



Marston's PLC Annual Pubs Code Compliance Report

**For the reporting period from 21 July 2016 to 31 March 2018 -
prepared and submitted in accordance with regulation 43 of the
Pubs Code Regulations 2016**

Prepared by: James Edwards – Code Compliance Officer

July 2018

Section 1: Audit Committee Statement on Compliance

In accordance with regulation 43(5), this report has been approved by the Chairman of the Marston's PLC Audit Committee. Marston's Code Compliance Officer has provided such other reports as are necessary to ensure that we have an understanding of Marston's compliance with these regulations, as required by regulation 43(7). A summary of this report will be included the 2018 Marston's Annual Report, as required by regulation 43(8).

Section 2: Estate Summary

<i>As of 31 March 2018, total numbers of:</i>	
Pubs Code Agreements	1075
• Agreements contracted in to the Landlord & Tenant Act	333
• Agreements not contracted in to the Landlord & Tenant Act	155
• Short Agreements under Regulation 54	288
• Pub Franchise Agreements under Regulation 55	299
• Qualifying Investments under Regulation 56	0

Section 3: Code Compliance

Part I: Investigations

N/A – no investigations undertaken by the Pubs Code Adjudicator.

Part II: Enforcement

N/A – no enforcements undertaken by the Pubs Code Adjudicator.

Part III: Guidance & Advice

The advice note issued by the Pubs Code Adjudicator in July 2017 on Tied rent contractual dispute resolution clauses and Calderbank Offer letters has been noted. Marston's are not issuing Calderbank Offer letters. All stakeholders affected by this advice note have been briefed on the contents. Marston's negotiate both tied and MRO deals simultaneously. It does not ask tied pub tenants (TPT) to sign a rent memorandum if the TPT is still negotiating the MRO rent.

The advice note issued by The Pubs Code Adjudicator in December 2017 on Regulatory Compliance Handbook: complying with the principles of the Pubs Code has been noted. All stakeholders affected by this advice note have been briefed on the contents and Marston's now enclose information about MRO rights by way of the PCA's flyer with all rent assessment proposals and physically stamp these envelopes "Important Documents Enclosed".

The advice note issued by the Pubs Code Adjudicator in March 2018 on Market Rent Only-compliant proposals has been noted. All stakeholders affected by this advice note have been briefed on the contents, however, at the time of writing, the note itself is subject to legal challenge.

Part IV: Unfair Business Practices

N/A – no representations made from the Pubs Code Adjudicator regarding unfair business practices.

Section 4: Tied Agreements

Part I: Code Tied Agreements	
<i>During the reporting period, numbers of:</i>	
New Agreements	1089
<i>Prior to the implementation of the Pubs Code Regulations 2016, Marston's amended their processes to comply fully with Part 2 of the Code. For all new substantive agreements, compliance is monitored to ensure all tied pub tenants are provided with the required information contained in Schedule 1 of the Code in order to make an informed decision in respect of the proposed agreement. We ensure that tied pub tenant takes the necessary professional advice in relation to the pub, that they prepare a sustainable business plan and complete the necessary pre entry training course, unless they qualify for an exemption. The regulations relating to the assignment of a tenancy and the requirements for entering into short agreements are also monitored to ensure full compliance.</i>	
Assignments	26
Forfeitures	23
Legal Surrenders	62
Abandonments	1
Code Rent Reviews	121
<i>Marston's are complying with the process detailed in regulation 20 when undertaking rent assessments and are providing the information specified in Schedule 2 of the Code, if it is reasonably available. Rent assessments are all undertaken by RICS qualified surveyors in accordance with their professional standards.</i>	
Protected Renewals	35
<i>For all Landlord and Tenant Act 1954 protected renewals, Marston's serve section 25 notices bringing tied agreements to an end in accordance with Landlord and Tenant legislation. Marston's then enter into direct dialogue with the tied pub tenants to negotiate the lease renewal.</i> <i>Marston's have not served any hostile section 25 notices on tenants, with the intention of ending a protected agreement and taking that pub back into occupation.</i> <i>On agreeing terms for protected renewals, Marston's have chosen not to enforce terminal dilapidations on tenants. Instead, a new Schedule of Condition and Schedule of Initial Works are produced with the Initial Works being carried out by Marston's on renewal and costs charged to tenants where appropriate.</i>	
Investment Exceptions agreed under Regulation 56	0

