



Marston's PLC Annual Pubs Code Compliance Report

**For the reporting period from 01 April 2018 to 31 March 2019 -
prepared and submitted in accordance with regulation 43 of the
Pubs Code Regulations 2016**

July 2019

References throughout to 'Regulations' are to the Pubs Code etc Regulations 2016

References throughout to 'SBEEA' are to the Small Business, Enterprise and Employment Act 2015

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 2019 Marston's Annual Report, as required by regulation 43(8).

Section 2: Tied Estate Summary

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|--|------|
| As of 31 March 2018, total number of Pubs Code Agreements | 1075 |
| Total acquisitions to tied estate since 31 March 2018 | 0 |
| Total pubs transferred from managed house estate to tied estate since 31 March 2018 | 8 |
| Total pubs transferred from tied estate to managed house estate since 31 March 2018 | 5 |
| <i>During the reporting period, Marston's also reopened two tied sites which were previously closed, closed five tied sites, repossessed one MRO site and completed five MRO agreements.</i> | |
| Total disposals since 31 March 2018 | 31 |
| <ul style="list-style-type: none"> • Which were to another Pub Owning- Business (POB) (for use as a pub) | 0 |
| <ul style="list-style-type: none"> • Where the title has been transferred to the ownership of a person who is not a landlord of 500 or more tied pubs (for use as a pub) | 24 |
| <ul style="list-style-type: none"> • Directly disposed for other use [e.g. residential; other commercial] | 7 |
| <i>During the reporting period, Marston's sold 31 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.</i> | |
| As of 31 March 2019, total number of Pubs Code Agreements | 1040 |
| Of total Pubs Code Agreements, how many are: | |
| <ul style="list-style-type: none"> • Agreements contracted in to the Landlord and Tenant Act 1954 | 249 |
| <ul style="list-style-type: none"> • Agreements not contracted in to the Landlord and Tenant Act 1954 | 170 |
| <ul style="list-style-type: none"> • Short Agreements under Regulation 14 | 237 |
| <ul style="list-style-type: none"> • Tenancy at Wills (TAW's) in occupation for a period of 12 months or more | 48 |
| <ul style="list-style-type: none"> • Pub Franchise Agreements under Regulation 55 | 336 |
| <ul style="list-style-type: none"> • Qualifying Investments under Regulation 56 | 0 |

Types of Agreements

As at 31 March 2019:

167 Base/Open House Leases – All contracted in to the Landlord and Tenant Act 1954 (the Act). Varying lengths. Five yearly rent reviews. Fully tied. Rent and service charge payable. Fully repairing and insuring. Sit inside of Pubs Code.

35 Jennings Leases – All contracted in to the Act. Varying lengths. Five yearly rent reviews. Partially tied. Rent payable. Fully repairing and insuring. Sit inside of Pubs Code.

183 Pathway Tenancy Agreements – 47 contracted in to the Act, 136 contracted out of the Act. 3 or 5 year length. Fully tied. Rent and service charge payable. Internal repairing. Sit inside of Pubs Code.

34 Foundation Tenancy Agreements – All contracted out of the Act. 5 year length. Fully tied. Fixed turnover share agreement. Service charge payable. Internal repairing. Sit inside of Pubs Code.

336 Retail/Pub Franchise Agreements – All contracted out of the Act. 5 year lengths. Fully tied. Fixed turnover share agreement. Right to assign/sell business to a third party. Sit inside of Pubs Code however granted exemptions under regulation 55(1).

48 short agreements (TAW's) in occupation for 12 months or more – Mixture of franchise style and tenancy models. Sit inside of Pubs Code.

237 short agreements (TAW's) in occupation for less than 12 months – Mixture of franchise style and tenancy models. Sit inside of Pubs Code however granted exemptions under regulation 54.

9 Free of Tie/MRO Leases – All contracted in to the Act. Varying lengths. Five yearly rent reviews. Free of tie. Rent payable. Fully repairing and insuring. Sit outside of Pubs Code.

Section 3: Code Compliance

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| Part I: Investigations |
| <i>N/A – no investigations undertaken by the Pubs Code Adjudicator.</i> |

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| Part II: Enforcement |
| <i>N/A – no enforcements undertaken by the Pubs Code Adjudicator.</i> |

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| Part III: Guidance and Advice |
| <i>N/A – no guidance or advice issued by the Pubs Code Adjudicator.</i> |

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| Part IV: Unfair Business Practices |
| <i>N/A – no representations made from the Pubs Code Adjudicator regarding unfair business practices.</i> |

