

## **Pubs Code – Market Rent Only Frequently Asked Questions**

### **Key**

**BDM** – Business Development Manager

**CCO** – Code Compliance Officer

**MRO** – Market Rent Only

### **When you send an MRO Notice**

#### **Q. What happens once I have sent my MRO notice?**

**A.** On receipt of your MRO notice, we will acknowledge this as soon as reasonably practicable. Your MRO notice will be assessed to ensure it is valid, if not then we will notify you that the notice is invalid and give you the reason why. If the notice is valid then we will issue a full response within 28 days beginning the day after the MRO notice was received.

#### **Q. How can I find an Independent Professional Advisor?**

**A.** We would recommend that you take independent professional advice from a suitably qualified professional who has professional indemnity insurance. The BII has a panel of accredited advisors.

### **Approach to MRO Proposal and Negotiations**

#### **Q. Will my MRO have to be via a new lease, or can it be a deed of variation?**

**A.** Our initial proposal will be via a new lease. However, all offers issued by Marston's will be made following the assessment of the individual situation of the tied pub tenant and the current tied agreement attached to their pub. This area of the code is evolving and the vehicle for MRO could be via a new lease or a deed of variation.

You will receive a full MRO response detailing the proposed terms. We would advise you to take independent professional advice.

**Q. How long will my MRO tenancy be?**

**A.** This will depend on how long your existing tenancy is. Under the Pubs Code, if your MRO right is triggered by a rent assessment, we must grant you a term at least as long as the unexpired term of your existing agreement. We will however grant you a minimum term of 5 years, if the unexpired term is less than 5 years. If your MRO right is triggered by a renewal we will offer a term that we would expect to be granted reflecting current conditions and trends in the market.

**Q. Will the terms in the MRO proposal be the same as those in my tied tenancy?**

**A.** No. The terms in the MRO proposal will be terms which are common in Free of Tie Agreements. It will not include any terms listed as unreasonable in Regulation 31 of the Pubs Code. We will provide a copy of the draft MRO agreement as part of your MRO offer.

**Q. How will MRO negotiations be carried out?**

**A.** Our Estate Managers assess, propose and negotiate MRO agreements. They will contact you and commence negotiations in respect of the Tied Rent Review and MRO proposal once you have received our offers.

**Q. Who will manage my MRO negotiations? Will it be my BDM?**

**A.** Your MRO negotiations and your tied rent review negotiations will be undertaken by your Estate Manager, who is a qualified Chartered Surveyor.

**Q. Will I be required to have a business plan?**

**A.** You are not required to have a business plan for your proposed MRO agreement but you may still wish to prepare one as good practice.

**Q. Will I be required to change my rent and deposit payment dates? Will my deposit level change?**

**A.** Our MRO agreement provides for a rent deposit equivalent to a quarter's rent and payment of rent quarterly in advance on the usual quarter days. However, these will depend upon the terms that have been agreed. **We recognise that a transitional**

period may be required to build up these amounts and details of a transitional period will be included in your MRO proposal, this will take into consideration your individual circumstances.

**Q. Will my insurance level change?**

A. Buildings insurance policies for MRO sites are assessed on an individual basis and do not benefit from being included in a block policy and may potentially be higher.

**Q. Will my repairing liabilities and benefits change under an MRO agreement?**

A. You will be required to comply with repairing liabilities in accordance with terms that are agreed between the parties, these may differ from your existing repairing liabilities.

**Q. Will my business relationship with Marston's change?**

A. You will no longer benefit from the tailored support and services Marston's provide to their tied tenants. You will no longer have the benefit of a BDM.

**Q. Will there be any upfront costs if I go MRO?**

A. You will be charged our legal costs in relation to this transaction. You may be liable for SDLT, you should take independent professional advice on this matter. You may have to pay additional deposit depending on the level of deposit currently held and the deposit agreed under the terms of the MRO agreement. Your rent will be payable in advance in accordance with the rent payment dates included in the new agreement. We recognise that a transitional period may be required to build up these amounts and details of a transitional period will be included in your MRO proposal, this will take into consideration your individual circumstances. You will be responsible for any professional fees you incur during the process.

**Q. Will I have to pay for any dilapidations if I request MRO?**

A. Completion of dilapidation works will not be a required condition to complete your MRO agreement. A Schedule of Dilapidations will be prepared and you will be required to undertake any outstanding statutory compliance works within a

prescribed timescale. Your responsibility for any repairs and decorations that have arisen under your tied agreement will be carried over to your MRO Agreement.

**Q. Will there be a stocking requirement in the MRO option? If so, how will this be considered?**

**A.** There is no stocking requirement in Marston's MRO agreements.

**Q. If I choose an MRO agreement, does any part of the tie remain?**

**A.** If you choose an MRO agreement the only tie will relate to the buildings insurance. We will insure the premises and recharge the cost of insurance to you.

**Q. I have a long lease at present what term do you have to offer me on renewal or at rent review if I opt for MRO?**

**A.** The new term can vary and will be agreed by negotiation, if the parties are unable to agree on the term the courts are able to award a new tenancy up to a maximum of 15 years. Where the MRO request is made following a rent review, the length of the MRO agreement will be for at least the remaining term of your current tied agreement.

