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11 December 2023

FILE REF: **SHA/26071**

DECISION MAKING BODY: **NHS SOUTH WEST LONDON INTEGRATED CARE BOARD ("THE COMMISSIONER")**

GMS CONTRACTOR: **DR ACHARYA
TRIANGLE SURGERY
UNIT 3, TRIANGLE HOUSE
2 BROOMHILL ROAD
WANDSWORTH
SW18 4HX**

DISPUTE RESOLUTION – NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES CONTRACT) REGULATIONS 2015

RE: REFUSAL OF PREMISES RELOCATION

1. Determination on a preliminary matter

1.1 [Taking all of the above into account,] I conclude that:

1.1.1 The Commissioner has provided insufficient details of the changes to its strategic priorities and related financial position in relation to primary care premises since October 2021 when it agreed to a similar practice premises move and a variation to the GMS Contract; and

1.1.2 The Contactor has failed to provide sufficient details around the possible options to determine this dispute.

1.2 I provide a preliminary determination that the parties work together to consider the options available in relation to the current practice premises, premises Improvement Grants arrangements and future funding and provide this information to me, as soon as possible and at the latest by 11 April 2024 following which I shall provide a final determination of this dispute.

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DISPUTE RESOLUTION – NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES CONTRACT) REGULATIONS 2015

RE: REFUSAL OF PREMISES RELOCATION

1. INTRODUCTION

1.1 The above Contractor referred the dispute in relation to its General Medical Services Contract for dispute resolution under the provisions of Regulation 83 of the National Health Service (General Medical Services Contracts) Regulations 2015 (the "Regulations").

1.2 The Secretary of State for Health and Social Care has directed that NHS Resolution exercise the functions of dispute resolution on their behalf. I, as an authorised officer of NHS Resolution, have made this determination.

2. APPLICATION FOR DISPUTE RESOLUTION

2.1 By email dated 18 August 2023 the Contractor applied to NHS Resolution, for dispute resolution.

2.2 I have had regard to the following documents made available to me in consideration of this matter to ensure the just, expeditious and economical determination of this dispute:

2.2.1 The Contractor's application, received via emails dated 18 and 28 August 2023, together with enclosures;

2.2.2 The Contractor's representations, received via emails dated 19, 20, 24 and 27 September 2023 and 3 October 2023, together with enclosures;

2.2.3 The Commissioner's representations, received via email dated 29 September 2023, together with enclosure; and

2.2.4 The Contractor's observations, received via email dated 20 October 2023 together with enclosures.

3. PARTIES SUBMISSIONS

The Contractor's application

3.1 On 18 August 2023, the Contractor applied to NHS Resolution for dispute resolution. It's initial email stated:

"*I would like to appeal the refusal of premises move by SWL ICB for my practice on the grounds that they have given no valid reason or rationale for the rejection apart from 'stragetic'* [sic]*.*

Despite an overwhelming demand from my patients and staff for the move as the current premises is dangerous and could result in a fatality, they are adamant on me entering into a 15 year lease with the current landlord.

They had agreed for a move of premises in 2021 for a different building, however the seller reneged on the deal last minute.

I attach the application of premises move, their initial refusal with my replies in red text, and also the approval letter from 2021.

I will send the appeal to their refusal, and their rejection of the appeal in the next mail

I appreciate your urgency on the matter as the seller of the building cannot hold the building for much longer, as it's been 6 months since the application, and we wish not to lose the building and this wonderful oppurtunity [sic].

Our patients and staff are very concerned on the delay by the ICB and they should not be condemmed [sic] *to the current unsafe premises*."

3.2 The Contractor provided copies of the documents referred to above.

3.3 By email dated 28 August 2023, the Contractor further stated:

"*Please see attached my GMS contract.*

The current premises is owned by [redacted], my previous partner who retired in 2020 and there is no lease in place between the practice and himself.

He wanted me to sign a 15 year lease with no right of renewal and had indicated he would be converting this building into flats.

It is a delapitated [sic] *building over 2 floors, with steep staircases, a platform lift which is dangerous, and patients safety is compromised as they have needed rescuing from the lift which gets stuck, by the fire service.*

A patient even fell head first down the stairs.

There is a serious risk to patients life, as the fire exits lead out to steep spiral stairways, and if the lift breaks down, patients on the top floors would not be able to leave the building.

