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4 June 2024

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. Outcome

1.1 I conclude that the Contractor has not provided all or sufficient further information and evidence requested in my Preliminary Determination. I cannot therefore determine this dispute in favour of the Contractor. I determine no variation to the address of the practice premises.

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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. BACKGROUND

2.1 I provided a determination on a preliminary matter dated 11 December 2023, in which I indicated 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, following which I would provide a final determination of this dispute.

2.2 Each party was provided with a copy of the other party's further submissions and provided with the opportunity to make any final observations. All submissions received have been shared with all parties.

3. FURTHER SUBMISSIONS

3.1 In its further representations, the Contractor stated:

"Further to your conditional arbitration some months ago , i have emailed the swl icb lead [AM] on his stance on my move of premises.

We arranged a meeting at the premises with his team,however their stance seems to be that we are 'low priority' in their agenda,and they were dismissive in my request to allow a premises move,and instead they triggered a infection control visit.

I have asked [A] for a meeting to discuss the issues,and if in his opinion the current building is safe for use as a Gp surgery(which in my numerous remonstrations ivr proven that it's not).

He has not engaged and simply stated that he is in discussions with his team, and this was 1 month ago." (sic)

3.2 The Contractor further stated:

"Subsequent to our infection control visit by NHSE, i have concerns on issues raised by the inspector who had incorrectly stated that our water temperatures breached legionella risk management.

We had sent her our legionella scheme and water temperature logs,which showed that temperatures were within the safe range(see attatched)

We sent our legionella test and tank inspection which were normal.

She also stated that there was no hot water coming through the taps on the top floor due to low pressure in the boiler. This is incorrect,as i'd advised her that the lack of water flow was due to the outdated and poor plumbing in the building.The boilers are working fine.

She stated that there were no laminates showing hand washing technique at basins,which is incorrect,as this was not the case.

She stated that the staff room/kitchen had notes stacked up which posed a fire risk,however this is incorrect (as shown in the photo).

Please can you consider these errors in their report,but do note that the lack of storage areas for clinical waste and files,lack of water in taps on upper floors,lack of sluice room,dangerous and damaged staircases,irrepairable lift, all confirms that the building is unfit for purpose and cannot be remedied.

We are grateful for your assistance in granting the premises move, as the ICB have not entered into any mediation since your arbitration." (sic)

3.3 The Contractor further stated:

"I attatch the ammended infection control inspection report,conducted by the NHSE.

I would like to point out;

1) The plumbing ,water issues were highlighted in my reasons to move as the building needs a complete strip of the pipes,which would require closure.

2) The report hadnt mentioned that a recent legionella risk assessment was done,showing normal water temperature logs and tank inspection,which was sent to the inspector.

3) The lack of space in the building meant that clinical waste, notes were stored in the same locked cupboard.

4) The inspector agreed that the building was not fit for purpose,and that 'it should be closed down'. She stated that the purpose of the visit was to facilitate the premises move.

Please do advise on the next steps as a matter of urgency." (sic)

3.4 In its further representations, the Commissioner stated:

"Thank you for your letter dated 11th December 2023 with the preliminary determination of the dispute, in which you have requested further information to be submitted by 11th April 2024 for a final determination of the dispute to be completed.

Fundamentally Dr Acharya has made an application to approve a relocation to a new site (and the financial consequences for doing so). The ICB has considered his request by reference to the ICB's strategic and budgetary constraints. In doing so, this has highlighted an increased financial implication on the ICB regarding the possible valuation of the new property by reference to the anticipated £126k per annum (inc. VAT) rent– an increase from £74k per annum rent reimbursement for the current premises. Therefore, the ICB has taken the decision not to approve the application.

There are also several other considerations to note:

- The current legal position Dr Acharya finds himself in with his landlord.
- The state of repair and condition of the premises (of which we have not received a risk assessment or action plan from Dr Acharya to address these issues).
- Dr Acharya is responsible for his own contractual arrangements with his landlord (which include those that relate to the repair and maintenance of the practice premises).
- Applications are considered on a case-by-case basis, and any previous approval is irrelevant. The ICB considered this application on its own merits.

As stated throughout the process the ICB remains ready to support Dr Acharya to discuss the options available about the required improvements to the current premises and mediation support in agreeing terms for a new lease with the landlord.

I have summarised below the key information used to inform the decision-making process and the outcome not to approve the application to relocate.

