



MARKET RENT ONLY (MRO) FAQ'S

MARKET RENT ONLY (MRO) FAQ'S

WHAT HAPPENS ONCE YOU SUBMIT AN MRO REQUEST/NOTICE?

Upon receiving your MRO notice or request it will firstly be acknowledged and then reviewed by your Commercial Estates Manager (CEM) as to its validity. Should your MRO notice be deemed valid you will receive a full response within the 28 days deadline detailing our MRO proposal. Should your notice be deemed invalid, you will be notified of this in a timely manner explaining the reasons for this decision (these usually relate to a notice being out of the prescribed time, in an incorrect format or due to there not having been a statutory trigger event enabling an MRO request/notice to be submitted). Should you have any questions regarding your MRO request you are able to raise these with your Punch Operations Manager (OM) or CEM at any time.

HOW WILL I RECEIVE MY MRO PROPOSAL

Your MRO proposal Full Response will be sent by email to the email address you provide in your MRO notice and a hard copy will also be sent by post.

YOUR MRO PROPOSAL AND NEGOTIATIONS

WILL MY MRO HAVE TO BE VIA A NEW LEASE, OR CAN IT BE A DEED OF VARIATION?

The Code is not definitive as to how MRO can be achieved, Punch may offer an MRO proposal by way of a new lease or a variation of your existing lease terms. Whichever method is proposed, Punch will provide the reasoning for choosing to adopt that approach as part of the full response/MRO proposal.

HOW LONG WILL MY MRO TENANCY BE?

There is a statutory minimum condition that the proposed MRO agreement cannot be for a period shorter than your remaining agreement term. You may be offered an MRO agreement for a longer term than this but, again, regardless of the term being proposed Punch will provide the reasoning behind the approach being tabled.

WILL THE TERMS IN THE MRO PROPOSAL BE THE SAME AS THOSE IN MY TIED TENANCY?

No, you are taking the opportunity to explore a differing trading relationship with Punch. The terms proposed will reflect this. The terms of the proposed MRO tenancy should be reasonable and cannot be terms that are uncommon in free of tie agreements. Again, Punch will provide reasoning for the terms being proposed on a case-by-case basis.

HOW WILL MRO NEGOTIATIONS BE CARRIED OUT?

Once you have received your MRO proposal, we advise that you take the time to fully consider the options being proposed. There is a statutory 3-month resolution period in which we can discuss the terms being proposed, however, given the tight time scales for referral (should we not be able to agree terms between ourselves) we strongly suggest arranging a meeting with your CEM within the first 2 weeks of the proposal being provided.

WHO WILL MANAGE MY MRO NEGOTIATIONS?

Your MRO negotiations will primarily be managed by your CEM, your OM may also wish to be involved in such negotiations. At any point during the process you should be free to discuss your MRO proposal with both your CEM and your OM.

WILL I BE REQUIRED TO HAVE A BUSINESS PLAN?

Punch would always advocate producing a business plan whenever there could be material change to your trading arrangement. However, Punch do not insist on a business plan being produced prior to your MRO agreement progressing or completing.

WILL MY RENT PAYMENT FREQUENCY OR MY DEPOSIT LEVEL CHANGE?

Potentially, this could vary from agreement to agreement. Our free-of-tie agreement provides for a rent deposit equivalent to a quarter of the initial annual rent and payment of rent quarterly in advance. However, these will be discussed with you as we recognise that a transitional period may be required to "build up" to the requirements of the MRO agreement and we will take into consideration your individual circumstances.

WILL MY BUILDINGS INSURANCE PREMIUM CHANGE?

There should be no impact to your buildings insurance premium you pay via Punch solely as a result of you exploring or converting to a free of tie (FOT) MRO arrangement.

WILL MY REPAIR OBLIGATIONS/LIABILITIES CHANGE UNDER THE MRO AGREEMENT?

The common repairing liabilities contained in commercial free of tie arrangements are full repairing obligations, the impact on your business that this brings will vary on a case-by-case basis and will depend on your existing agreement terms. Both your CEM and your OM would be happy to discuss the potential impact to you and your business that the differing trading relationship would bring. Additionally, you should be aware in choosing to take an MRO agreement you are opting for a differing trading relationship with Punch. As you will no longer be tied to purchase products via Punch you will no longer benefit from the support and services Punch provide to their tied publicans.

WILL THERE BE ANY UPFRONT COSTS IF I MOVE TO AN MRO AGREEMENT?

When entering into any new agreement with Punch you can expect to pay some upfront costs, these will likely include any professional fees you incur during this process. You may be required to pay rent in advance or increase your deposit level, you will also need to settle any existing trade account balances as part of transferring to the new trading relationship under the MRO agreement, however, we recognise that a transitional period may be required to "build up" to the requirements of the MRO agreement, and therefore details of any transitional period will be discussed with you by your CEM or OM, which will take into consideration your individual circumstances.