Timeline of events:

June 2021: Application to move premises to 98 wandsworth highstreet

July 2021: Rejection of move by Southwest London CCG on the basis that the current premises was suitable for use, and that it was not in the strategic estates planning by the CCG.

ON subsequent appeal and meetings with the estates manager, he stated there was a demand and need for a new G.P premises in the Wandsworth town due to the large number of flat developments being built.

July 2021: Appeal to THE CCG on rejection of move of premises

October 2021: Approval to move premises by SWL CCG, on the basis that they would give zero funding for the move, including IT equipment etc which I agreed to fund myself.

They also enforced a notional rent cap of £74,000 per year, which is what they were paying me now, and I had agreed to this.

The landlord of the premises reneged on the sale of the building at the last minute in March 2022, hence I searched for a new premises.

I had notified the SWL ICB that I still was looking for an alternative premises and applied for a move of premises to 63 Wandsworth Hight street, which is a much better, larger, safer premises ,7 minutes walk from the current, with no stairs or lift required.

March 2023: Application to move premises to 63 Wandsworth High street

April 2023: Rejection of move of premises by the SWL ICB on the basis that it was not within the strategic planning.

May 2023: Appeal against the rejection of move to the ICB on the basis that the current building was unsafe and unfit for use, with overwhelming patient and staff support.

August 2023: Rejection of the appeal by the ICB on the basis of ' the move was not in the strategic planning', and they emphasised that they wanted me to sign a 15 year lease in the current premises, as they had spoken to the landlord who had agreed for me to stay.

I had emphasised that i would fund the move myself, with no increase in notional rent, and there would be a right to renew the lease after 15 years in the new premises

It would be preposterous for us to stay in the current building which is unsafe and unfit for use as a G.P surgery, especially when the current landlord will not renew the lease after 15 years.

I had emailed Mr [AM] *(head of primary care SWL ICB), and Ms* [KG] *(assistant head of primary care) for an urgent meeting to discuss the rejection of appeal, and Ms* [G] *had stated there was no further appeal possible.*

The letter of rejection was written by [MC] *(place executive, suth* [sic] *west London ICB), whom seems to be a new executive.*

I would appreciate your urgent assistance, as the landlord of the new premises is now very concerned, and I really do not want to lose the oppurtunity [sic] *for my patients and staff*."

3.4 The Contractor provided a copy of its GMS Contract.

Representations

The Commissioner's representations

3.5 The Commissioner provided representations on this matter which states:

"*I write to you in response to your letter dated 5 September 2023 regarding the application for dispute resolution with regards* [sic] *to the SWL ICB's refusal of premises relocation requested by Triangle Surgery, the GP practice located in Wandsworth, London.*

In April 2021 the SWL NHS Primary Care Team became aware of a lease dispute between the landlord and the tenant of Triangle Surgery, Wandsworth. The landlord is a retired ex-partner at the practice and the GMS contract is now held by Dr Acharya, who is a single hander.

Through discussion with the practice, it became clear that Dr Acharya wished in fact to relocate his practice to another location, rather than signing a lease with his current landlord, as he felt the terms of the proposed lease were not agreeable, and he did not want to commit to a long-term lease which is expected for any lease agreements related to GP Practices as per NHS Premises Directions.

The ICB has repeatedly requested assurance that Dr Acharya has security of tenure in his current location and reminded him the importance of having a signed lease in place which represents value for money and ensures that the premises are fit for the delivery of Primary Medical Services. The Tenancy at Will arrangement he has in place does not meet these criteria and is in breach of his contract. Without a signed lease in place, this raises serious concerns regarding the long-term security of the premises as patient services may be disrupted. The Primary Care Directions stipulate the need for premises to meet the minimum standards which are linked to compliance with law and health & safety. This in turn will link to the obligation to reimburse to the lower of the CMRV or the actual lease costs.

In March 2023 Dr Acharya submitted a business case proposing to relocate his practice to a new building which is situated at 63 Wandsworth High Street which is about 600 metres from its current location.

His application and supporting documents were considered by the ICB in line with the relevant formal governance and decision-making requirements. It was agreed that the proposal was not in line with the strategic priorities of primary care in Wandsworth, and there was no need for relocation to a bigger building. The list size had not increased in the past few years, and in fact dropped by few hundred, and there is no significant population growth expected in the area where the practice is located. Also, to note, that there is no right for a contractor to relocate under the GMS contract. This would be seen as a contract variation which requires approval from the ICB.