1. GMS premises obligations.

Dr Acharya is contractually responsible for ensuring the premises are safe and secure to operate from, and it is the ICB's responsibility to ensure that Dr Acharya is meeting his contractual obligation, as set out in Clause 7.2 Premises, of his GMS Contract dated 1st January 2021.

7.2. Premises

7.2.1. The address of each of the premises to be used by the Contractor or any sub-contractor for the provision of services under the Contract is as follows: Triangle Surgery, Unit 3 Triangle House, Broomhill Road, Wandsworth SW18 4HX.

7.2.2. Subject to any plan which is included in the Contract pursuant to clause 7.2.3, 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.

7.2.3. Where, on the date on which the Contract was signed, the Board is not satisfied that all or any of the premises specified in clause 7.2.1 met the requirements set out in clause 7.2.2 and consequently the Board and the Contractor have together drawn up a plan (contained in Schedule 5 to this Contract) which specifies:

(a) the steps to be taken by the Contractor to bring the premises up to the relevant standard;

(b) any financial support that is available from the Board; and

(c) the timescale in which such steps will be taken.

7.2.4. The Contractor must comply with the plan specified in clause 7.2.3 and contained in Schedule 5 to this Contract as regards the steps to be taken by the Contractor to meet the requirements in clause 7.2.2 and the timescale in which those steps will be taken.

2. NHS funding/ rent reimbursement

SWL ICS, in 2023/24, is currently spending £81.6m more than the funding available. The SWL ICB Delegated Primary Care budget has an underlying recurrent deficit of £6.5m in 2023\24, which it needs to manage going forward into the 2024\25 financial year.

Any increase in Rent Reimbursement (which is funded from Delegated Primary Care) must align to the effective provision of Primary Medical Services, including Value for Money.

The proposed new premises is significantly larger, and as stated above would result in an additional £52k recurrent spend per annum in rent reimbursement, with little or no additional benefit realised. In the current financial climate and with limited resources, this scheme is not a priority for being funded by SWL ICB.

The financial implications for the ICB if Dr Acharya does not relocate and agrees a new lease, would relate to the current rent and rates. Any other premises improvement costs would not be covered unless Dr Acharya applied and received approval for Improvement Grant funding to support some of the remedial works.

Improvement Grant applications

The SWL Lead Estates Manager has confirmed that to-date, Dr Acharya has not applied for Improvement Grant (IG) funding to support any premises improvements. This has been further confirmed via a search of the London Improvement Grant Project Management Office system and files dating back to 2016/17.

3. ICB strategic plan

There is no significant growth expected in the immediate area which would require additional capacity above that already in progress to be delivered through the Brocklebank Health Centre redevelopment, located within one mile of the proposed site.

Since January 2020, the list size of Triangle Surgery has reduced by 6%, from 4858 to 4545 registered patients.

Triangle Surgery is one of five practices within Wandle Primary Care Network (PCN). Since January 2020, the overall list size of the PCN has increased by 4%. All have open lists and are taking on new patients.

There are 8 GP practices within one mile of the current Triangle site, and the proposed new site and a further 10 Wandsworth practices within 1.5 miles of both. All have open lists and are taking on new patients.

Triangle Surgery has a relatively young population with over 50% of the registered list between the ages of 15-44. It is in an area with an IMD score of 7 (most deprived 1; least deprived 10). The Practice is not the lead practice for any Care Homes.

Triangle Surgery was given an overall Requires Improvement rating by the CQC following an inspection in April 2022. The practice was rated Requires Improvement for Safe, Effective and Well Led, and rated Good for Caring and Responsive. There was one breach of regulations found at the inspection related to processes for reviewing test results prior to repeat prescribing and recording of blank prescription stationery. Issues with the premises were highlighted in the report. The practice had to put an action plan in place following the inspection, and this was monitored by the ICB. All areas of the plan, including those relating to the premises have been completed.

4. Current premises inspection

Dr Acharya has continued to raise concerns regarding the current premises to support his request to relocate. Many of the issues reported appear to be easily repairable and solvable by agreeing a new lease with the landlord. Despite offers of support from the ICB and advice from the NHSDR team, Dr Acharya has not addressed these issues or applied for IG funding which may be able to support some of the required improvements. However, for Dr Acharya to be eligible for IG funding, he will require a letter of support from the ICB which must accompany a Tenancy at Will or formal lease in place. On 8th February 2024, Dr Acharya emailed the ICB clearly stating that he is not planning to make improvements to his current site.