Section 4: Tied Agreements

| Part I: Code Tied Agreements | |
|--|-----|
| <i>During the reporting period, numbers of:</i> | |
| New Agreements | 745 |
| <p><i>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. Marston's 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.</i></p> <p><i>The regulations relating to the assignment of a tenancy and short agreements are also complied with and all information required under the provisions of the code is provided.</i></p> | |
| Assignments | 6 |
| Forfeitures | 3 |
| <ul style="list-style-type: none"> • Of pre-Pubs Code tenancies | 3 |
| <ul style="list-style-type: none"> • Of tenancies granted since the Pubs Code came into force | 0 |
| <p><i>In total, Marston's have forfeited three leases during the reporting period.</i></p> <p><i>Marston's forfeited two tenancies which were for agreements of 6 years and older. The first forfeiture was for non-payment of rent and the second one was for non-payment of rent and followed the bankruptcy of the tenant.</i></p> <p><i>One tenancy forfeited was for an agreement which was between 1-2 years old. This agreement was forfeited for non-payment of rent.</i></p> | |
| Section 146 notices issued | 2 |
| <p><i>Once a breach of covenant has been identified by Marston's, a copy of a tenant's current tenancy agreement and details of the breach are passed to external solicitors. Solicitors will then review and confirm if there has been a breach and will advise on appropriate action to be taken. If it is deemed the best course of action is a Section 146 notice, they will then serve this notice on behalf of Marston's.</i></p> | |
| Legal Surrenders <i>(where the tenant has surrendered their agreement and left the pub and <u>not</u> instances of 'surrender and regrant).</i> | 59 |
| <p><i>Marston's do not hold a central record of the reasons for legal surrenders. Following a request from a tied pub tenant to surrender an agreement, Marston's will consider each individual request, take a commercial decision taking all factors into consideration and write to the tenant informing them of the decision to take an early surrender.</i></p> | |
| Abandonments | 5 |
| Renewals | 20 |

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.

A Schedule of Dilapidations will be carried out on all substantive agreements prior to termination; which will set out all of the tenant's breaches of repairing liability, together with the remedy for that breach, and will be issued to the tenant by electronic delivery, or by recorded delivery. The Schedule of Dilapidations will be carried out at least 6 months before the end of the agreement. The Schedule will be carried out by an RICS qualified surveyor who will act in accordance with the RICS professional guidance note Dilapidations in England and Wales 7th edition and Marston's dilapidation protocol. In carrying out the Schedule of Dilapidations, the Surveyor will review the repairing obligations under the terms of the agreement together with the Schedule of Condition. Where a dispute occurs, the tenant should confirm the details within the Schedule of Dilapidations and return to the Surveyor, where the matter will be reviewed. If agreement cannot be reached between the Landlord and the Tenant, Marston's will follow the process set out within the RICS Dilapidations protocol. Outstanding dilapidations are agreed prior to the commencement of the new agreement and a final inspection is carried out three to six months later to sign off dilapidation repairs. Decorating works are rolled over and undertaken during the term of renewal.

Investment Exceptions agreed under Regulation 56

0

N/A – no investment exceptions have been agreed under Regulation 56.

Part II: Code Rent Proposals & Rent Assessment Proposals

During the reporting period, numbers of:

Total number of Rent Proposals and Rent Assessment Proposals in connection with a contractual review.

56

Marston's are complying with the processes detailed in regulations 15 & 20 when undertaking rent proposals and rent assessment proposals and are providing the information specified in Schedule 2 of the Code, if it is reasonably available. Rent proposals and rent assessment proposals are all undertaken by RICS qualified Surveyors in accordance with RICS professional standards.

Total number of Rent Assessment Proposals requested by tenants

0

- By reason of no rent review concluded in last 5 years

0

- By reason of a significant increase in price

0

- By reason of a trigger event

0

N/A – Marston's have not received any requests from tied pub tenants for a Rent Assessment Proposal.

Total number of requests for Rent Assessment Proposals rejected

0

N/A – Marston’s have not received any requests from tied pub tenants for a Rent Assessment Proposal.

Part III: Renewals under the Landlord and Tenant Act 1954 (LTA)

During the reporting period, numbers of:

| | |
|--|----|
| Section 25 Notices issued opposing a new tenancy | 1 |
| Section 25 Notices issued proposing a variation of the terms | 20 |
| Section 26 Notices opposed | 0 |
| Section 26 Notices unopposed | 0 |

During the reporting period, Marston’s served one section 25 notice under the Landlord & Tenant Act 1954 opposing renewal, relying on ground 30(g) in that “subject as hereinafter provided, that on the termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on by him therein, or as his residence”. This notice was uncontested, an agreement was reached between the tenant and Marston’s, statutory compensation was paid and the tenant vacated the pub. This site is now trading in the Marston’s managed house estate.

