attachments to be appended to the Response in addition to the restriction on the 10 page limit, and this should be in the form of numbered appendices. The use of such appendices should not however be taken as an opportunity to artificially extend beyond the 10 page limit the size of the Response. The Response should specifically identify any page or paragraph within the appendices that the PubCo/Brewery specifically wishes the Panel to refer to, and to provide the appropriate reasoning for referring to that particular document, section or paragraph.

11.5 The PubCo/Brewery should in their Response and supporting documentation supply all information on which they intend to rely in support of their response to the complaint. This includes any expert evidence, which should be in the form of a written statement from the relevant expert or experts. Any evidence not supplied at this stage may not at the Chairman's discretion be admitted subsequently unless the PubCo/Brewery is able to show to the satisfaction of the Panel that it was not possible to provide the evidence at the time of the Response.

11.6 The Response should include mention as to which paragraphs in the Tenant's Statement are accepted, as well as refuting those matters which are not accepted. This will obviate the need for the preparation of a Statement of Agreed Facts, and assist in saving both time and cost.

11.7 Respondents must be complete as to their coverage of all relevant matters relating to the complaint. It is not acceptable for them to withhold relevant information purely on the basis that they perceive this weakens the strength of any defence.

11.8 In the event that discussions have taken place between the tenant and the PubCo/Brewery in relation to the matters which are the subject of the complaint and there have been negotiations that have involved offers or counter offers neither party may disclose details of any offer or counter offer as part of their

evidence without the prior written consent of the other party. Neither side should be disadvantaged by having made genuine attempts to settle their dispute between them.

12. The tenant's response

- 12.1 **A further response will only be permitted** if the Tenant is able to correctly identify that the Pub Co/Brewery response contains incorrect, misleading or inadmissible material. The Administrators will allow a period of 14 days from the date of issue of the PubCo/Brewery's Response to cater for such eventuality. The tenant's response shall if justified comprise no more than 5 sides of A4 in no less than font size 10.
- 12.2 Care must nonetheless be taken to ensure that this is not utilised as an opportunity to put forward a further statement dealing with new issues. The tenant's statement must respond purely to the contents of the Brewery/Pub Co Response, and should again be forward to the Administrators in triplicate. The numbering in any tenant's Response should follow the paragraph numbering utilised by the Brewery/Pub Co.

13. Statements of Agreed Facts

- 13.1 PICA-Service will not be bound or fettered by the content of any Statement of Agreed Facts or any Statements or Responses placed before it. If either party fails to supply documents within the prescribed timetable PICA-Service reserves the right to proceed to its decision in any event.

14. Withdrawal or Settlement Prior to a Hearing

- 14.1 In the event that prior to the date set for a Panel Hearing the parties to a complaint reach a settlement, or the Tenant decides to withdraw their application, the Tenant shall notify the Administrators promptly in writing. In such circumstances the Panel will make no Decision or Award.
- 14.2 Neither the Tenant nor the PubCo/Brewery will have entitlement to receive a return of all or any part of the fees paid by them to the PICA-Service under circumstances whereby an application is withdrawn or the parties settle prior to a Hearing.
- 14.3 PICA-Service, on the contrary, will from the moment the Hearing date is fixed have incurred Hearing costs on such items as room hire, preparation of papers for panel usage, panel accommodation and travel reservations and shall be entitled to recover such costs from the parties. Under circumstances where an application is withdrawn PICA-Service will usually look to the complainant to reimburse such costs. In instances whereby the parties reach a negotiated settlement prior to the Hearing it is essential therefore that they agree as part of such settlement the proportions in which they will each be responsible for PICA-Service's abortive costs relating to the Hearing and advise the Administrators accordingly.

15. Fees

- 15.1 On the submission of an application to the PICA-Service the Tenant shall be required to pay the current registration fee. In the event that the Tenant's complaint is upheld in full or in part by the Panel this amount will be returned to the Tenant. If, however, the Tenant's complaint is not upheld by the Panel the Tenant will not be entitled to a refund of all or any part of its registration fee.

16. The Panel Hearing

16.1. Timing and Venue of the Panel Hearing

16.1.1 The Administrators will notify the parties of the Timetable set for the Panel hearing (**Hearing**) by giving notice of the precise time, date and place the Hearing will take place.

16.2 All Panel Hearings will be Conducted in the English Language

16.2.1 All papers, statements, responses and documents must be presented to the Panel in English, and where necessary it will be the responsibility of the relevant party submitting such documents to ensure that a translation into English is provided by a reputable translator where the original document is in any other language.

16.2.2 In the event that any party requires a translator to be present at a Hearing it will be the responsibility of the party in question to advise the Administrators of this in advance and to arrange (and where applicable) pay the cost of a translator to be present in order to enable a Hearing to be conducted in English.