Part II: Code Rent Assessments	
<i>During the reporting period, numbers of:</i>	
Total Rent Assessments conducted under terms of the tenancy	119

Total number of Rent Assessment Proposals requested by tenant	2
• By reason of no rent review concluded in last 5 years	2
• By reason of a significant increase in price	0
• By reason of a trigger event	0
<i>Marston's has received two requests for a rent assessment under provision 19(2)(a) where no rent review has concluded in the last 5 years. In both instances, new rent assessment proposals were issued to the tied pub tenants within the period of 21 days, from the date on which the tied pub tenants requested the rent assessments.</i>	
Total number of requests for Rent Assessment Proposals rejected	0
<i>Marston's have not rejected any requests for a Rent Assessment Proposal.</i>	

Part III: Renewals under the Landlord and Tenant Act 1954	
<i>During the reporting period, numbers of:</i>	
Section 25 Notices issued opposing a new tenancy on the grounds of an intention to take the pub back into occupation	0
Section 26 Notices opposed on the grounds of an intention to take the pub back into occupation	0
LTA court proceedings related to an intention to take the pub back into occupation	0
• Of which, the number of objections to a new tenancy that were upheld	0
• Of which, the number of objections to a new tenancy that were dismissed	0
<i>Marston's have not served any hostile section 25 notices on tenants or opposed any section 26 notices received from tenants, due to their intention of ending a protected agreement and taking a pub back into occupation.</i>	

Section 5: MRO

Part I: MRO Notices	
<i>During the reporting period, numbers of:</i>	
Total number of MRO Notices received and acknowledged	43
• Following receipt by a tenant of a Rent Assessment Proposal	42
• In relation to the renewal of a tenancy	1
• Requested in response to a significant increase in price	0
• Requested in response to a trigger event	0
<i>Marston's have not received any claims of trigger events from tied pub tenants.</i>	
Total number of MRO Notices accepted	35
Total number of MRO Notices rejected	8
• Following receipt by a tenant of a Rent Assessment Proposal	8
• In relation to the renewal of a tenancy	0
• Requested in response to a significant increase in price	0
• Requested in response to a Trigger event	0
<i>Four "MRO Notices" were rejected as they were not served in accordance with regulation 23(2).</i>	
<i>Three "MRO Notices" were rejected as they were not served in accordance with regulation 23(3). One of these rejections was referred to the Pubs Code Adjudicator. Following this award a MRO offer was subsequently issued to the tied pub tenant.</i>	
<i>One "MRO Notice" was rejected due to a rent assessment proposal being served prior to the introduction of the Pubs Code Regulations 2016.</i>	
Total number Full Responses to MRO Notices issued	36
<i>All 36 full responses have been issued within the period of 28 days, as per the requirement of regulation 29.</i>	

Part II: MRO Negotiations*During the reporting period, numbers of:*

MRO Negotiations undertaken with tenants	35
<i>During the reporting period, Marston's did not execute any MRO agreements. 17 tied settlements were agreed and documented. Negotiations continue in respect of the remaining 18.</i>	
Times that each of the regularly challenged terms above has ultimately appeared in a completed MRO agreement (please list and enumerate)	0
MRO tenancies agreed	0
• By a New Agreement	0
• By a Deed of Variation	0
Total number of tied settlements following MRO negotiations	17
• Of which number of new tied tenancies agreed	1
• Of which number of tied rent reviews concluded	16
• Of which number of tied tenant departures	0

Part III: MRO Independent Assessment*During the reporting period, numbers of:*

Total Independent Assessor appointments	4
• Of which number that were appointed jointly in agreement with the tenant	4
• Of which number that were appointed by the PCA	0
<i>Independent Assessors appointed during the reporting period:</i> <ul style="list-style-type: none">- Stephen Hattley (Three appointments)- Barry Crux (One appointment)	
Independent Assessments challenged	0
Any second challenges to Independent Assessments	0
<i>Marston's have not challenged the assessments made by independent assessors.</i>	

Section 6: Other Code Reporting

Part I: Code Part 10 Provisions

For the reporting period, narrative reports on compliance with:

Regulation 46 – Insurance provisions

Pub Owning Business:

Group Property Damage and Business Interruption policies acquired:

- *Aviva policy covering all losses above £500k, and in aggregate all losses above £10k totalling more than £1.5m in 12 months.*
- *Banks's Brewery Insurance Ltd policy covers any losses above £250k to £500k.*

Combined liability policy acquired:

- *Aviva policy covering all public liability losses above £250k, and all employee losses.*
- *Banks's Brewery Insurance Ltd covers employee and public losses above £5k to £250k. Banks's Brewery Insurance Ltd is a whole owned subsidiary of Marston's PLC, and is an insurance captive company registered in Guernsey. A re-insurance agreement exists between Aviva and Banks's Brewery Insurance Ltd.*

Tenant / Lessee:

1. Pub building insurance charge from Marston's PLC

The pub building is insured under Marston's group policy. We keep the property insured under our Group policy in order to ensure full cover and minimise the costs to tenants.