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|---|---|
| LTA court proceedings where the POB relied in whole or in part on 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 |

In respect of tenancies contracted into the Landlord & Tenant Act 1954 Marston’s will serve no less than 6 months’ notice under section 25 of the Landlord & Tenant Act 1954 to either propose a new tenancy or to bring the tenancy to an end.

Prior to issuing a notice under the Landlord and Tenant Act 1954, and in the months leading up to a protected renewal, the Company will undertake a review of the pub to consider whether to renew the existing agreement or if the pub would suit the operational needs of our managed house division. Both the Estates Manager and Operations Manager are involved in this process. A commercial decision will be taken by senior management after an inspection of the premises, review of the options and financial assessments have been undertaken.

Part IV: Other contractual renewals (where applicable)

During the reporting period, numbers of:

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|--|---|
| Pub franchise operators who exercised a contractual right to renew their tenancy | 2 |
| • Of which, the number of these to which the POB consented | 2 |
| • Of which, the number of these that were opposed by the POB | 0 |

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|--------------------------------------|
| Total number of contractual renewals |
|--------------------------------------|

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|---|
| 2 |
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Section 5: MRO

| Part I: MRO Notices | |
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| <i>During the reporting period, numbers of:</i> | |
| Total number of MRO Notices received and acknowledged | 24 |
| <ul style="list-style-type: none"> • Following receipt by a tenant of a Rent Assessment Proposal | 18 |
| <ul style="list-style-type: none"> • In relation to the renewal of a tenancy | 6 |
| <ul style="list-style-type: none"> • Requested in response to a significant increase in price | 0 |
| <ul style="list-style-type: none"> • 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 | 22 |
| Total number of MRO Notices Received and Pending Acceptance | 1 |
| Total number of MRO Notices rejected | 1 |
| <ul style="list-style-type: none"> • Rejected following receipt by a tenant of a Rent Assessment Proposal | 0 |
| <ul style="list-style-type: none"> • Rejected in relation to the renewal of a tenancy | 1 |
| <ul style="list-style-type: none"> • Rejected following a request in response to a significant increase in price | 0 |
| <ul style="list-style-type: none"> • Rejected following a request in response to a trigger event | 0 |
| <i>One "MRO Notice" was rejected as it did not comply with regulation 23(2) as the notice was served outside of the prescribed timeline.</i> | |
| Total number of MRO Notices not rejected and withdrawn by the tenant | 0 |
| <i>N/A – No MRO notices not rejected and withdrawn by the tenant.</i> | |
| Total number of MRO Proposals issued | 22 |
| <i>All 22 full responses have been issued within the period of 28 days, as per the requirement of regulation 29.</i> | |
| <i>When assessing the length of the lease to be offered, Marston's offer a term greater than the unexpired term or a minimum of five years, in accordance with regulation 30(2) which specifies the proposed term is at least as long as the remaining term of the existing tenancy.</i> | |

Part II: MRO Negotiations

During the reporting period, numbers of:

| | |
|--|----|
| MRO Negotiations undertaken with tenants | 40 |
| <p><i>Throughout the reporting period, Marston's undertook negotiations with tenants who had served an MRO notice in both the previous reporting period together with those that served an MRO notice during the current reporting period.</i></p> <p><i>Five MRO tenancies were concluded during the reporting period. Two did not challenge any of the terms of the draft agreements and three tenants challenged the proposed rent.</i></p> | |
| <p><i>On three occasions, only the amount of rent has differed to that of the initial offer.</i></p> | |
| MRO tenancies agreed | 5 |
| • Of which number of free of tie arrangements agreed by new agreement | 5 |
| • Of which number of new free of tie arrangements agreed by deed of variation | 0 |
| Total number of tied settlements connected with MRO negotiations | 21 |
| • Of which number of new tied arrangements agreed by new lease | 4 |
| • Of which number of other new tied arrangements agreed (rent or other terms) | 16 |
| • Of which number of tied tenant departures from the pub | 1 |
| • Other outcomes | 0 |
| • Ongoing – yet to be concluded | 14 |

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|--|---|
| <p>Part III: MRO Independent Assessment</p> <p><i>During the reporting period, numbers of:</i></p> | |
| Total Independent Assessor appointments | 2 |
| • Of which number that were appointed jointly in agreement with the tenant | 2 |
| • Of which number that were appointed by the PCA | 0 |
| <p><i>Independent Assessors appointed during the reporting period:</i></p> <p>- Stephen Hattley (Two appointments)</p> | |
| <p><i>Independent Assessment One:</i></p> <p><i>Original proposed MRO Rent: £68,000 p.a.</i></p> <p><i>Independent Assessor MRO Rent: £51,500 p.a.</i></p> | |

Independent Assessment Two:

Original proposed MRO Rent: £72,500 p.a.