16.3 Representation at the Hearing

16.3.1 Both parties are required to be present at the Hearing. The panel will usually have questions concerning issues on which they are not clear and any party not in attendance to afford answers may well inevitably be disadvantaged. The parties should ensure furthermore that they bring with them into the Hearing any material relevant to the complaint not included in the documentation already provided in the Statement of Complaint and Responses (minutes of meetings, e mails etc). No restriction is placed on the panel as to the scope or direction of their questions.

16.3.2 Attendance at the Hearing is restricted to two persons for each side unless with the express consent of the PICA-Service Administrators. This will include the parties to the complaint. If the tenant is a single individual it is permissible for them to be accompanied by a person of their choosing subject to their giving the Administrators adequate advance notice of the individual concerned along with their background and role in the dispute.

16.3.3 A pub Company or Brewery may similarly be represented by a maximum of two individuals. The Panel require that one of these individuals be a party who has had an active involvement in the issues or the core issues the complaint(s) centre around. Should the pub Co/Brewery wish to deviate from this they should provide reasons and obtain the Administrator's advance consent to this at least seven days prior to the Hearing..

16.3.4 Should the Tenant intend to be represented at the Hearing they must notify the Administrators of this at least 21 days prior to the date of the Hearing, specifying the identity of the individual, their connection to the Tenant, any relevant field of expertise and matters they intend to address.

16.3.5 The PICA-Service does not consider legal representation, whether involving staff solicitors or external lawyers, as being within the spirit of the procedure. The Panel will not, as a result, reimburse within any Award any legal costs which a party may have incurred as a result of taking legal advice or obtaining legal representation in connection with a complaint to the PICA-Service.

16.3.6 Should the tenant nonetheless intend to be legally represented he/she must place the PICA-Service Administrators on notice of the fact he/she is to be legally represented at least twenty one days prior to the date of the Panel Hearing to enable the Pub Co/Brewery concerned to, at its option, similarly arrange for legal representation.

- 16.3.7 The parties' contentions must not however contain any legal argument as the Panel will not have the power to determine any points of law. If disputes of a legal nature are identified the Administrators to PICA-Service will cease proceedings until these have been clarified and resolved by the parties.
- 16.3.8 If it transpires that clarification cannot be afforded by the parties on any legal point in a manner mutually agreed between them the matter will be regarded as being one for the legal profession and potentially the courts rather than as a subject for PICA-Service.
- 16.3.9 Likewise, where the Tenant chooses to appoint an individual with an area of expertise relevant to their complaint, such representative may not during the course of the Hearing introduce any new evidence or expert testimony or opinion that has not already been clearly set out in the Tenant's Statement and supporting documentation.
- 16.3.10 Upon being informed by the Tenant of their intention to be represented or accompanied at a Hearing the Administrators will notify the PubCo/Brewery concerned, who may at its option within 7 days of being informed by the Administrators of the identity of any individual accompanying the Tenant, itself identify a third party with similar expertise to appear on its behalf to deal with the same subject matter.
- 16.3.11 Each party's presentation to the Panel must be conducted by not more than two of the parties identified in the foregoing paragraphs unless by specific dispensation obtained from the Administrators not less than 21 days prior to the date of the Hearing. If such dispensation is granted the other side will be advised accordingly.
- 16.3.12 In instances where either party are represented at the Hearing this will not affect the time restraints detailed elsewhere. The total 20 minute timing available to each party is not to be extended other than at the absolute discretion of the Panel Chair.
- 16.4 Conduct of the Hearing**
- 16.4.1 The conduct of the Hearing will be regulated by the Panel Chair. The decision of the Panel Chair on all matters of Hearing procedure will be final.
- 16.4.2 Each party will be afforded the opportunity to be present at the time of the other party's presentation to the Panel. Each party will be allowed a 20 minute period during which to verbally summarise their complaint or response, which shall be addressed through the Panel Chair to the Panel.
- 16.4.3 The Panel will have been provided with the Statement of Complaint, Response(s) and other documentation during the weeks leading up to the Hearing.
- 16.4.4 The Panel Chair may allow a longer period of time for a presentation at their absolute discretion, and the parties are at liberty to identify a need for this prior to a Hearing commencing.
- 16.4.5 If either party does not attend this will not preclude the other party from appearing and making their presentation to the Panel.
- 16.4.6 If a party at a Hearing does not wish to make a presentation the Panel is entitled to progress to its decision and any Award without considering further representations from the relevant party.
- 16.4.7 Neither of the parties or their representatives will be permitted to interrupt the other during the Hearing. This is strictly applied as being seen as acting in contempt of the proceedings.
- 16.4.8 Recordings and transcripts of recordings of conversations are not admissible as evidence for the purpose of bringing a complaint to PICA-Service and will not be permitted in a Hearing.