To gain some further insight of the premises, an inspection was conducted by an external estates' consultant commissioned by the ICB on 23rd January 2024. Key findings were:

- Inspection of the rooms indicated that updating of Wash Hand Basins and general decor could be undertaken. WCs required renewal of sanitary ware and boxing in of pipework.

- The Lift requires repair, and the staircases need handrails and reboarding on landings.

- The ground floor consulting/ examination room requires soundproofing, and all consulting rooms require improved soundproofing to prevent conversations being heard outside the room.

- The building was poorly managed and untidy and would benefit from re-organisation to remove patient files and sort out the staff room.

The following recommendations were made following the site visit:

1. An IPC Audit is undertaken of the surgery with focus on the issues highlighted above including clinical waste disposal and lack of external bin.

2. Dr Acharya to re-engage with the landlord to agree:

a. Responsibility for backlog maintenance including the lift and reach a mutually acceptable compromise in bringing this back into working order (repair or replacement) and any other backlog maintenance items.

b. Reach terms on a lease agreement.

3. Apply for an improvement grant with SWL ICB to support with some of the improvements required to the surgery. This will not include backlog maintenance items such as the lift but should have a strong focus on:

a. Improving IPC standards, such as replacing the sinks (although general décor and reboarding on landings are not covered).

b. 'Digitisation of records to free up storage for better utilisation of space.' Although there is no funding for the digitisation of the records, if Dr Acharya paid for this, the IG funding may support the conversion of a room.

c. Improving clinical rooms and environmental standards (subject to eligibility under the Premises Costs Directions).

d. NB: IG funding for the lift is only eligible if reinstalling or upgrading to an equality act compliant lift. General maintenance repairs are not likely eligible. It has been recommended that a report is commissioned to ascertain the best course of action.

Following the premises inspection, an estimate of the costs to make the required improvements was provided on 11th April 2024. The cost estimates relating to repairs to the lift and a new boiler could be seen as reasonable for the ICB as this would be offset against the increase in cost savings in rent and rates reimbursement for not approving Dr Acharya's request to relocate to new premises. However, the other costs are the responsibility of the tenant and landlord and could be covered by Dr Acharya through an improvement grant application and through negotiations with the landlord once an agreed lease is in place.

Conclusion following the site visit:

The Triangle Surgery could be refurbished to remain a viable facility into the future if properly organised. The main recommendations set out above would need to be conducted to facilitate this.

5. Additional information

Further issues during this process raised with Dr Acharya include the use of ICB funded text messaging to patients in May 2023 informing them that due to issues with the current premises, a new premises has been found and that the move should be granted. Dr Acharya was asked to reimburse the ICB for the cost of the text messages. His actions generated support from patients for the proposed move. The ICB received no queries or complaints from patients and the public."

3.5 By way of further observations, the Commissioner stated:

"In response to your letter dated 17th April 2024, in which you have asked for any final observations to be provided within 14 days, we wish to provide the following observations and rebuttals to statements made by Dr Acharya.

Statement from Dr Acharya on 30th March 2024

Further to your conditional arbitration some months ago, i have emailed the swl icb lead [AM] on his stance on my move of premises.

We arranged a meeting at the premises with his team,however their stance seems to be that we are 'low priority' in their agenda,and they were dismissive in my request to allow a premises move,and instead they triggered a infection control visit.

I have asked [A] for a meeting to discuss the issues,and if in his opinion the current building is safe for use as a Gp surgery(which in my numerous remonstrations ivr proven that it's not).

He has not engaged and simply stated that he is in discussions with his team, and this was 1 month ago.

The arbitrator has indicated he will make a decision in April, and could you please indicate the time line and next steps?

The SWL Primary Care Team issue a rebuttal on the above statement - *the team did not say 'low priority'. An infection control visit was requested out of professional duty of care (potential issues were identified so escalated to the IPC team appropriately). The team note Dr Acharya's comment (highlighted above) that he was not supportive of a conversation about improving his current building. As per the initial NHSR determination, it was made clear to Dr Acharya that he should engage in efforts to improve his current building but as can be seen by his replies, he made no attempt to do so despite ICB support in this matter.*

Lift:

In his email dated 10th April, he states that the 'lift is irreparable'.

