

19 July 2024

FILE REF: SHA/26088

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DECISION MAKING BODY: NHS ENGLAND – NORTH WEST (CHESHIRE & MERSEYSIDE)

GMS CONTRACTOR: DR WHITTLE & PARTNERS

PREMISES: RAINBOW MEDICAL CENTRE,
333 ROBINS LANE, SUTTON,
ST HELENS, MERSEYSIDE,
WA9 3PN

DISPUTE RESOLUTION: NHS (GENERAL MEDICAL SERVICES CONTRACT) REGULATIONS 2015

RE: NOTIONAL RENT

1 Outcome

- 1.1 For the reasons given in the report from the Advisor, I accept the recommendation on the notional rent of the subject premises with effect from 25 December 2017 which is £116,555.
- 1.2 I note neither party has submitted a claim for interest with regard to this dispute so I make no determination in this regard.

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1 Introduction

- 1.1 As a GMS Provider, the above named Contractor has referred the matter of notional rent for dispute resolution under the provisions of Part 12 of the NHS (General Medical Services Contract) Regulations 2015 (the “Regulations”).
- 1.2 The Regulations came into force on 7 December 2015. The Regulations apply to an agreement to which the National Health Service (General Medical Services Contract) Regulations 2004 applied immediately before this date. The Contractor's GMS Contract indicates a commencement date of March 2004 and I therefore consider that the Regulations apply to this dispute.
- 1.3 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.
- 1.4 The dispute resolution procedure also allows for advice to be sought.

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

- 2.1 In an email dated 4 October 2023, the Contractor through its representative, applied to NHS Resolution for Dispute Resolution. The letter stated that the Contractor remained dissatisfied with the revised figure of £112,800.00 as reported to the Commissioner and sought to argue that the notional rent in respect of the Contractor's surgery

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premises should have been assessed at a higher figure of £124,500.00 with effect from 25 December 2017.

2.2 I have had regard to the following documents made available to me in consideration of this matter:

- 2.2.1 Email dated 4 October 2023 from Dacres Commercial and attachments;
- 2.2.2 Email dated 24 October 2023 from Dacres Commercial and attachments, including letter of authority to act and signed GMS Contract;
- 2.2.3 Four emails dated 21 November 2023 from the Commissioner with representations;
- 2.2.4 Email dated 30 November 2023 from Dacres Commercial with representations;
- 2.2.5 Email dated 20 December 2023 from the District Valuer (on behalf of the Commissioner) with observations;
- 2.2.6 Email dated 21 December 2023 from Dacres Commercial with observations and
- 2.2.7 The report from the Advisor and additional comments.

3 Statutory Framework

- 3.1 I note the Regulations apply in this case. Part 12, paragraph 83 of the Regulations, indicates with some exclusions, that the NHS dispute resolution procedure applies in the case of “any dispute arising out of or in connection with the contract which is referred to the Secretary of State –
- (a) in accordance with section 9(6) of the Act (where the agreement is an NHS contract); or
 - (b) in accordance with paragraph 82(1) (where the agreement is not an NHS contract).
- 3.2 I note that recurring premises costs such as notional rent payments are dealt with in Premises Costs Directions which allow the Board to make payments to the contractor and allows for a three yearly review. In the absence of argument to the contrary, I will proceed on the basis that these form part of the contract and apply in this case.

4 Procedural Matters

- 4.1 In order to be able to determine the dispute properly, I decided to consult and seek advice from an Advisor appointed by the President of the Royal Institution of Chartered Surveyors (RICS). This Advisor uses their knowledge on these matters to weigh the merits of the arguments presented but, importantly, has no pecuniary or budgetary interest in the outcome.
- 4.2 The Advisor provided a report that dealt with any factual matters in dispute e.g. the floor area of the premises, and addressed the issues raised by the parties. The report is in the form of a reasoned assessment and recommendation. NHS Resolution received the report, and the parties were provided with an opportunity to make observations upon it.

5 Consideration

- 5.1 As part of this 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.
- 5.2 I note that the District Valuer, in advice to the Commissioner, contended that the revised notional rent as at the date fixed for review was £112,800. I further note that the total figure upon which the Contractor seeks to rely is £124,500. I note that the Advisor appointed by NHS Resolution recommends the value to be £116,160.
- 5.3 I note that a copy of the Advisor's report was forwarded to parties for comment; I further note that the Contractor's representative has provided comments upon it and these comments were sent to the Advisor asking for them to respond to the points raised.
- 5.4 I note that the Contractor's representative questioned the Advisor's finding on Repair Liability and the adjustment made of 0.5% to reflect the extra liabilities that the Tenant would be responsible for. On review, the Advisor amended the Repair Liability to reduce to 0.15%. This, in turn, has resulted in the recommended valuation of £116,555. Separately, the Advisor has clarified two other queries raised by the Contractor's representative.
- 5.5 In my view, the rationale in the advice to me is robust and the comments offered do not advance the initial dispute. On this basis I am not persuaded to depart from the advice to me.
- 5.6 For the reasons given in the report from the Advisor, I accept the recommendation on the notional rent of the subject premises with effect from 25 December 2017 which is £116,555.

**Head of Appeals
NHS Resolution**