Covers damage to the property:

Physical Loss or Damage arising from fire, explosion, riot, storm, burst pipes, lightning, aircraft, subsidence, malicious damage, flood and impact by third party vehicle.

Subject to an excess of £500 on any claim.

2. Business insurance policy*

Typically covers: employers liability, public liability, business interruption, stock, fixtures and fittings, glass, cash on premises

Levels of cover expected by the law (employer liability) and the tenancy / lease agreement. Licensee is free to acquire the policy from any insurance broker. Marston's receives no commission from the broker selling the policy.

Retailer / Franchisee

1. Business insurance policy*

Typically covers: employers liability, public liability, business interruption, stock, fixtures and fittings, glass, cash on premises

Levels of cover expected by the law (employer liability) and the tenancy agreement. Licensee is free to acquire the policy from any insurance broker. Marston's receives no commission from the broker selling the policy.

**From 2018 the insurance brokers PubProtect (T&R Direct Limited, [6 Concept Park, Innovation Close, Poole, Dorset, BH12 4QT](#)) are authorised to collect and register the business insurance policy details of our licensees, including making contact with new licensees. Prior to 2018 Pro Publican (Tasker Insurance Brokers, Crown House Home Gardens Dartford Kent DA1 1DZ) had this responsibility. Both PubProtect and ProPublican arrange broker business insurance policies for our licences, for which Marston's receives no commission.*

Regulation 47 – Gaming Machines

All Marston's tenancies and licences were amended at the implementation of the Pubs Code Regulations 2016 to comply with regulation 47. Marston's do not enter into new tenancies or licences, or renew a tenancy or licence, which requires a tied pub tenant to purchase or rent gaming machines.

Pub franchise agreements are exempt from regulation 47 under regulation 55(1)(b).

Regulation 48 – Requests for blank profit and loss templates

At the implementation of the Pubs Code Regulations 2016, Marston's created a "blank profit and loss template" for each separate tied business model. A copy is provided to incoming tied pub tenants to assist with the preparation of their sustainable business plans in accordance with regulation 10(2).

Regulation 49 – Sale of freehold or long leasehold (including numbers)

During the reporting period Marston's sold 52 pubs to private purchasers. Marston's notify their tied pub tenants that the pub is going to be marketed in advance of agents being instructed to place a property on the market for sale.

Regulation 50 – No tenant detriment from exercising Code rights (including action in response to any finding of detriment)

During the reporting period, there has been no finding of any detriment on the ground that a tenant exercises, or attempts to exercise, any right under the Pubs Code Regulations 2016.

Regulation 51 – Flow Monitoring Devices

In January 2018, Marston's completed the full removal of flow monitoring devices from all pubs within their Estate. Prior to this, Marston's did not take any action against any tied pub tenant as a result of any reading taken from a flow monitoring device, without additional evidence in connection with the purchase and stock of alcohol outside of the product tie.

Part II: Extended Protection

During the reporting period, numbers of:

Tied pubs where title has been transferred to the ownership of a person who is not a landlord of 500 or more tied pubs	52
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During the reporting period, Marston's sold 52 pubs to private purchasers. Tied pub tenants are notified by Marston's in advance of agents being instructed to place a property on the market. The details of the purchasers are passed on to tenants as soon as reasonably practicable following an agreement for sale. There is no requirement for Marston's to inform the Pubs Code Adjudicator of any transfer of ownership under the Code.

Section 7: Reporting on Tenant Complaints, Code Breaches and Arbitration

Part I: Breaches of the Code identified by tied pub tenants

During the reporting period, Marston's have received no complaints in relation to breaches of the Pubs Code Regulations 2016.