ICB Response: This is incorrect*, as confirmed following the premises inspection by Chartered & Commercial Surveyors [AG] (Grimes Ltd) and [CG] (Gibbard Associates Ltd) on 23rd January 2024. In the inspection report dated 19th February 2024, it confirms that the lift can be repaired or replaced. "Dr Acharya reengage with the landlord to agree: Responsibility for backlog maintenance including the lift and reach a mutually acceptable compromise in bringing this back into working order (repair or replacement) and any other backlog maintenance items."*

IPC audit:

We have shared Dr Acharya's (DA) comments regarding the IPC audit with the inspector who undertook the inspection, and they have provided the following responses:

DA Comment: "who had incorrectly stated that our water temperatures breached legionella risk management."

IPC Response: *I said that the temperature in the pipes might favour the growth of legionella.*

DA Comment: "The inspector agreed that the building was not fit for purpose,and that 'it should be closed down'. She stated that the purpose of the visit was to facilitate the premises move."

IPC Response: I mentioned that the designated space for clinical waste along with notes is inadequate for its purpose. Additionally, I pointed out that if installing new pipes is not feasible, then it would be prudent to assess the building's suitability for its intended use, as we must avoid any potential risks associated with legionella growth. His report says - 'The plumbing in the building is defective, outdated, and will need a complete strip as there is no further room to improve the current. The TMVs do not supply hot water and have very poor flow - Furthermore, it is not within my authority to determine if the building should be 'closed' or not as my expertise lies in IPC.

DA Comment: “had incorrectly stated that our water temperatures breached legionella risk management”

IPC Response: The temperature is correct. I said that because of the little water coming through the pipes, it might be a breeding place for legionella.

DA Comment: “there was no hot water coming through the taps on the top floor due to low pressure in the boiler. This is incorrect”

IPC response: This was amended to low pressure in the pipes.

DA Comment: “there were no laminates showing hand washing technique at basins,which is incorrect,as this was not the case.”

IPC Response: This is an error from the system as it was only a ‘no’ and no recommendation was issued on the Meg software. – this was removed.

DA Comment: “staff room/kitchen had notes stacked up which posed a fire risk,however this is incorrect”

IPC Response: There were loads of boxes there with notes. Then he removed them and sent me a picture as well.

I suggest that we adhere to the report and obtain a new legionella risk assessment from an external accredited company. This is necessary as the previous two assessments were done inhouse for two consecutive years. The new assessment will provide insights/clarity into the current situation.”

3.6 A further comment followed in this correspondence regarding redactions from a shared timeline document. This has been omitted from this quote and I have not had regard to the redacted information in making this determination.

3.7 In its further observations, the Contractor stated:

“Please find attachments with my replies in red text to the ICB, with details of the new premises which clarifies some of my rebuttals.

The SWL ICB are concerned about the current premises and suggests how it could be remedied by repairs and applying for an improvement grant. This contradicted their intentions as they specifically said that there would be no financial support from the ICB for relocation. Yet they have the audacity to suggest getting a grant to renovate the current premises.

They have no reason to object to the move except to rely on the current premises which has been shown to be dilapidated, dangerous and not fit for the purpose.

No amount of window dressing will resolve such problems. This is their way of delaying and circumventing their case for refusal. They have been doing that without cause or reason. Most of all, their delays during the process would or could jeopardize my interest in the new premises, as the landlord has been waiting patiently since my application in March 2023.

Such repairs or improvement to the current premises does not resolve the issue of space or other technical problems. The problems to staff and patients will still persist because of these underlying problems.

The current premises is on 3 floors as opposed to the proposed building all on the ground floor, which is conducive to the staff and patients in terms of access,

convenience, and usage. It also demonstrates progress as opposed to an old obsolete way.

They ICB approved our re-location in 2021 to Silverdale House at 98 Wandsworth High St. and yet they disallowed the re-location to 63 Wandsworth Hight St. which was 270m away. It does not make sense at all for the following reasons:

a) Silverdale House was only 2618sq ft in area which is much smaller than that of 63 Wandsworth High St. which stood at 4199 sq. ft. This was a massive difference of 1581 sq.ft.The NHS community physio services have repeatedly approached me as they are very interested in using the extra space.

b) The rent proposed at Silverdale House was 85,000/- pa as compared with £75,000/- at 63 Wandsworth High St which has a much larger area of 4199 sq.feet

c) 63 Wandsworth High Street will be a freehold property controlled by myself.

d) The proposed rent will be guaranteed for the next 3 years unless reviewed. Rent increase is subject to the market. Others will have the same rights and 63 Wandsworth High St. should not be the exception to forgo such rights in the future. Such future event should not be the reason to prevent any re-location.