**Q. Will I still be tied for Gaming Machines?**

**A.** There is no tie in respect of gaming machines in our MRO agreements.

**Q. I have received my MRO proposal, but I am concerned about the terms on which it is being offered what can I do?**

**A.** Marston's recommend that you take independent professional advice. You should contact your Estate Manager to discuss the MRO proposal as soon as possible during the 3-month negotiation period known as the Resolution Period. Where there are changes to the MRO offer originally given to you, we may provide you with an updated full MRO response. If we are unable to agree terms within the Resolution Period, you have the right to refer to the Pubs Code Adjudicator for arbitration. Marston's would recommend you obtain professional advice as there are strict deadlines to adhere to.

**Q. What information can I expect to receive from Marston's?**

**A.** To ensure you are able to understand how your MRO rent has been calculated Marston's will also send you an MRO rent assessment. You will also receive an MRO required information pack which will contain a current price list including sediment allowance, volume history for at least 3 years, a copy of the tied rent assessment, details of comparable evidence if any is available and other information which you may find useful.

**Rent**

**Q. Will my rent change if I go MRO?**

**A.** Yes, it is likely that your rent will change. The MRO rent will be included in the MRO proposal sent to you.

**Q. How will the MRO rent be assessed?**

**A.** The MRO rent is assessed by applying the guidance set out by the Royal Institution of Chartered Surveyors (RICS) by a RICS qualified surveyor using the profits method of valuation.

**Q. What can I do if I do not agree with the MRO rent provided?**

**A.** If you disagree with the MRO rent provided you are encouraged to contact your Estate Manager as soon as possible to enter into negotiations in respect of the rent. The day after you receive a full response you will enter into a period of negotiation with Marston's (called the resolution period) for a period of up to 3 months. You may end the resolution period on 7 day's notice to Marston's, but the resolution period must last a minimum of 21 days. In the 7 days after the resolution period ends Marston's has the option to issue an updated full response (updated period of response). If we have not been able to agree the rent you have 21 days from the end of the updated period of response to make a referral to an Independent Assessor. Your Estate Manager can discuss this in further detail with you and discuss how to agree on the appointment of the Independent Assessor.

**Q. What can I do if I do not agree with the proposed tenancy terms (not including rent)?**

A. After the resolution period has ended, if we have not agreed the proposed terms then either you or Marston's can refer the matter to the PCA for arbitration. If you want to make a referral you must make it within 21 days starting with the day after the end of the 7-day updated period of response and you must notify us of your intention to refer. If you gave Marston's notice to end the resolution period, the updated period of response will start after your 7 day notice period. It is important to still try to reach an agreement even if there has been an arbitration referral until the end of the MRO procedure. If we cannot reach an agreement then the arbitrator will decide the arbitration claim.

**Q. I have an outstanding rent review. What will happen with that?**

A. Marston's will continue to negotiate with you on your tied rent review and will not make any changes to the rent payable until you have made a choice between continuing under your current tied agreement or entering into a new MRO agreement. Your tied rent review will conclude only when you agree the new rent in writing, in accordance with Regulation 39 (g). Once you do so the MRO process will terminate.

**Steps following negotiation**

**Q. What will happen if I ask for the MRO rent to be sent to an Independent Assessor?**

A. If the parties are unable to agree the rent then you have the option to have the rent determined by an Independent Assessor. Marston's will endeavour to agree and jointly appoint an Independent Assessor with you. If the parties are unable to agree and jointly appoint an Independent Assessor then the matter can be referred to the PCA who will appoint an Independent Assessor. On appointment of an Independent Assessor information needs to be provided by both parties. The rent will then be determined by the Independent Assessor. There are strict deadlines for referral and it is important you or your advisor are aware of these ahead of receiving an MRO full response from us.

You will then have a further 21 days to accept/reject the rent or make a referral to the PCA under Regulation 38(4).

**Q. Do I have to take a MRO option if I request it?**

A. No. A valid request for a MRO, will give you the option to go MRO. It is up to you to make a choice between staying on your existing tied agreement or alternatively entering into a new MRO agreement.

**Q. What happens if I want to accept the MRO option?**

A. If you want to accept the MRO option, you must communicate your acceptance of this to us in writing and we will proceed to instruct our solicitor to prepare and complete the MRO tenancy as soon as possible.

**Q. What happens if I do not want to accept the MRO option?**

A. If you do not want to accept the MRO option, you should confirm this in writing to Marston's. The parties will need to either conclude and document the tied rent review or in the case of a protected renewal complete the new tied agreement. Once the MRO procedure has come to an end you will no longer be able to enter into an MRO agreement until another MRO event occurs.

**CCOs and BDM roles**

**Q. How can the CCO help? When and how to contact the CCO?**

A. Our CCO, Claire Coley, is there to verify compliance with the Pubs Code Regulations and is reasonably available to answer any questions on the Pubs Code where she is able to. Our CCO will also be able to signpost you to the PCA, the Regulations and our internal protocols. You may contact the CCO on [PCR@marstons.co.uk](mailto:PCR@marstons.co.uk).

**Q. When I request an MRO agreement will my relationship with my BDM change?**

**A.** No it will not. If you choose to request an MRO agreement your relationship with your BDM will continue, as normal. If you chose to go Free of Tie you will cease to have the support of your BDM when you enter into your new Free of Tie Agreement.