Independent Assessor MRO Rent: £64,500 p.a.

Independent Assessments challenged

0

Any second challenges to Independent Assessments

0

Marston's have not challenged the assessments made by Independent Assessors.

Section 6: Other Code Reporting

Code Part 10 Provisions

For the reporting period, 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. Marston's 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.

Market Value Review:

A comparison of the insurance charge to indicative market rates for buildings insurance is conducted annually to ensure that the charge is reasonable.

Price matching:

Price matching of the insurance charge to an equivalent building policy sourced by the tenant is offered, however no tenanted took up this option during the year.

2. Business insurance policy*

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*

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.

**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.*

Regulation 47 – Gaming Machines

Number of new Pubs Code tied agreements in which:

| | |
|--|------|
| The tenant has accepted a machine tie within the tied agreement itself | 551 |
| The tenant has accepted a machine tie in a side agreement | 0 |
| The tenant has accepted a machine from POB however not obliged to do so under the tied agreement | 35 |
| The tenant has sourced a free of tie machine agreement with a third-party supplier | N/A* |
| The tenant has chosen not to have machines | N/A* |

** Marston's do not hold records of tenants who do or do not stock gaming machines, other than those tenants who stock machines through a Marston's gaming machines supplier.*

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 of the appropriate tied model is provided to incoming tied pub tenants in their Pubs Code Property Pack, 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 31 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 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.

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

Part I: Breaches of the Code identified by 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 Code complaints

Complaints 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. Marston's do not hold a central record of these complaints.

N/A – During the reporting period there has been no complaints about alleged breaches of the Code.

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 | 9 |
| Referrals of MRO terms on grounds that they are not MRO-compliant | 9 |
| • Of which number where breaches of the Code were found by the PCA | 0 |
| Referrals of void or unenforceable terms under Regulation 57(2) | 0 |
| Referrals of all other non-MRO Code matters | 0 |

One referral made prior to the reporting period has been awarded in which Marston's was found to have issued a non-compliant MRO proposal on the grounds that it contained unreasonable terms. The parties continued to negotiate and have now agreed terms for a MRO compliant agreement.

One referral made prior to the reporting period has been awarded in which Marston's was found to be in breach of regulation 41(4)(b). This breach found that a Marston's BDM did not provide a record of a discussion to a TPT within the period of 14 days, beginning with the day on which the discussion occurred. To remedy this breach, Marston's conducted additional training on BDM's obligations under the Pubs Code in accordance with the directions of the PCA.

N/A – no further referrals have been made relating to any Code issue on which the POB has previously been found to be in breach of the Code by the PCA.

Part V: Other complaints made by tenants

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. Marston's do not hold a central record of these complaints.

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 (BDMs) - Training

During the reporting period Marston's have published the document required by regulation 41(5). This protocol specifically focusses on Business Development Managers and is published online and given to all new tied pub tenants. This protocol states:

- 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.

During the reporting period, all Marston's Business Development Managers received Pubs Code updates and training.

Annual refresher training was provided through the Marston's online training portal, Talent Academy Online. This system delivers Pubs Code training interactively and features a test at its conclusion to assess the understanding of participants. The content of this course is set by the Marston's Code Compliance Officer and Group Estate Manager and reflects all PCA updates and guidance.

Marston's Code Compliance Officer regularly attends BDM team meetings to update BDM's on any new publications and guidance from the PCA and to address any issues or queries relating to the Pubs Code.

Following the outcome of the arbitration detailed in Section 7 – Part IV, in which a breach of regulation 41(4)(b) was found by the PCA, Marston's issued guidance to all BDM's on all of their obligations under the Code, including their obligation to provide notes of their meetings with tenants. This was followed up with additional BDM training covering all BDM obligations under the Code. This training was conducted by the Marston's Code Compliance Officer at regional team meetings. Evidence of this guidance and training was provided to the PCA as dictated by the award finding the breach of regulation 41(4)(b).

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 have also received all the aforementioned Pubs Code training.

Part III: Business Development Managers - Conduct

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.

Marston's Business Development Managers are provided with an online tool designed to accurately record discussions with tenants in connection with rent proposals, rent assessments/assessments of money payable in lieu, repairs to the pub and matters relating to the tenants current or future business plans. This system automatically cues Business Development Managers to submit this record to the Marston's system and allows for an electronic version to be sent to the tied tenant by email in real time. This system is populated with the statement that requests that a tenant should respond to the BDM within 7 days of receiving the record if they disagree with the contents of it.

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

0

N/A – during the reporting period there have been no challenges by tenants about the non-provision or content of a BDM record.