The ICB has tried to sidestep the issue of re-location by sticking to their argument of not allowing one. Anyone of right thinking and analysis will allow such a move, as the building will be modern, bigger, cheaper, and more convenient for both patients and staff.

The PCN are always looking for more room space to provide more services and clinics,which we currently cannot provide.

Ultimately it makes no sense to stay in this current outdated building when i am prepared to invest in a modern,bespoke premises at NO extra cost to the ICB,which we fail to understand.

I trust you will facilitate this premises move which is in the best interests of patients and our staff."

3.8 The Contractor has also provided additional comments, marked by coloured text within other documents responding to the comments within those documents. The Contractor's comments in relation to the Commissioner's further representations state:

"Firstly, I am concerned and dismayed that the ICB, after several months of my appeal to the NHSR, have replied with a list of reasons to account for their refusal of the premises move. This matter has been unnecessarily prolonged due to their numerous submissions, well after the deadlines set by the NHSR.

However, I will respond. My obvious question is why they hadn't replied with these details much earlier, which would have saved a lot of time and taxpayers' money! Their delay had put the proposed move in jeopardy as the freeholder had threatened to withdraw their offer time and time again.

I had reiterated in my business case for the premises move that I would accept the current rent reimbursement at £74,000/year, but the ICB had repeatedly advised since 2021, they would not offer any funds for the premises move.

The ICB had even stated I would have to fund the total IT costs including installation, cabling, Wi-Fi, which I even agreed to.

As I had accepted these terms, and was willing to accept the same rent re-imbursement, it would be incorrect for the ICB to state that there would be an increased financial liability to the ICB"

3.9 The Contractor continues with his comments and stated:

"I had already stated in my business applications and representations the reasons for not signing a lease with [redacted], the current landlord. They were:

1) We have applied for a premises move on the grounds that the current building is dilapidated, unsafe and unfit for the purpose.

2) Patients and staff have unanimously voted for the new premises move as it hugely benefits them, and they are fed up with the current premises and it's lack of facilities.

3) [redacted] had offered a 15-year lease, with no option to renew it and had made it clear that he would be regaining possession of the building to convert into flats.

4) [redacted] had refused to remove the clauses in the lease whereby he was allowed to change access to the surgery without objection and change the media services at his own free will.

5) I had offered to sign a short-term lease of 12 months, which the landlord initially agreed to, then reneged.

6) The ICB and the landlord have remained in close and frequent communications during this process, which leads me to question the motive for the landlord's sudden withdrawal of his planning application for flat conversion.

7) The ICB have never discussed how the current building could be improved to standard, and they triggered an inspection from their estates and infection control team.

8) The ICB had even advised me when I spoke to them about an improvement grant, that I would not be eligible for the current premises, as it would be a 'waste of taxpayers' money, because I had applied for a premises move. This was stated by Ms [KG], one of the managers, in 2022.

9) Subsequently I also emailed Ms. [LL] as to why I hadn't received notification for IG funding for the 22/23 year and I was advised that I was excluded from notification because I had applied for a premises move.

10) We have not received any further notification from the ICB for an application for an improvement grant, and the infection control inspection and premises inspection report did not even mention the restrictions in the current building which I've pointed out and cannot be remedied; for example, the pipes/plumbing, lack of space and rooms, dangerous staircase and precarious fire exits."

3.10 The Contractor continues with his comments and stated:

"As I've clearly stated in my business plans and subsequent correspondence I've agreed to the same notional rent reimbursement without any uplift. Therefore, it is incorrect and improper to state that there would be an additional £52k in rent uplift. The ICB had not even obtained a report and rent valuation by the district valuer. So how did they come up with that figure?"

3.11 The Contractor continues with his comments and stated:

"This is incorrect, as I had applied for an IG in 2021/2022 for the new proposed premises, which was rejected. Thereafter I questioned the ICB on why I wasn't notified

on the 22/23 improvement grant applications and was told it would be ‘a waste of taxpayers’ money’.