In addition you may be liable to pay Stamp Duty Land Tax (SDLT) to HMRC in connection with the grant of a new agreement. We are not qualified to advise you on personal taxation and accounting matters and therefore we would strongly advise you to obtain advice from a suitably qualified professional advisor. You should also set aside funds to pay for independent professional advice covering such matters as legal/grant of new agreement (solicitor), financial (accountant and taxation specialist), valuation (Chartered Surveyor/Licensed Property Valuer), structural survey (Chartered Building Surveyor) and checking/testing of services (Specialist Contractor).

WHAT WILL HAPPEN WITH MY EXISTING REPAIR OBLIGATIONS/DILAPIDATIONS LIABILITY UNDER MY CURRENT AGREEMENT IF I MOVE TO AN MRO AGREEMENT?

You will continue to be responsible for any repair obligations/dilapidations for which you are liable under your existing agreement. A dilapidations report will be produced by an independent third-party surveying firm instructed by Punch. Your obligations identified within the report will remain with you and carry over onto your new MRO arrangement by way of an agreed schedule of dilapidations. If the dilapidations report identifies items requiring immediate attention (due to safety or compliance issues), Punch as a responsible landlord would expect you to address these as a matter of urgency and will discuss such items with you to ensure they are resolved.

IF I DECIDE TO PROCEED ONTO AN MRO AGREEMENT, DOES ANY PART OF THE TIE REMAIN?

No, MRO is the opportunity to explore a differing trading relationship with Punch which is not subject to any tie for products. Upon moving to an MRO agreement your relationship with Punch will become a solely landlord and tenant relationship with the freedom to purchase products on the open market and from suppliers of your choosing.

I HAVE A LONG LEASE AT PRESENT WHAT TERM WILL I BE OFFERED ON EXPIRY OR AT RENT REVIEW IF I OPT FOR MRO?

The Code is clear in regard to the statutory minimum term, being equivalent to the remaining term of your existing agreement. Should you look to explore MRO in connection with a rent review you will be presented with an MRO proposal at least equivalent to your remaining lease term. If you explore MRO on lease expiry, assuming Punch are not opposed to granting a new term in accordance with rights under the Landlord & Tenant Act 1954, you will be presented with an MRO proposal for a new term. Regardless of the trigger point for MRO, Punch will supply the reasoning for the length of MRO term being offered.

WILL I STILL BE TIED FOR GAMING MACHINES?

No, as above, MRO is the opportunity to explore a differing trading relationship with Punch which is not subject to any tie for products. Upon moving to an MRO agreement your relationship with Punch will become a solely landlord and tenant relationship with the freedom to buy products on the open market and from suppliers of your choosing.

I HAVE RECEIVED MY MRO PROPOSAL AND HAVE SOME CONCERNS ABOUT THE TERMS BEING OFFERED, WHAT CAN I DO?

We would always recommend that you discuss your concerns in a timely manner with your CEM or your OM in the first opportunity. Further to this we would recommend looking for professional, qualified, and independent advice from an accredited source to assist with any concerns regarding terms being proposed. Should we not be able to agree terms between ourselves you have a statutory right to refer any disputed terms to the Pubs Code Adjudicator (PCA) for arbitration. However, it is important to stress that there are deadlines in making such a referral, please refer to the information provided on the PCA website.

WILL MY RENT CHANGE IF I OPT FOR MRO?

As part of your MRO proposal you will be presented with a new rent figure based on the new FOT trading relationship. FOT rents are generally higher than tied rents due to the higher achievable gross profit margins in the business model. You will be presented with a rent representing a free of tie opportunity at your subject property.

HOW WILL THE MRO RENT BE ASSESSED?

The MRO rent will be assessed in line with the RICS valuation guidelines. The best methodology for rent assessment is recent market transactions for comparable properties. In the absence of relevant comparable evidence, the "profits method" of valuation can be used. This is based on assessing the fair maintainable trade that is achievable from the property under a reasonably efficient operator. The rent will be representative of the achievable gross profits under a free of tie agreement and the likely rent bid achievable in the open market.

WHAT INFORMATION CAN I EXPECT TO RECEIVE WITH MY MRO PROPOSAL?

To ensure you're able to understand how Punch has calculated the MRO rent you will receive an MRO Rent Assessment Proposal and Shadow Profit and Loss Report. These documents will include the assessment of the Fair Maintainable Turnover; gross profit; details of operating costs; details of the volumes purchased from Punch in the last 3 years; details of any comparable evidence, where available and relevant; and confirmation of whether the property has been valued in its existing configuration or should you have made improvements to the property, confirmation of what those improvements are and an explanation of how they affect the calculation of the Rent Assessment.

WHAT CAN I DO IF I DO NOT AGREE WITH THE MRO RENT PROVIDED?