The issues with the building listed by Dr Acharya in his application were mainly concerning a faulty lift which could be repaired. Whilst being used as justification for relocation, this in turn provides admission from the contract holder that the premises are non-compliant with the requirements of the GMS contract which requires them to be suitable for the delivery of services, and the PCDs which requires compliance with minimum standards in Schedule 1 as a condition for reimbursement.

Another crucial factor in refusing the application was the financial burden that the ICB would face if it approved the relocation. Although the provider stated that he would cover the financial costs of the relocation and adapting a new building into a GP practice, there was a significant rent increase forecasted. The ICB currently reimburses £74k per annum in rent, and the possible valuation of the new property was £126k per annum. While Dr Acharya stated that he would not seek a rent increase in the first 3 years, he made it clear that after a rent review which are reviewed on a 3 yearly basis by the District Valuer, he would expect a full market rent to be reimbursed by the ICB. Furthermore, the approval of leasehold premises rental costs under the PCDs is not absolute. An ICB must consider an application, but only to approve in 'appropriate cases' (having regard, amongst other matters to the budgetary targets it sets for itself).

Following the ICB's decision to refuse his application, Dr Acharya appealed this decision. His appeal was reviewed by the ICB and presented to the SWL Primary Care Executive Group for decision in accordance with the ICB governance arrangements. As Dr Acharya did not provide new information in his appeal, which would address the concerns raised by the ICB in their response, the appeal was rejected.

In the appeal outcome letter, the ICB reminded the provider of his obligations to have a valid lease in place advised to sign a formal lease agreement with his landlord as a matter of urgency, with a view to obtaining an adequate lease term. The ICB also reminded Dr Acharya of his contractual obligations to ensure the premises is safe and encouraged him to apply for the Improvement Grant and use the funds to resolve any building issues. To date, we have not been satisfied that all steps have been taken by the contractor to resolve the outstanding issues with the landlord."

The Contractor's representations

3.6 The Contractor's representations consisted of photographs, patient statements, a statement from the PPG, responses to questionnaires, a premises business case, minutes from the PPG meeting dated January 2023, incident reports from the London Fire Brigade, a surveyors report on the new premises, together with copies of email correspondence between the Contractor and the Commissioner.

Observations

The Contractor's observations

3.7 The Contractor provided observations in response to the Commissioner's representations which stated:

"***Strategic Priorities***

SWL Primary Care Team in their representation of 29th September 2023 said the proposal was not in line with strategic priorities.

That was contradictory as on 5th October 2021 (attached), when they approved a move to Silverdale House, 98 Wandsworth High Street. There was no mention of strategic priorities.

The rent of £126,000/- they mentioned on 63 Wandsworth High Street Freehold (4,199 sq. ft) was subjective and based on the valuation report arranged by my Bank whom are arranging my finances. The district valuer has yet to value the current market rent.

The proposed rent on a new lease from the Freeholder was £85,000/-. Despite that proposed rent, I agreed to subsidize of £11,000/- for three years, until the next rent review.

Dispute with [redacted] over the signing of the new lease.

I clearly stated the reason for not signing a new lease with [redacted]l as I was awaiting the outcome, including appeals from the SWL Primary and Care team.

I was willing to sign a shorter lease with a 'get out' clause. If they were worried about my signing a new lease with [redacted], why did they drag their feet and not expedite the decision of the lease. thereby resolving any issue of moving or staying? I kept telling them to expedite their decision as the freeholder was getting very anxious. It is now seven months since my application in March 2023.

Apparently, [redacted] had sought their help in pressurising me. Obviously, it was prudent of me not to renew Triangle Practice lease as that would prevent me from moving to the new property.

This was blatant biasedness on their part as they could have told him I was trying to re-locate to new premises.

As soon as they rejected my move, they pressurised me to sign a new lease, without due regard to my right of appeal.

Security of Tenancy

During my partnership with [redacted] at Triangle Surgery, we were operating on the 'Tenancy at Will' lease which was operating well for 20 years. The CCG/ICB had no issues with that at the time, so why now?

Of course, if the outcome of the move is not realised, then I will have to sign a new lease agreement with [redacted].

Faulty Lift

Their rejection letter of 24th April 2023 only mentioned two points, i.e., rent, and strategic need for the move. However, in their latest letter dated the 29th of September (attached), they brought in the issue of the faulty lift and suggested it was repairable; ignoring the other issues with the dilapidated building and contradicting their approval on 5th October 2021 for Silverdale House.