- 16.4.9 All phones and other recording devices are to be switched off throughout a Hearing with the exception of the fact the Administrators will record proceedings in order to ensure accurate minute taking.
- 16.4.10 The Panel will usually direct individual questions to either or both of the parties as they see fit. The Panel also reserves the right to make inquisitorial enquiries by post, telephone or (on rare occasions) by requesting that a witness of fact appear before the Panel either at the time of the Hearing or subsequently, but are under no obligation to do so.
- 16.4.11 Whilst the parties may put forward to the Administrators names and details of witnesses of fact they feel could usefully contribute to the matters at hand, giving sufficient notice for the requisite arrangements to be made, PICA-Service are under no obligation to demand or permit their attendance.
- 16.4.12 The parties should ensure they take into the Hearing all material relevant to the case. Copy e mails, meeting minutes etc should have been included with Statements of Complaints or Responses but it has been known for further documents to be required during Panel questions. It is contrary to the spirit of the proceedings for either party to withhold relevant evidence.
- 16.4.13 The parties must not introduce other than at the Chairman's request any new evidence at a Hearing that has not already been covered in the Tenant's Statement, the PubCo/Brewery's Response or the Tenant's Response to the Response.
- 16.4.14 The parties are under a strict duty of care to ensure that everything that they place before the Panel is absolutely truthful and accurate, and is not calculated to mislead or deceive.
- 16.4.15 Where either party in support of their position provides information from an expert or professional, the relevant expert or professional must provide with such information the following statement of truth *"I understand that my overriding duty is to the PICA-Service Panel, and I have complied with that duty. I confirm that I have made clear which facts and matters I have referred to are within my knowledge, and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinion on the matters to which they refer"*.
- 16.4.16 Where either party wishes to rely on expert evidence, the evidence of the relevant expert must be submitted in writing at the time of their original Statement of Complaint or Response. Expert evidence cannot be presented orally at the Hearing except at the request of the Chairman.
- 16.4.17 During the course of their oral presentations the parties will not be entitled to challenge or cross-examine each other, and all presentations will be addressed to the Panel through the Panel Chairman.
- 16.4.18 Each party shall have the burden of proving the facts relied on to support its complaint or response.
- 16.4.19 Once personal appearances have been concluded the parties and any representatives will leave the room to enable the Panel to discuss the matter in private.

17. Issues of Law

- 17.1 It is outside of the scope of the Panel to determine any issues of law, and the parties' presentations must not contain any legal arguments which require the Panel to rule on any point of law. If a dispute of a legal nature is identified the Administrators (if before a Hearing has commenced) or the Panel Chair (if a Hearing has commenced) may suspend proceedings until the relevant legal issue has been clarified and resolved by the parties. If it transpires that clarification cannot be secured by the parties on any legal point in a manner mutually acceptable to them then the complaint will be regarded as one for the

courts, rather than a subject for the PICA-Service and the PICA-Service will be entitled to terminate the application without any further responsibility or liability to the parties.

18. Decisions and Awards

18.1 The Decision

18.1.1 The Panel will make their decision as to whether or not to uphold the Tenant's complaint(s) in full or in part by a majority of the Panel members. The PICA-Service will endeavour to provide the parties with the Panel's decision along with, where appropriate its Award, in a timely fashion having regard to the circumstances surrounding the application.

18.1.2 The Panel's Decision and any Award will not be reasoned, and there will be no supporting dialogue or calculations.

18.2 Awards

18.2.1 The Panel may make separate Awards on different issues in connection with a single application. Such Awards may include loss of earnings, the Tenant's reasonable and relevant costs, and where applicable interest. Awards shall not however include any sums which the Panel considers to be consequential loss of an indirect nature, or any element of legal costs. The Panel can also order remedial action to take place in respect of physical works where (in the sole opinion of the Panel) these are justified.

18.2.2 All Awards shall be final and binding on the parties and the parties shall carry out all Awards without delay. The Panel in making an Award will provide details of the monetary amount involved, and or any other remedial action required and within what time frame.

18.2.3 The Panel may impose penalties in cases of none or late payment or performance. The Panel will identify the payee(s) to whom restitution is to be made. The Panel reserves the right to opt for the PICA-Service to receive payments in the first instance on behalf of the party receiving an Award, and to arrange financial settlement itself on administrative grounds, but is under no obligation to do so.

19. Costs

19.1 Where a Tenant's complaint is upheld the Tenant will be entitled to reimbursement of their registration fee. In those circumstances the PubCo/Brewery will be required to pay PICA-Service an additional fee equal to the amount of the registration fee paid by the Tenant.

19.2 A successful tenant will usually be invited to lodge with PICA-Service **within 28 days of an Award being posted** a claim for their costs incurred in making the application and attending the Hearing. Time to be of the essence in the matter – if no such claim is made within this 28 day period it will not be entertained subsequently.

