

10 November 2009

FILE REF: 14943

PRIMARY CARE TRUST : #

PMS PROVIDER : DR #

PREMISES : #

**PMS AGREEMENT REGULATIONS 2004
RE : NOTIONAL RENT**

1 Introduction

- 1.1 As PMS Providers, the above contractor has referred the matter of notional rent for dispute resolution under the provision of Paragraph 95, Schedule 5 of the NHS (Personal Medical Services Agreement) Regulations 2004.
- 1.2 On behalf of the Secretary of State for Health, the NHS Litigation Authority is directed to exercise the functions of dispute resolution. 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 7 November 2008, the contractor 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 15 November 2007.
- 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 dated 4 November 2008.
 - 2.2.2 Letter from the contractor dated 10 November 2008.
 - 2.2.3 Letter from the PCT, with enclosures dated 3 December 2008.
 - 2.2.4 Letter from the contractor's representative, with enclosures, dated 5 December 2008.
 - 2.2.5 Letter from the PCT, with enclosures, dated 23 December 2008.
 - 2.2.6 Report by an Independent Expert Advisor dated 7 October 2009.

3 Statutory Framework

- 3.1 The PMS Agreements Regulations 2004 apply in this case. Schedule 5, Part 7, paragraph 95(1) 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 agreement 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 94(1) (where the agreement is not an NHS contract).”

3.2 The PCT does not seek to argue that a notional rent review does not apply. I am mindful that reviews since April 2004 are likely to come under Part 5 of the GMS Statement of Financial Entitlements which 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 the an Independent Expert Advisor (IEA) appointed by the President of the Royal Institution of Charters 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 £31,000. I further note that the total figure upon which the contractor seeks to rely is £34,500, which is contained in submissions to the IEA.
- 5.2 In my view, the rational in the advice to me is robust and the observations offered do not advance the initial dispute rather seek to add to it. I note that we have not received any additional comments from either party upon the report provided by the IEA which was forwarded to them on 13 October 2009. On this basis I am not persuaded to depart from the advice to me.
- 5.3 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 15 November 2007 which is £32,000.

Lisa Hughes
Appeals Manager