The platform lift is not repairable and is 20 years old. The lift company stated that the parts were obsolete. A whole new lift would need to be installed and cost more than £50,000, with a lifespan of 15-20 years but the platform lifts would come with ongoing issues like breakdowns, unreliability, and patients getting trapped inside.

Ultimately this still poses a serious risk to life, and in the event of a fire, patients would get trapped on the higher floors, with the fire exits leading to precarious spiral stairways.

The current building is essentially a death trap waiting to happen with the steep stairwells. This was designed as an office block; not a GP surgery catering for vulnerable patients.

In addition, the Bison risk assessors have documented concerns on the fire safety and legionella control as there are hidden, or dead loops in the plumbing which cannot be identified without a complete strip of the existing pipes.

This would involve closure of the surgery for 6 months.

The new premises is all on the ground floor, with very good escape routes in the event of emergency evacuation. It will also have new plumbing.

These problems were clearly listed in my business plan for relocation (attached) on the 1st of March 2023, but SWL Primary Team chose to ignore such problems and only highlighted the lift.

Minimum standards which are linked to compliance with law and health & safety.

I have never breached any requirements of the GMS contract and my services are selfless and I adhere to the highest standards.

There was no need for relocation to a bigger building due to list size.

A relocation to a larger building is not necessarily dependent on the size of the patient list in the practice or area. The main overriding and fundamental considerations are to the wellbeing of the staff and patients by giving them a better facility.

A new bigger, better building with more advanced equipment and technology should be welcomed by any forward thinking person or entity.

If the list size has dropped by a few hundred, then the underlying cause would be the conditions persisting in the current practice. No doubt, the size will grow again, because the facility will be much better in terms of services which will be modern and up to date.

An example will be the installation of new devices to enable patients to log in via the screen when they attend appointments without having to speak the receptionists. Only one will be required to sit at reception whilst freeing others for different tasks.

If there was no significant population growth in the area, why, again, did they approve the move to Silverdale House? The size of 63 Wandsworth High Street is not for the purpose of any list size. It is solely for the convenience of all the patients and staff. Therefore, list size should not be the factor.

No Right for Relocation

Of course, I am aware that there is no right for me to relocate under the GMS contract. That is the reason why I made the application to Silverdale House, which was granted in 2021 and also to 63 Wandsworth High Street which has been rejected. Isn't making any application a part of the ICB procedure?

Rent Review after 3 years.

I have told SWL Primary Care that I would bear the burden of the new rent for three years until the next renewal. This is my guarantee, but who in the other practices would do that? Can they guarantee that other practices would not have rent increases every three or five years. Why should my new move be the exception? In any event rent increases are negotiable and not to the whims and fancies of anyone.

Even my then partner, [redacted] had to negotiate an increase, which subsequently ended in a tribunal, and he won. They should be more worried about [redacted] than my new company which I can control as regards rent increases.

Dr Acharya did not provide new information in his appeal

It is preposterous to suggest that I did not address the concerns raised by the ICB.

There were only two concerns raised by them, one of which was the rent issue, which I had addressed. The other issue was 'strategic need' I responded to their rejection letter of 24th April 2023 on the 4th of May 2023 (attached). What new information did I need to provide when I responded to their reasons for rejections?

Despite my emails, they never explained what 'strategic need' was, except to procrastinate.

I had provided an email from the PPG, emails from patients, as well as staff and patient surveys.

Did they want me to continue operating in a dilapidated building, rather than a new building, all on one floor without any floor above?

SWL Primary and Care Team lied

They lied about the right of appeal in their email dated the 15th of August 2023 (attached). If I had listened to their lies, I would not have reached this stage of the appeal and the right to move. This shows their unprofessionalism and biasedness in dealing with this matter. I wonder how many other cases they had dealt with and lied? All the while, they were dragging their feet and potentially jeopardizing the loss of the freehold and my right to move.

***NHS Resolution** should allow my appeal as they had no reasons to stop my move. They were creating reasons for the sake of stopping me. Their lies prove the way they operated.*

They don't have any valid reason to reject me as their reasons were invalidated by me. The only reason why they prevented me from moving is may be due to vested interests of others."

3.8 No observations were received from the Commissioner.

4. CONSIDERATION

4.1 As part of my consideration of the application for NHS dispute resolution, I required an up-to-date version of the contract in dispute containing all variations agreed since the contract was signed. This was provided and has not been disputed by the Commissioner.

