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**17 January 2025**

**FILE REF: SHA/26185**

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**DECISION MAKING BODY: DERBY & DERBYSHIRE INTEGRATED CARE BOARD**

**GMS CONTRACTOR: DR S TIRUGULLA**

**PREMISES: WOODVILLE SURGERY, 71 BURTON ROAD,  
WOODVILLE, SWADLINCOTE, DE11 7JE**

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

**DIRECTIONS: NHS (GENERAL MEDICAL SERVICES – PREMISES  
COSTS) DIRECTIONS 2013**

**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 8 January 2021 which is £170,700.
- 1.2 I note that 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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**RE:** NOTIONAL RENT

## **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 1 April 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 a letter dated 22 March 2024, the Contractor through their representative, applied to NHS Resolution for dispute resolution. The letter stated that the Contractor remained dissatisfied with the revised figure of £162,350.00 as reported to the Commissioner and sought to argue that the notional rent in respect of the Contractor's surgery premises should have been assessed at a higher figure of £180,000 with effect from 8 January 2021.

- 2.2 I have had regard to the following documents made available to me in consideration of this matter:
- 2.2.1 The application for dispute resolution dated 22 March 2024;
  - 2.2.2 Email to NHS Resolution from the Contractor's representative dated 10 April 2024;
  - 2.2.3 Email to NHS Resolution from the Derby and Derbyshire ICB ("the Commissioner") dated 8 May 2024;
  - 2.2.4 Email to NHS Resolution from the Commissioner dated 12 June 2024;
  - 2.2.5 Email to NHS Resolution from the Contractor's representative dated 18 June 2024;
  - 2.2.6 The Commissioner's representations to NHS Resolution dated 2 July 2024;
  - 2.2.7 The Contractor's representations to NHS Resolution dated 2 July 2024;
  - 2.2.8 The Contractor's representatives observations to NHS Resolution dated 25 July 2024;
  - 2.2.9 The Commissioner's email to NHS Resolution dated 15 August 2024;
  - 2.2.10 The Commissioner's observations to NHS Resolution dated 10 September 2024;
  - 2.2.11 The Contractor's representatives email to NHS Resolution dated 26 September 2024; and
  - 2.2.12 The report from the Independent Advisor.

### **3 Statutory Framework**

- 3.1 I note the GMS Contracts Regulations 2015 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 the NHS (General Medical Services – Premises Costs) Directions 2013. Part 5, paragraph 42 of the Premises Costs Directions allows 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, further revised its figure and contended that the notional rent as at the date fixed for review was £165,950.00. I further note that the total figure upon which the Contractor seeks to rely is £180,000. I note that the Advisor appointed by NHS Resolution recommends the value to be £170,700.
- 5.3 I note that a copy of the Advisor's report was forwarded to parties for comment; I further note that neither party has provided any comments upon it.
- 5.4 In my view, the rationale in the advice to me is robust. On this basis I am not persuaded to depart from the advice to me.
- 5.5 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 8 January 2021 which is £170,700.
- 5.6 I note that neither party has submitted a claim for interest with regard to this dispute so I make no determination in this regard.

## **Head of Appeals NHS Resolution**