During this appeal process, the NHSR arbitrator advised on negotiations to improve the current premises. The ICB have not offered any advice whatsoever or IG on how they think the current premises could be improved and made safe.”

3.12 The Contractor continues with his comments and stated:

“It is incorrect to state that there is no growth in the Wandsworth area, as there has been extensive regeneration in the area with the Ram brewery and adjacent sites being extensively developed to produce 100’s of new flats, with commercial offices, a new UK visa Centre, relocation of US embassy staff. There is also a flat development on the old TV studios next to the Ram quarter.

Please see link below for new builds in Wandsworth, which would be 2-5 mins walk from the new premises.

https://ramquarter.com/

https://www.berkeleygroup.co.uk/developments/london/wandsworth/wandsworth-mills?utm_source=bing&utm_medium=organic&utm_campaign=016678_wandsworthmillsbingadsoftlaunch&msclkid=92018ad026191a88062cece28dc6bcdf

https://1newhomes.com/willow-walk-london

This also contradicts the approval of the premises move in 2021 where no such claim of lack of growth was made. In fact, [AG], the head consultant to the NHS estates even stated that there was a real demand for G.P estate in the area which currently could not cope with demand.

The Brocklebank health center development is more towards Earlsfield, and our catchment area will not impinge or affect theirs. Their new development was approved many years ago, and this was not even mentioned in my 2021 premises approval. Surely then it should also have been denied?

All the practices in the area have had a drop in practice list size, as during the lockdown many left the London area to work from home etc. Earlsfield group practice has had an increase as they received a lot of patients from the Trinity Medical Centre, which closed down, as their catchment area was nearby.

Further, it proves our point that patients in Wandsworth would hugely benefit from the new premises as many of the practices in the area are outdated buildings, with poor facilities and we are offering a bespoke new building with modern and innovative features. This can only lead to growth!

We have a lot of patients registered from the ethnic minorities and there is a Mosque nearby from where many patients register.We have a large number of asylum seekers registered at our practice due to our diversity of staff. We have the highest cohort of patients from Pakistan whom register at our practice within our PCN as myself and 3 of the Gp’s understand Urdu. Approximately 30% of our patient population is from the Asian cohort,the highest within our PCN,and many choose to stay registered at our practice despite moving well outside our catchment area.”

3.13 The Contractor continues with his comments and stated:

"The CQC inspection was done immediately after a 2-year period of Covid lockdown measures which had stretched all NHS services. We lost our senior staff during the pandemic including the senior GP partner, senior nurse, senior reception manager (25,14,25 years' experience respectively), as well as many administrative staff. I had effectively taken over a new practice and was in the process of rebuilding a new team and practice with restricted resources due to the effects of the pandemic.

We were one of the first practices to be inspected using the CQC's new 5-day model, where they access the computer records remotely and use specific computer searches which we were not given any prior advice on. Subsequently the searches have been made available by NHSE, and this enables practices to be more vigilant to scrutinize certain aspects of clinical practice more carefully, such as blood test monitoring.

In our case we received a 'GOOD' rating for 'caring' and 'services responsive to people's needs', and the breach related to an instance where medication was prescribed, but the patient had not attended for blood test monitoring, despite several reminders.

The issue regarding recording of blank prescriptions was due to a previous log being misplaced, and hence we compiled a new log prior to the inspection.

Following the inspection, we implemented more stringent measures, and ensured compliance with the action plans which the ICB were satisfied with.

We have become a high performing practice with very good QOF scores in the last 2 years, and are one of the highest performing within our PCN with 'green' for safety in prescribing as part of the investment and impact fund, as well being 'green' in the other IIF domains.

Our smear uptake has been increasing since I took over the practice, with the highest ever for the practice in the 23/24 Quarter 3 with a 76% uptake for the 50-64yr age, and 66% in the 25-49 yr (higher than the ICB average).

This is all due to a very good management and clinical team with 3 nurses and 1 healthcare assistant, but we are severely constrained by the premises and is unfair and unjust to force us to stay."

3.14 The Contractor continues with his comments and stated:

"How would the issues be repairable and solvable by agreeing a new lease with the landlord? The landlord has clearly stipulated in the draft lease that he wanted me to sign, that I would be responsible for any internal works of the building, and he would only be responsible for maintaining the external structure.