4.2 From the information before me, I am of the view that local dispute resolution has been exhausted following which the Contractor has referred the matter in dispute to NHS Resolution. There is no dispute between the parties that local dispute resolution has not been entered into and therefore I will proceed to consider the matters before me.

4.3 I note that the matter in dispute concerns the Commissioner's refusal of the Contractor's application for premises relocation. I am content that there is clearly a dispute between the parties and whilst the Contactor has requested an "appeal" regarding the refusal of the practice premises move that he has requested be approved by the Commissioner, I am content that his application for NHS dispute resolution is for a determination of the dispute between the parties on the same issue.

4.4 I have considered the papers provided to me, and note that I have been provided with considerable details as regards the current practice premises and their condition by the Contractor. I am mindful of the Contractor's request for certainty and the urgency of a final decision.

Practice Premises size

4.5 The current practice premises are at 2 Broomhill Road, Wandsworth, SW18 4HX and they occupy 230 m2. The registered list of patients is stated by the Contractor to be 4,700 (as of 1 March 2023).

4.6 I note that there has been a previous local dispute between the parties regarding the practice premises, which I understand relates to when the Contractor applied to move the practice premises to 98 Wandsworth High Street (98 Wandsworth). I understand that this was ultimately approved in October 2021. I also note that the premises at 98 Wandsworth was 293 m2 (net internal area). This is around 27% larger than the current practice premises.

4.7 The Contractor has stated that the landlord of 98 Wandsworth pulled out of the premises agreement in March 2022 and so the move to these premises was no longer possible.

4.8 In March 2023, the Contractor applied to the Commissioner to move the practice premises to 63 Wandsworth High Street, Wandsworth SW18 2PT (63 Wandsworth).

As correctly identified by the Commissioner, this would be a variation of the GMS Contract and would need the agreement of the Commissioner.

4.9 63 Wandsworth is 390 m2 (gross internal area) which is approximately 33% larger than 93 Wandsworth, which was previously approved for a move of the practice premises. I also note that the referenced 390 m2 for 63 Wandsworth is the "gross internal area" whereas, the measurement of 293 m2 for 98 Wandsworth was the "net internal area". I understand that the net internal area for 63 Wandsworth is likely to be much closer to that of 98 Wandsworth which was previously approved. The Commissioner does not explain why, in October 2021, a practice premises move was accepted and the change in circumstances which have led to this dispute as a variation to the practice premises cannot be agreed. I note the Commissioner's comments as regards this not being in line with the strategic priorities of primary care in Wandsworth and the financial burden that the Commissioner would face if it approved the relocation, however, these do not explain the change since the previous decision was made in October 2021,which would have been helpful to the Contractor and in relation to this application for NHS dispute resolution.

4.10 The Contractor has stated that they have sought larger practice premises due to requiring more storage space, a sufficiently sized waiting area, a staff room, disabled toilet and a larger reception area to accommodate another receptionist to answer the phones.

4.11 I note that it is the Commissioner's position that the registered patient list size has dropped by a "few hundred" and there is no significant population growth expected in the area, therefore, an increase in practice premises size is not required.

4.12 I have also considered the Contractor's suggestion that the registered patient list size may have decreased due to the conditions of the current practice premises and so patients are leaving the practice and seeking alternative practices with better facilities and easier access. This is of course speculation and I have not been provided with any evidence to this effect.

4.13 The Contractor's application stated that there is growing demand in the area with the recent "Ram Brewery" and new riverside developments which are ongoing, where "100’s of flats" have been built. The Contractor's email, dated 28 August 2023, stated that [redacted] (the owner of the current practice premises) would likely convert the building into flats if the Contractor does not renew the lease. This is contrary to the Commissioner's indication that there is no significant population growth expected in the area. I would have expected the parties, and in particular the Commissioner, to have been able to provide further evidence in this regard as this is clearly a salient issue to this dispute.

4.14 I have not been provided with any data or figures relating to the registered patient list size and local demographics so I am unable to comment on the extent that this could affect a move to a larger practice premises.

Condition of the current practice premises

4.15 Clause 7.2.2 of the GMS Contract states that the Contractor must ensure that premises used for the provision of services under the Contract are "(a) suitable for the delivery of those services; and (b) sufficient to meet the reasonable needs of the Contractor’s patients".