Part II: Steps taken in relation to complaints

Prior to the introduction of the Pubs Code Regulations 2016, Marston's complaints process was detailed in its Code of Practice. Following the introduction of the Code, Marston's Complaints Protocol was created detailing their internal procedures for handling all complaints, including any alleged breaches of the Code. This protocol is issued to all new tied pub tenants / franchisees, is available on the Marston's PLC website and is also accessible through the tenants & franchisees online portal MyMarstons.

Part III: Self-notification of breaches

N/A – During the reporting period there has been no self-notification by Marston's of any breaches of the Code to the Pubs Code Adjudicator.

Part IV: Referrals for arbitration

During the reporting period, numbers of:

Total MRO cases referred to the PCA	16
Referrals of MRO terms on grounds that they are non MRO-compliant	13
• Of which number where breaches of the Code were found by the PCA	2
Referrals of void or unenforceable terms under Regulation 57(2)	1
Referrals of all other non-MRO Code matters	2

Marston's have received two awards in which they have been found to have issued non-compliant MRO proposals on the grounds that they contained unreasonable terms. The unreasonable term related to the issuing of full terminal schedules of dilapidations prior to the completion of a new MRO agreement. We have since reissued these proposals removing the requirement for completion of all the works detailed in the terminal schedule of dilapidations. This requirement has been removed from subsequent MRO proposals.

Marston's have been found non-compliant in relation to rejecting a MRO notice due to the absence of information required under regulation 23(3). The award stated that the absence of information required under regulation 23(3), if already known by a Pub Owning Business, does not constitute a reason to reject a tenants MRO notice. The outcome of this award was taken into account when deciding whether to accept or reject MRO notices received by Marston's, from the date of this award onwards.

Following the two awards issued to Marston's regarding non-compliant MRO proposals, further referrals have been made to the Pubs Code Adjudicator regarding non-compliant MRO proposals however the specific arguments are unconnected to the awards given.

Part V: Other complaints made by tenants
<i>Complaints not relating to the Pubs Code are handled by the respective Business Development Manager and escalated in line with our internal complaints protocol through Operations Managers and Operations Directors until resolved. We do not hold a central record of these complaints.</i>

Section 8: Corporate Compliance Structures

Part I: Compliance Officer

Marston's have met in full their duty under regulation 42 of the Pubs Code Regulations 2016 to employ and empower a Code Compliance Officer and maintained written records of training received.

Part II: Business Development Managers - Training

During the reporting period Marston's have not published the document required by regulation 41(5). This is currently being addressed with the creation of a protocol specifically focused on Business Development Managers and will be published online and given to all new tied pub tenants. This protocol will state:

- Marston's commitment to ensuring its Business Development Managers continue to learn and develop new knowledge and skills within their roles;*
- That ongoing development will be provided in Performance, Career and Development Reviews with line managers; and*
- Delivered through on the job learning with the help of coaching and support, learning from resources on our online learning platform and in the classroom, taking place every two months.*

All Business Development Managers in post when the Code came in to force received a copy of the Pubs Code Regulations 2016 before liaising with tied pub tenants. All new Business Development Managers receive a copy of the Code as part of their induction before liaising with tied pub tenants.

In May 2016, before the introduction of the Pubs Code, all Marston's Business Development Managers received an internal brief, based on the draft regulations that were available at the time.

Since the implementation of the Code, all Marston's Business Development Managers have received Pubs Code updates and training. During the reporting period, all Business Development Managers have also received annual refresher training on the Pubs Code.

Marston's Estate Managers, who are responsible for conducting all rent assessments, are members of The Royal Institution of Chartered Surveyors and act in accordance with professional standards and all legislation when conducting rent assessments or producing rent proposals. They are all well informed and have also received specific Pubs Code training.

Part III: Business Development Managers

Training is provided to all Business Development Managers and covers the core Code principles of fair and lawful dealing in relation to tied pub tenants.

At the implementation of the legislation, Marston's adapted its ways of working and its processes to ensure compliance with regulation 41(4) and the conversations BDM's have with tied pub tenants in respect of this regulation. These conversations are communicated to tenants within 14 days of the discussions taking place and the provision for a tenant to challenge the contents within 7 days is also detailed. Business development reviews are

sampled and audited by the BDM's line managers to ensure compliance and to highlight any training requirements.

For the reporting period, the number of challenges by tenants about the non-provision or content of a BDM record.

1

A tenant who received a record of a conversation outside of the 14 day timeline has referred this matter to the Pubs Code Adjudicator. The outcome of this referral is pending and Marston's are monitoring their processes to ensure compliance going forward.