Furthermore, how would signing the lease make the building fit for the purpose? As the building is over 3 floors, it is dangerous and cannot be renovated to a standard that would be safe and fit for a G.P surgery."

3.15 The Contractor continues with his comments and stated:

"This statement is incorrect as the ICB have not given ANY advice or support on how the current building could be improved to standard.

In fact, please see the email trail where I have repeatedly emailed [AM] and his team to discuss the matters, and he advised that he would respond through 'formal' channels.

In fact, the premises inspection by Mr. [AG] was on my insistence to meet at the premises so that they could see the shortfalls. However, they decided to overlook these

and focused on the décor, whilst ignoring the glaring facts of the hazards which cannot be remedied."

3.16 The Contractor continues with his comments and stated:

"This statement is incorrect as the ICB have previously stated that it would be 'a waste of tax payers' money' for IG funding to be used on the current premises and I was excluded from any emails to apply for IG funding; and have not received any further advice or emails on applying for IG funding.

Please see the email chain to [A] and his team to enter discussions to relent to allow the premises move as the current building could not be remedied to standard.

The ICB have also stated that the tenancy at will which is currently in place is not valid and have on numerous occasions told me to sign a 15-year lease with the current landlord. The tenancy at will lease has never been questioned and this the lease started years ago when [redacted] was still a partner.

It seems the ICB and [redacted] have forged a close relationship and ties, to ensure that Triangle surgery remains to operate within the confines of his building."

3.17 The Contractor continues with his comments and stated:

"As I've pointed out in my reasons to move, there is no storage for any external clinical waste bin, and the current internal storage space is woeful. There is no further room for waste inside or outside the building. The new premises will have designated areas for storing waste externally, as there is ample room."

3.18 The Contractor continues with his comments and stated:

"The landlord has made it clear in his draft lease that I am responsible for any repair or maintenance within the building and the 20 years old platform lift is now obsolete and a hazard as the parts are not available. It can only be replaced with a new platform lift which will have similar problems and limitations, i.e. frequent breakdowns, trapping patients, hazard in the event of a fire."

3.19 The Contractor continues with his comments and stated:

"These comments are unrealistic and totally dismiss the pertinent points of the hazards that I have pointed out.

The premises inspection report, and the IPC audit had not mentioned:

1)The dangerous steep staircases (there are 2 of these to reach the upper 2 floors) are a health and safety and DDA hazard, with a patient previously fallen down, and staff frequently injuring themselves coming down the stairs.

2) The precarious, dangerous external spiral stairwells from the fire exits

3) The fire exits being blocked by the neighbouring residents of the adjoining flats within the freehold building

4) The outdated plumbing and water tank, which would need a complete strip and new installation leading to a minimum of 6 months closure of the building. The current plumbing and pipes would constantly pose a Legionella risk which I had pointed out to Mr. [G], but he has omitted from his report.

5) The lack of water supply to the top floor taps is due to outdated plumbing, and this report mentions a new boiler would be needed, which is incorrect. The boilers work absolutely fine and are not the cause of the water supply problems.

6) The lack of adequate room sizes and number of rooms due to the limited space means there is no staff wellbeing room (kitchen facilities), no clean or dirty utility room, no interview or meeting rooms, and a tiny reception area where only 2 receptionists can work.

7) The IPC inspector even stated that the current building is unfit for the purpose, and that she would assist in the move of premises. In her opinion, she even advised that the current premises should be 'closed down' and agreed that the lack of water supply to the top floors meant there was a legionella risk. This was not mentioned in her report, but rather had stated that the risk could be managed by a change in water taps, which is incorrect.

8) Following IPC premises inspections, there were not agreed action plans or advice from the ICB, apart from trying to enforce another legionella risk assessment, which we had already done and identified the risks. The risk can only be eliminated by a complete strip of the plumbing of the building."

3.20 The Contractor further stated:

"Please see photos and video of surgery to show

2) photos of hazardous fire exits and staircase

3) red route outside main entrance with no drop off area"

4. CONSIDERATION

4.1 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 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.

4.2 My determination on a preliminary matter, dated 11 December 2023, ("**Preliminary Determination**") concluded that the Commissioner 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 that the Contactor failed to provide sufficient details around the possible options, particularly around the current practice premises, for me to determine this dispute in full.

