

3 November 2009

FILE REF: SHA/15292

PRIMARY CARE TRUST: #

PMS CONTRACTOR : DR #

**DISPUTE RESOLUTION – NATIONAL HEALTH SERVICE
(PRIMARY MEDICAL SERVICES AGREEMENT)
REGULATIONS 2004 (AS AMENDED)**

RE: REIMBURSEMENT FOR FURNITURE, FIXTURES & FITTINGS

1 Introduction

- 1.1 As PMS Providers, the above contractor has referred the matter of Reimbursement for furniture, fixtures and fittings 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 NHSLA have made this determination.

2 Application for Dispute Resolution

- 2.1 By letter dated 13 July 2009 the contractor applied to the FHS Appeal Unit of the NHS Litigation Authority, for dispute resolution of the above issue.
- 2.2 I have had regard to the following documents made available to me in consideration of this matter to ensure the just, expeditious, economical and final determination of this dispute: -
 - 2.2.1 Contractor's letter to the Appeal Unit dated 13 July 2009 with enclosures.
 - 2.2.2 PCT's letter to the Appeal Unit dated 17 August 2009 with enclosures.
 - 2.2.3 Contractor's letter to the Appeal Unit dated 2 September 2009 with enclosures.

3 Consideration

- 3.1 I note the Contractor's application for dispute resolution, concerns the PCT's decision regarding reimbursement of furniture, fixtures and fittings costs for setting up a new General Practice Surgery. The Outline Business Case for the development, had been produced in March 2006 by the PCT's predecessor.
- 3.2 I note the Contractor's letter to the PCT of 20 March 2009, indicated the they were submitting an application to the Trust *"in respect of additional costs which will be incurred as the project comes towards completion."* The application was being made under Section 36 of the Premises Costs Directions 2004.
- 3.3 I note the Contractor has stated they are aware of other similar developments in other PCT's areas where all furniture, fixtures and fittings have been provided free of charge. I had no knowledge of those developments and in any case they are a matter between those PCT's and individual contractors. I therefore take no view of them in my determination of the current application for dispute resolution.

3.4 Whilst not directed by the contractor to any particular part of their Personal Medical Services Agreement with the PCT, I note Schedule 2, Part 2 of the Agreement, includes that the Contractor and PCT had *“identified the need for improved primary care premises.”* In my view however, Schedule 2, Part 2 does not assist my determination of the application for dispute resolution, in that it provides no indication the cost of furniture, fixtures and fittings will be reimbursed by the Trust.

3.5 I note the applicant’s statement that their application for reimbursement of costs was made under The NHS (General Medical Services-Premises Costs) (England) Directions 2004. Whilst the Contractor’s is a PMS practice, Part17, clause 440 of the copy contract (which commenced 1 March 2006) provided to me states:

“Where premises costs are payable to the contractor these are excluded from the annual contract price and paid separately in accordance with the equivalent provisions of the SFE part 5 (existing premises development) and The National Health Service (General Medical Services – Premises Costs) (England) Directions 2004.”

I note the ‘Outline Business Case’ produced by the PCT’s predecessor dated March 2006, also indicates some reliance upon the Premises Costs Directions.

3.6 Given the above, there should in my view, be no discrepancy between PMS and GMS in such circumstances, the provisions of The National Health Service (General Medical Services – Premises Costs) (England) Directions 2004 shall apply. I note that this is agreed between the parties and not an issue.

3.7 I note the contractors reference to the PCT’s letter to them of 1 June 2009, indicated that the Contractor had received an approved list of items ‘last year’. This was clear on what items the Primary Care Trust would fund. I note comments from the contractor that the PCT encouraged them not to move existing fixtures and fittings to the new premises, but can find nothing in the documentation provided to me to suggest that costs of new furniture would be reimbursed by the PCT. I note the PCT’s document (dated 1/2/08) entitled “New Surgery Developments: Related Costs” also states *“This document outlines the financial support available to GP practices arising from new primary care developments”*. The column headed ‘Issue’ includes ‘cost of non-fixed e.g. desks, chairs followed under the heading ‘Primary Care Trust Principle’ by *“The PCT will not provide these items”*. I am satisfied the Contractor was aware early on what items were or were not likely to be reimbursed by the PCT.

3.8 I note the applicant’s argument that the approved list of items was separate to the Premises Directions application to which this application for dispute resolution relates.

3.9 I note in their letter to the PCT dated 19 May 2009, the Contractor stated the Premises Costs Directions clearly state that the PCT must consider individual applications for financial support. In their letter to the contractor of the 15 May 2009 the PCT indicated the Premises Costs Directions required the PCT to consider any requests for financial assistance received from practices that fall within the remit of these Directions. I note Part 1 of Regulation 3, indicates the Directions apply in relation to the payments made to contractors: including related costs, incurred in occupying new or significantly refurbished premises relating to the relocation of the contractor. The Contractor has made specific reference to paragraph 35 of Part 5 ‘Recurring Premises Costs’ of the Directions and have suggested the PCT was obliged to consider their application. Paragraph 36 states:

“Subject to the following provisions of this part, where a contractor –

(a) incurs borrowing costs as a result of purchasing, building or significantly refurbishing its practice premises (or would have incurred such costs had the contractor not funded the project with its, or its partners’ or shareholders’, own resources: and

(b) makes an application to it for financial assistance towards meeting those costs,

The PCT must consider that application and, in appropriate cases (having regard amongst other matters, to the budgetary targets it has set for itself) grant that application.”

- 3.10 I am of the view that the Premises Costs Directions placed an obligation on the PCT to consider the application but did not commit it to providing financial assistance. The PCT had considered the Contractor's request for financial assistance in line with its framework for doing so, and in the light of discretionary support already provided, declined to provide assistance in respect of furniture, fixtures and fittings.
- 3.11 I conclude that the PCT's has acted in accordance with the Directions and accordingly dismiss the application for dispute resolution.

Lisa Hughes
Appeals Manager