We would always recommend that you discuss your concerns in a timely manner with your CEM or your OM at the first opportunity. Further to this we would recommend looking for professional, qualified, and independent advice from an accredited source to assist with any concerns regarding the rent being proposed. Should we not be able to agree the MRO rent between ourselves through meaningful negotiations then you would have a statutory right to refer the MRO rent to an independent assessor (IA) to determine the MRO rent figure. The appointed IA will issue parties with directions covering the process for resolving the rent dispute. This usually involves each party making a submission to support their position and put their case across to the assessor. The assessor will review the submissions and provide parties with their determination of the MRO rent. This is able to be appealed by either party in certain circumstances.

I HAVE AN OUTSTANDING RENT REVIEW. WHAT WILL HAPPEN WITH THAT?

Punch understand that you may wish to fully explore both your tied rent event as well as MRO before you decide which option is best for you and your business. Punch will not pursue an escalation of any tied rent event whilst you are exploring the MRO process, however, we do advocate continued dialogue and negotiation on all options throughout the process.

STEPS FOLLOWING NEGOTIATION

DO I HAVE TO TAKE AN MRO OPTION IF I REQUEST IT?

No, the intention of the Code is to enable you to fully understand and consider the options available to you. The decision regarding the future of your business, whether through remaining on your tied agreement or moving to an MRO arrangement, is your choice. Your ability to explore your MRO proposal is not open ended, upon fully exploring MRO you will have a period of time to confirm if you wish to accept or reject this option, after which your MRO option may lapse. Discussions will then revert to looking to resolve any outstanding tied rent events should this be required.

WHAT HAPPENS IF I WANT TO ACCEPT THE MRO OPTION?

Should you wish to accept the MRO option (assuming terms and rent are agreed) you will need to formally confirm this intention to Punch. Punch will then contact you to draw up the agreed heads of terms for the new arrangement. This will be used to instruct solicitors to draw up the relevant paperwork to document your new MRO agreement terms. Upon completion you will receive a copy of the PCA's MRO questionnaire which should be completed and returned to the PCA office.

WHAT HAPPENS IF I DO NOT WANT TO ACCEPT THE MRO OPTION?

Should you not wish to proceed with the MRO option you will need to formally confirm this intention to Punch. This will bring a close to your MRO process. You will receive a letter confirming this as well as a copy of the PCA's MRO questionnaire which should be completed and returned to the PCA office. Your existing tied agreement terms will continue, and should there be any unresolved tied rent events, we will continue to engage with you on these in order to achieve a resolution.

WHAT CAN I DO IF I DISAGREE WITH ANY OF THESE POINTS?

A. If you believe that we have not complied with the Pubs Code regulations you have the right to make a referral to the Pubs Code Adjudicator. You must notify us of your intention in writing prior to referring your matter to the Pubs Code Adjudicator. There are strict deadlines for referral and so it is important that you or your advisor are aware of these in your considerations.

ENGAGING WITH PUNCH DURING YOUR MRO PROCESS

WHEN AND HOW TO CONTACT THE CODE COMPLIANCE OFFICER (CCO)?

An important part of the role of the CCO is to be available to respond to queries in relation to the Code. The CCO can discuss with you the reasons behind any decisions made by Punch under the Regulations. You can contact the Punch Code Compliance Officer at pubscodeenquiries@punchpubs.com. Should you disagree with, or simply wish to further understand, any of the points expressed in this Q&A you can raise these directly with your OM or via the Punch Code Compliance Officer.

WHEN I REQUEST MRO WILL MY RELATIONSHIP WITH MY OM CHANGE?

No, you will not suffer any detriment as a result of exercising any of your rights under the Code. Should you feel that this is not the case we would encourage you to raise such matters in the first instance via the Punch complaints process. However, in the event that you move onto an MRO agreement it is important to stress that under the new FOT trading relationship you will no longer receive the benefit of a dedicated Punch OM supporting your business.

INDEPENDENT ADVISORS

DO I NEED TO APPOINT AN INDEPENDENT ADVISOR TO HELP ME WITH THE MRO PROCEDURE?

The MRO procedure can be complex and therefore we would strongly recommend you take independent professional advice throughout the process.

CAN YOU RECOMMEND ANY INDEPENDENT ADVISORS?

We believe that advisors should remain completely independent of Punch to ensure you get the impartial advice you need in your decision-making. When selecting an advisor to support you, it's important to ensure they are suitably qualified to assist you and that they have an understanding of the industry. We would encourage you to check that they hold professional indemnity insurance and that they are accredited by an appropriate professional association, such as The Law Society, RICS, IFA or CIMA, which you can rely on if something goes wrong. Punch provides you with membership of the British Institute of Innkeeping (the BII). Through the BII you can access their accredited panel of advisors who specialise in the licensed trade. See details at www.bii.org.

We hope you find this booklet helpful. Should you have any questions about your Punch agreement or general queries about the Pubs Code then please contact your Punch Operations Manager in the first instance.

For further guidance or advice, you can contact the British Institute of Inn-keeping:

Phone: 01287 684449

Email: membership@bii.org

Visit: www.bii.org

PUNCH
Pubs. People. Possibilities.