4.3 The Preliminary Determination required the parties work together to consider the options available in relation to the current practice premises, premises Improvement Grants arrangements and future funding. I required the parties to provide further information and evidence in relation to their respective positions in order for me to provide a final determination of this dispute.

4.4 I have considered the additional papers provided to me by both parties. Both the Contractor and the Commissioner have provided further information and evidence, as required by the Preliminary Determination, however, I have not been provided with all of the necessary information requested.

4.5 For example, I have not been provided with sufficient information in relation to future funding and costs; I do not have details in relation to confirmation of the rent of the proposed practice premises, the Contractor's ability to fund the works required to the

proposed practice premises (or how it would meet the rental costs of the proposed practice premises during the time that the construction programme takes place at the proposed practice premises), and the impact that this would have on the Commissioner in terms of how the premises costs may change and when this would occur. This is a fundamental issue to this dispute.

4.6 I note the Commissioner's comment that "***The proposed new premises is significantly larger, and as stated above would result in an additional £52k recurrent spend per annum in rent reimbursement***, with little or no additional benefit realised. In the current financial climate and with limited resources, this scheme is not a priority for being funded by SWL ICB. The financial implications for the ICB if Dr Acharya does not relocate and agrees a new lease, would relate to the current rent and rates. Any other premises improvement costs would not be covered unless Dr Acharya applied and received approval for Improvement Grant funding to support some of the remedial works." I also note the Contractor's response to this which states that "As I've clearly stated in my business plans and subsequent correspondence I've agreed to the same notional rent reimbursement without any uplift. Therefore, it is incorrect and improper to state that there would be an additional £52k in rent uplift. The ICB had not even obtained a report and rent valuation by the district valuer. So how did they come up with that figure?" I understand that the business plan / rent assurance that the Contractor has proposed would be for the first three years and after this the proposal is that the rent would be reviewed on a three yearly basis.

4.7 I have been provided with a copy of the "Premises Review for Triangle Surgery" report by Grimes, and Gibbard Associates Limited. This report was commissioned by the Commissioner for a premises review of the current practice premises to assess its current condition and whether any improvement works could be made. I note that the report concludes that the current practice premises could be refurbished to remain as a viable facility if properly organised and following the main recommendations set out in the report.

4.8 In the absence of the additional information requested I am unable to determine this dispute in favour of the Contractor. It is insufficient of the Contractor to dispute the position put forward by the Commissioner and fail to evidence firm costs details including around the current practice premises costs improvements. As per the report referenced at 4.7, it is evident that the current practice premises could be refurbished to remain as a viable facility. It does appear that agreement has not been reached with the current landlord and whilst it is noted that remaining at the current practice premises is not the preferred position of the Contractor, with appropriate improvements being made, without agreement of the Commissioner a variation to the practice premises is not possible.

4.9 It is clear that the Commissioner has had regard to its priorities and budgetary matters in coming to its position. The Contractor's application and supporting documents were considered by the Commissioner and 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. It was noted that the list size had not increased in the past few years, and had, in fact, reduced. There was no significant population growth expected in the area where the practice is located. Regard has been had to other practices in the PCN and other local practices which also have open lists for patients as it is noted that the Contractor disputes this issue. I note the Commissioner's comment in coming to its decision to refuse the application to relocate the practice to the alternative practice premises that "Another crucial factor in refusing the application was the financial burden that the ICB would face if it approved the relocation."

4.10 I note the Commissioner's comment in their representations stating that "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." [sic]

4.11 I have been provided with details of Improvement Grant arrangements and how the Contractor would be able to apply for an Improvement Grant. Indicative details of what such a grant could be used for have also been helpfully provided by the Commissioner. I have also been provided with further details regarding the patient list size of the current practice premises and the potential population growth in the immediate area surrounding the proposed practice premises. In reviewing an application for improvement proposals, the Commissioner will need to satisfy itself that the premises are held on lease or licence, and that a lease has or will have adequate security of tenure. I strongly recommend that the Contractor considers applying for an Improvement Grant to ensure that the issues with the premises are resolved to meet the standards required at paragraph 7.2 of the Contract between the Parties.

5. DECISION

5.1 Taking the parties' further representations and the above into consideration, I conclude that the Contractor has not provided all or sufficient further information and evidence requested in my Preliminary Determination. I cannot therefore determine this dispute in favour of the Contractor. I determine no variation to the address of the practice premises.

Head of Appeals
NHS Resolution