19.3 Such claim may include reasonable travel and subsistence costs in attending the Hearing. If a successful tenant intends to make a claim for the time taken in preparation work concerning their complaint this must be accompanied by a detailed log identifying each of the hours spent by time and date in respect of each aspect of the preparation work. Otherwise a claim for time expended by a successful complainant will not be entertained.

19.4 Any claim for a successful tenant's costs will be referred to the panel chairman who will discuss this with the panel members present at the Hearing. Should any member of this panel not at the time be

available for discussion the panel chairman will progress discussions with the remainder without the missing individual's further input.

19.5 Consideration may or may not be given in calculating any Award for Costs to:-

- a) the number of breaches of the Pubs' UK Industry Framework Code of Practice or the individual Pub Co's/Brewery's Code of Practice alleged by the tenant and the number of these alleged breaches the PICA-Service panel have found for.
- b) The amount of the PICA-Service panel's Award when compared with the amount claimed for by the tenant.
- c) The conduct of the parties throughout the PICA-Service procedure.

19.6 The decision of the PICA-Service panel to be final.

20. No Appeals

20.1 The Panel's Decision shall be final and binding on the parties, and there is no right of appeal to the Panel's Decision or any Award unless it is subsequently proven that such decision was based on erroneous information recklessly or fraudulently presented by the other side. Both parties are under a duty of care.

20.2 Neither the Panel, nor any Panel member will engage in any correspondence or discussions with any party following a Decision or Award. Any correspondence or discussions involving PICA-Service subsequent to the Award being made will be restricted to posting such Award, dealing with the Award settlement where required and liaising with the Panel to enable it to deal with any claim for costs.

21. Publication of Decisions and Awards

21.1 The parties acknowledge and agree that, unless the tenant identifies at the outset this should be otherwise, the PICA-Service may publish details of the outcome of a complaint, however all details relating to compensation and costs awarded by the Panel will remain confidential.

22. In Summary

22.1 An aggrieved tenant must ensure that they have registered their grievance in writing with their Pub Co or Brewery and have given their landlords a reasonable opportunity of resolving the problem through their internal grievance procedures prior to referring the matter to the Administrators of PICA-Service.

22.2 The PICA-Service Administrators will, on being placed on notice by a tenant of the fact that a complaint is to be issued, promptly inform the Pub Company or Brewery concerned of the situation and require that they confirm within a fourteen day period that they have indeed completed their internal grievance procedures concerning the matter. In the absence of a response being received within this fourteen day period the PICA-Service Administrators will commence proceedings.

22.3 If such response, within the time constraint indicated, details that the internal grievance procedures have not been completed the Pub Company/Brewery concerned will be afforded a further twenty-one days to bring the matter to a conclusion effectively meaning that they have a window of 35 days from initially being notified of the problem to resolve the matter. In the absence of both parties advising the

PICA-Service Administrators of a satisfactory outcome within the timescale indicated above the latter will commence proceedings.

- 22.4 The tenant presents in the first instance to PICA-Service:-
- a A completed application form
 - b A signed copy of the PICA-Service Terms and Conditions agreeing to abide by the Panel's findings
 - c Relevant documentation (copy Lease etc)
 - d A Statement setting out full details of his/her complaint in triplicate
 - e His/her cheque in the sum of £200 made out to PICA-Service. This is intended to represent the tenant's contribution towards costs of the proceedings whilst also acting to guard against frivolous complaints. Provided the complaint is upheld by the Panel the £200 will be returned to the tenant at the end of the proceedings. The decision of PICA-Service to be final in this matter.
- 22.5 Under circumstances whereby the tenant is unable to supply legal or other documentation the Pub Co/Brewery will, on being requested so to do, provide this to the PICA-Service Administrators with copies being sent to the tenant.
- 22.6 The named Brewery/Pub Company representative presents their Response in triplicate
- 22.7 The tenant may avail himself/herself of a right to respond (in triplicate) to the Pub Co's/Brewery's Response **only** should it be perceived that this details incorrect or inadmissible material
- 22.8 The parties will appear in person before the Panel. If the tenant intends to be represented at the Hearing he/she must place the PICA-Service Administrators on notice of this fact in accordance with the foregoing.
- 22.9 The PICA-Service Decision should be regarded as being final and binding on both parties.

23. Procedural updates

- 23.1 Whilst the above represents the approved procedures at the time of going to print the Pub Governing Body which administers PICA-Service does reserve the right to review the content from time to time, and where necessary update the wording. Tied tenants and tied lessees, Pub Companies and Breweries who envisage having an involvement in PICA-Service procedures should always ensure therefore they are working from the most up to date procedure paper.

7th July, 2015.