

30 September 2009

FILE REF: SHA/15247

PRIMARY CARE TRUST: #

GMS PROVIDER: #

SUBJECT PREMISES: #,
#

**DISPUTE RESOLUTION – NATIONAL HEALTH SERVICE
(GENERAL MEDICAL SERVICES CONTRACTS)
REGULATIONS 2004 (AS AMENDED)**

RE: CURRENT MARKET RENT – Abatement

1 Introduction

- 1.1 As a GMS Provider, the above named doctors have referred the matter of current market rent assessment for dispute resolution under the provision of Schedule 6, Part 7 of the NHS (General Medical Services Contract) Regulations 2004.
- 1.2 On behalf of the Secretary of State for Health, the NHS Litigation Authority (“NHSLA”) is directed to exercise the functions of dispute resolution. I as an authorised officer of the NHSLA have made this determination.

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

- 2.1 In a letter dated 24 June 2009 the contractor applied to the NHS Litigation Authority for Dispute Resolution. The letter stated that the abated current market rent in respect of the contractor’s surgery premises had been assessed at £44,629.73, with effect from 27 February 2007.
- 2.2 I have regard to the following documents made available to me in consideration of this matter:
- 2.2.1 Letters to the NHSLA from the contractor’s representative dated 25 June 3 July and 19 August 2009.
- 2.2.2 Letters to the NHSLA from the PCT dated 7 and 17 July 2009.

3 Statutory Framework

- 3.1 I note the GMS Regulations 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 paragraph 101(3) states that any written request to the Secretary of State for Dispute Resolution shall include or be accompanied by:

- 3.2.1 The names and addresses of the parties to the dispute;
- 3.2.2 A copy of the contract; and
- 3.2.3 A brief statement describing the nature and circumstances of the dispute.
- 3.3 The contractor has failed to send a copy of the contract with its request for dispute resolution as is required by Part 7 paragraph 101(3) of the Regulations. I am satisfied that I can resolve this dispute without sight of the contract.
- 3.4 I am mindful that Part 5 of the GMS Statement of Financial Entitlements, which applies to payments under a GMS Contract, indicates the relevant provision is contained within the NHS (General Medical Services – Premises Costs) (England) Directions 2004; [‘the 2004 Directions’].

4 Consideration

- 4.1 I note that a current market rent has been agreed and that the actual values for the premises (before and after the improvement works) are not in dispute by either of the parties. However the level of abated rent which the PCT has sought to apply is a lower value than that which the practitioner considers appropriate for these premises. The PCT in representations seeks to argue the lower figures is the correct figure on the basis of the abatement of Notional Rent under s43 of the Premises Cost Directions:

s43 states:

Where –

- (a) NHS capital has contributed to the cost of building or refurbishment work done in respect of the premises of a contractor; and*
- (b) that contribution of NHS capital was made after 18th September 2003,*

On completion of the building or refurbishment work, the amount of the notional rent payable by a PCT must be the abated notional rent for those premises, calculated in accordance with Part 1 of Schedule 3, rather than the full notional rent, determined in accordance with direction 42. However after a period of 10 years the full notional rent again becomes payable.

Part 1 of Schedule 3, paragraph 1 states:

1. Where NHS funds have contributed to the cost of building or refurbishment work done in respect of practice premises, the notional rent payable in respect of those payments is to be abated (in proportion to the level of NHS contributions) as follows.....

- 4.2 I note that the doctors seek to argue that as the Total Improvement Grant was made up of an improvement grant and prescribing incentive paid out of the Prescribing Incentives monies available to the practice, it is only the improvement grant which should be taken into account in the abatement calculations.
- 4.3 I note that the PCT is of the view that the prescribing incentive scheme rewards are NHS Funds and therefore the contribution towards the total Improvement Grant, from the prescribing incentive monies available for this practice, constitutes NHS funds and is to be taken into account in the abatement calculation in accordance with s43 of the Premises Cost Directions.
- 4.4 I note that in its letter of 17 May 2006 to the doctors, the PCT states that it “*would support the redevelopment of your current Rosegarth premises and we have provided a figure of £180,000 to do this in the 2006/2007 financial year. We agreed that the*

practice's contribution to this is made up by underspends in prescribing that have been generated in 2004/2005 and 2005/2006'.

- 4.5 It does not appear that the underspends referred to in this letter are part of a prescribing incentive scheme. The parties have assumed this description following on from an e-mail from the PCT of 23 July 2008 but there is no evidence that the monies were paid out of funds from this scheme. I perceive from the wording of the PCT's letter quoted in paragraph 4.4 above that the underspends were not proportionate rewards under an incentive scheme but actual underspends on indicative budget and therefore NHS funds.
- 4.6 On the basis that the Total Improvement Grant comprised an improvement grant and budget underspends the abated current market rent is therefore the figure quoted by the PCT. I note there is an inconsistency in the effective date quoted by the doctors and their representatives. I trust this is fact that can be clarified with the PCT.

Lisa Hughes
Appeals Manager