

21 January 2010

FILE REF: SHA/15240

PRIMARY CARE TRUST: #

GMS CONTRACTOR: DR #

PREMISES: #

**NHS (GMS) REGULATIONS 2004  
RE: NOTIONAL RENT**

## **1 Introduction**

- 1.1 As a GMS Provider, the above named contractor has referred the matter of current market rent assessment as at 5 April 2008 for dispute resolution under the provision of Schedule 6, Part 7 of the NHS (General Medical Services Contract) Regulations 2004.
- 1.2 The Secretary of State for Health had directed the NHS Litigation Authority to exercise the functions of dispute resolution on his behalf. I, as an authorised officer of the Authority, have determined this application.
- 1.3 The dispute resolution procedure also allows for advice to be sought.

## **2 The Following Points are relevant to this Application for Dispute Resolution**

- 2.1 In a letter received by the NHS Litigation Authority on 19 June 2009, the contractor Dr # through their representative, applied to the NHSLA for Dispute Resolution. The letter argued that notional rent in respect of the contractor's surgery premises should have been assessed at a higher figure with effect from 5 April 2008.
- 2.2 I have had regard to the following documents made available to me in consideration of this matter:
  - 2.2.1 Letter from the Contractor's representative to the Appeal Unit dated 16 June 2009 with enclosure.
  - 2.2.2 Letter from the PCT to the Appeal Unit dated 15 July 2009 with enclosures.
  - 2.2.3 Letter from the PCT to the Appeal Unit dated 24 July 2009 with enclosure.
  - 2.2.4 Letter from the Contractor's representative to the Appeal Unit dated 15 July 2009 with enclosures.
  - 2.2.5 Letter from the PCT to the Appeal Unit dated 3 August 2009.

## **3 Statutory Framework**

- 3.1 I note the GMS Contracts Regulations 2004 apply in this case. Schedule 6, Part 7, paragraph 101 of the Regulations, indicates with some exclusions, that the NHS dispute resolution procedure applies in the case of "any dispute arising out of or in connection with the contract which is referred to the Secretary of State –

- (a) in accordance with section 4(3) of the 1990 Act (where the agreement is an NHS contract); or
- (b) in accordance with paragraph 100(1) (where the agreement is not an NHS contract).

3.2 I note Part 5 of the GMS Statement of Financial Entitlements indicates recurring premises costs such as notional rent payments are dealt with in the NHS (General Medical Services – Premises Costs (England) Directions 2004. Part 5, paragraph 42 of the Premises Costs Directions allows the PCT to make payments to the contractor, and allows for a three yearly review. In the absence of argument to the contrary, I will proceed on the basis that these form part of the contract and apply in this case.

#### **4 Preliminary Matters**

4.1 In order to be able to determine the dispute properly, I decided to consult and seek advice from an Independent Expert Advisor (IEA) appointed by the President of the Royal Institution of Chartered Surveyors (RICS). This IEA uses their expert knowledge on these matters to weigh the merits of the arguments presented but, importantly, has no pecuniary or budgetary interest in the outcome. It is open to the IEA to ensure that it has available to it as full an understanding as possible of the parties' view on the appropriate valuation. This usually includes providing the parties the opportunity to fully disclose matters, which have not previously been made available, expand on that already provided and also inspect the subject premises and any comparables.

4.2 The IEA provided a report that dealt with any factual matters in dispute e.g. the floor area of the premises, and addressed the issues raised by the parties. The report is in the form of a reasoned assessment and recommendation. The Authority received the report, and the parties were provided with an opportunity to make observations upon it.

#### **5 Consideration**

5.1 I note that the District Valuer, in advice to the PCT, contended that the revised CMR as at the date fixed for review was £44,500p.a. I further note that the total figure upon which the contractor seeks to rely is £58,850p.a.

5.2 I note that a copy of the IEA's report was forwarded to parties for comment; I further note that neither party has provided any comments upon it.

5.3 In my view, the rationale in the advice to me is robust. On this basis I am not persuaded to depart from the advice to me.

5.4 For the reasons given in the report from the IEA, I accept the recommendation on the current market rent of the subject premises with effect from 5 April 2008 which is £47,250p.a.

**Lisa Hughes**  
**Appeals Manager**