4.16 The Contractor has provided evidence in the form of a video, staff statements and PPG meeting notes (dated 9 January 2023) to show that the platform lift is not fit for purpose. The Contractor has stated that the lift company informed them that the lift is not able to be repaired as the parts are obsolete and so the lift would need replacing. The cost of replacement would be approximately £50,000.

4.17 It is the Commissioner's position that the Contractor could apply for a premises Improvement Grant to resolve issues with the building, however, no information has been provided regarding the likelihood of securing or the value of the grant or the costs of the works that would be required together with the costs to both the Contractor and the Commissioner in this regard.

4.18 Whilst I understand that the lift could be replaced, the issues relating to what I understand are steep, inappropriate stairs for use by vulnerable and elderly patients, remain alongside a variety of other issues set out by the Contractor. The Contractor has commented that the internal stairs are very steep and there was an incident where a patient fell down the stairs. I understand that there is only one consultation room on the ground floor which limits the availability which can be offered to patients who would not be able to use the stairs in the event that the lift is not accessible or available. I also understand that the external fire exit consists of a steep spiral staircase which abuts resident flats, by which residents often leave objects on the stairs which obstruct the fire exit and photographic evidence of this has been provided to me.

4.19 I note that there is significant staff and patient support shown for the request to move practice premises in the form of patient surveys and letters, staff statements, and a PPG meeting note and letter. The staff have stated that the current building is dilapidated with insufficient room and space to work, there is poor ventilation and inadequate natural light, and they have to work in cramped and congested rooms. Staff have stated they do not have appropriate facilities for a staff room/communal area. They have also stated that the back office does not have sufficient storage space and so they have to shred paper in the reception area which could lead to a potential personal data breach. Staff have also stated that there is no parking available at the practice premises which makes patient access difficult, for disabled patients in particular. The patients have stated that they do not like to use the lift as it breaks down often and the stairs are very steep. The waiting room has limited space and often patients have to wait outside of the building prior to their appointment.

4.20 The Contractor states that a "Bison Risk Assessment" was carried out and documented concerns on the fire safety and legionella control as there are hidden, or dead loops in the plumbing which cannot be identified without stripping the existing pipes. The Contractor has not provided a copy of this document and so I am unable to consider this further. These are serious concerns that I would expect the Contractor and its landlord, together with the Commissioner to consider upon sharing of this Risk Assessment.

4.21 The Contractor’s Business Case, dated 1 March 2023, states that the current consulting rooms are separated by thin partitioning which allows patient consultations to be heard in the waiting room and adjacent rooms which compromises patient confidentiality.

4.22 I note that the practice premises are owned by a previous partner to the GMS Contract and I understand that the practice premises have been in use for this purpose since or around 1992. I understand that this is on the basis of a tenancy at will. It is crucial that the Contractor (either itself or through its landlord) has the ability to maintain or make necessary alterations to the practice premises in order for it to fulfil its duties under the GMS Contract. Whilst I appreciate that the lift could be replaced and some detail has been provided in this regard, I have not been provided with any alternative proposals, to the clear position accepted by the Contractor, that the practice premises are not fit for use. I understand that the landlord wishes to enter into a lease for 15 years. Whilst it is commended that the Commissioner is now keen to move to a certainty of practice premises tenure after such a long period operating under a tenancy at will, I would have expected these conversations to also include how the practice premises may be brought up to the state required by the GMS Contract. I appreciate that there are likely to be costs associated with this, either for the landlord or the Contractor and that this may also have implications on the Commissioner. The Commissioner has referenced

the premises Improvement Grant as being a future option which may be available to the Contractor.

4.23 The Contractor's evidence supports the need for more appropriate practice premises. Whilst the Contractor's proposed practice premises on the ground floor are clearly desirable, the Commissioner must balance its strategic priorities and the associated costs against its wider duties. I am aware that the Contractor would not seek a rent increase for a period of three years, however, the GMS Contract continues in perpetuity and the Commissioner must have regard to the long term financial position. Bearing in mind the requirements of managing public money, I am not satisfied that the issues raised regarding the practice premises are incapable of resolution and thus lead to a situation where the Contractor must be permitted to move practice premises. I have not been provided with evidence on the possibilities of undertaking works to the current practice premises (or been told that this is not possible) or details of the financial effectiveness of this as against the practice premises move. I am particularly concerned by the comments as regards patient safety, including in the event of a fire due to the top floor fire exits, and patient personal data breaches due to thin walls and storage facilities. I note that the Contractor has been providing services from this property for over 20 years and I have not been made aware that the Commissioner has served any breach notices on the Contractor regarding the practice premises. It is unclear from the evidence that has been provided to me on what can be resolved and what is not possible. As an example, it does not appear impossible for the items that are blocking the fire escape to be moved and remedial action in this regard should be undertaken urgently.

Proposed new practice premises

4.24 For completeness, I note that it is generally accepted that the new proposed practice premises at 63 Wandsworth is 0.3 miles and a 7 minute journey on foot from the current surgery's location.

4.25 63 Wandsworth is currently being used as a an open plan Jiu Jitsu dojo with adjacent Pilates studio and so the interior will need to be stripped and rebuilt according to the Development Study plan.

4.26 The Development Study (Blueprint Architects Limited) plan provided by the Contractor shows that the proposed new practice premises at 63 Wandsworth would be located on one floor only to provide ease of access to all patients. The plan states that the entire ground floor is intended to be barrier free, without any steps or thresholds.

4.27 The increased internal area of 63 Wandsworth would allow for 2 additional clinical rooms, a dedicated staff room, meeting room, storage, IT and utility rooms. There would also be a larger reception area and waiting room.

4.28 Whilst I understand that this layout of space and facilities may be entirely desirable, it is essential that this is balanced by the Commissioner against its priorities and funding and whether the current practice premises are and can comply with the GMS Contract. I note that there are 6 GPs which provide services at the current practice premises, together they work 18 sessions between them although I have not been provided with details of how the additional capacity would be fully utilised. I do note the comments in relation to the PCN/AARS.

4.29 The Development Study plan states that a construction programme will take approximately 12 weeks and this does not account for the expected 3 months from mobilisation until being able to start the construction. The Contractor has not confirmed their ability to fund these works (or how it would meet the rental costs of the proposed practice premises during the time that the construction programme takes place). These are relevant issues for the Commissioner to consider as part of the application for the variation to the GMS Contract due to practice premises as absent an understanding and assurance in this regard, there may be a risk of material financial loss to the

Commissioner. I have assumed that patient services would not be interrupted during the construction programme as the services would continue to be delivered from the practice premises.

4.30 The Contractor has provided evidence of a number of issues with the current practice premises, however, the proposed new practice premises at 63 Wandsworth is not currently able to be used as a GP surgery and it will take a minimum of 6 months until it can be used as such.

Rent

4.31 I note that the District Valuer has not yet valued 63 Wandsworth. The Christie & Co Valuation report, dated 2 December 2022, (the Contractor's bank finance report) values 63 Wandsworth market rent at £126,000 per annum. The Contractor has stated that the proposed rent on a new lease from the Freeholder was £85,000 per annum, however, no evidence has been provided to confirm this. As I have set out above, I have not been provided with evidence of comparison costs for the current practice premises to be brought in line with the GMS Contract and the impact that this would have on the Commissioner in terms of how the premises costs may change and when this would occur. For example, where the Contractor (either itself or through its landlord in accordance with the property tenure/management arrangements they have in place) addresses its areas of concern and there is a subsequent change to the rent review by the District Valuer, which the Commissioner has highlighted occurs every 3 years.

4.32 I understand that the Commissioner currently reimburses £74,000 per annum in rent. The Contractor has proposed to subsidize £11,000 per annum for 3 years to make up the remainder of the rent for 63 Wandsworth.

4.33 The Commissioner stated that after a rent review, which takes place on a 3 yearly basis by the District Valuer, the Contractor informed them that they would expect the full market rent to be reimbursed by the Commissioner.

4.34 Whilst I note and commend the financial offer from the Contractor, the future costs, beyond the three years are a valid consideration for the Commissioner, which is responsible for public money and must prioritise this appropriately.

5. DECISION

5.1 Taking all of the above into account, I conclude that:

5.1.1 The Commissioner has provided insufficient details of the changes to its strategic priorities and related financial position in relation to primary care premises since October 2021 when it agreed to a similar practice premises move and a variation to the GMS Contract and

5.1.2 The Contactor has failed to provide sufficient details around the possible options, particularly around the current practice premises, for me to determine this dispute in full.

5.2 I provide a preliminary determination that the parties work together to consider the options available in relation to the current practice premises, premises Improvement Grants arrangements and future funding and provide this information to me, as soon as possible and at the latest by 11 April 2024 following which I shall provide a final determination of this dispute.

Head of Appeals
NHS Resolution