

13 February 2025

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COMMISSIONER:

**HAMPSHIRE AND ISLE OF WIGHT INTEGRATED
CARE BOARD**

GMS CONTRACTOR:

DR BOWDEN & PARTNERS

PREMISES:

**WHITELEY SURGERY
YEW TREE DRIVE
WHITELEY
FAREHAM
PO15 7LB**

DISPUTE RESOLUTION:

**NHS (GENERAL MEDICAL SERVICES CONTRACT)
REGULATIONS 2015**

DIRECTIONS:

**NHS (GENERAL MEDICAL SERVICES – PREMISES
COSTS) DIRECTIONS 2004**

RE:

LEASEHOLD PREMISES RENTAL COSTS

1 Outcome

- 1.1 For the reasons given in the report from the Advisor, I accept the recommendation on the current market rent of the subject premises with effect from 30 November 2018, which is £119,990.
- 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: **LEASEHOLD PREMISES RENTAL COSTS**

1 Introduction

- 1.1 As a GMS provider, the above named Contractor has referred the dispute of leasehold premises rental costs as at 30 November 2018 for dispute resolution under the provision of Part 12 of the NHS (General Medical Services Contract) Regulations 2015 (the “Regulations”).
- 1.2 The relevant provision is contained within the NHS (General Medical Services – Premises Costs) Directions 2004 and in particular paragraphs 31 and 32 (‘the 2004 Directions’).
- 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 6 December 2023, the Contractor through its representative, Aitchison Raffety, applied to NHS Resolution for dispute resolution. The letter stated that the Contractor remained dissatisfied with the revised figure of £112,380.20 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 £122,525 with effect from 30 November 2018.

- 2.2 I have had regard to the following documents made available to me in consideration of this matter:
- 2.2.1 Application for dispute resolution dated 6 December 2023;
 - 2.2.2 Contractor's email, with enclosures, to NHS Resolution dated 1 March 2024;
 - 2.2.3 Contractor's email, with enclosures, to NHS Resolution dated 21 March 2024;
 - 2.2.4 Contractor's email, with enclosures, to NHS Resolution dated 27 March 2024;
 - 2.2.5 Contractor's representations to NHS Resolution dated 14 June 2024
 - 2.2.6 Commissioner's representations to NHS Resolution dated 14 June 2024;
 - 2.2.7 Contractor's observations to NHS Resolution dated 14 October 2024;
 - 2.2.8 Commissioner's observations to NHS Resolution dated 14 October 2024;
 - 2.2.9 The report from the Advisor dated 8 January 2025;
 - 2.2.10 Contractor's letter to NHS Resolution dated 27 January 2025;
 - 2.2.11 DV letter to NHS Resolution dated 5 February 2025;
 - 2.2.12 Commissioner's letter to NHS Resolution dated 6 February 2025; and
 - 2.2.13 Further comments from the Advisor dated 12 February 2025.

3 Statutory Framework

- 3.1 I note the GMS Contract 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 "a dispute arising out of or in connection with, the contract which is referred to the Secretary of State in accordance with –
- (a) section 9(6) of the Act (where the contract is an NHS contract); or
 - (b) regulation 82(1) (where the contract is not an NHS contract).
- 3.2 I note that recurring premises costs such as rent payments are dealt with in the 2004 Directions. Part 5, paragraphs 31 and 32 of the 2004 Directions state:
- Recurring Premises Costs*
- Leasehold premises' rental costs*
31. *Subject to the following provisions of this Part, where—*
- (a) *a contractor which rents its practice premises makes an application to its PCT for financial assistance towards its rental costs; and—*
 - (b) *in the case of rental costs arising under a lease agreed or varied on or after 1st April 2004, the PCT is satisfied (before the lease is agreed or varied) where appropriate in consultation with the District Valuer Service, that the terms on which the new or varied lease is to take effect represent value for money,*

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

Amount of leasehold premises' rental costs payable

32. If a PCT does grant the application, subject to the following provisions of this Part, the amount that it must pay in respect of a contractor's rental costs for its practice premises is—

- (a) the current market rent for the premises; or*
- (b) the actual lease rent for the premises, plus any Value Added Tax payable by the contractor if this is properly charged to the contractor by the landlord,*

whichever is the lower amount.

4 Procedural matters

- 4.1 It would appear that the Contractor has applied to the Commissioner pursuant to paragraph 31(a) of the 2004 Directions. I am mindful that the instant dispute relates to the assessment of the Current Market Rent of the subject premises. Nonetheless, the amount of leasehold premises rental costs payable under the GMS Contract by the Commissioner to the Contractor is 'whichever is the lower amount' pursuant to paragraph 32 of the 2004 Directions.
- 4.2 In order to be able to determine the dispute properly, I decided to consult and seek advice from an Advisor appointed by the Royal Institution of Chartered Surveyors (RICS). The 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.
- 4.3 The Advisor provides a report that deals with any factual matters in dispute e.g. the floor area of the premises, addressing 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. I note that despite requesting this on several occasions a full copy of the GMS Contract as held by the Contractor was never provided as part of this dispute. I was provided with a copy of the signatories page which was titled "General Medical Services (GMS) Contract 2017/18" and was signed on behalf of the Board as well as by the signatories of Whiteley Surgery. I was further provided with a copy of a "General Medical Services Contract Variation Notice" which again had been signed by all signatories as well as the Commissioner and that this covered the branch surgery at Yew Tree Drive, Whiteley, Fareham, PO15 7LB which is the location of the surgery that this application for dispute resolution was made with regard to. I note that there was no dispute raised by the Commissioner with regard to the version of the Contract that is in place. I have therefore assumed that the Contract between the parties reflects the provisions of the relevant Regulations in force at the relevant time and proceed to determine a dispute on that basis.
- 5.2 I note that the final total figure upon which the Contractor seeks to rely is £122,325, which is contained in submissions to NHS Resolution. I further note that the DV, in

submissions to NHS Resolution on behalf of the Commissioner, contended that the revised CMR as at the date fixed for review was £113,130. I note that the Advisor appointed by NHS Resolution recommends the value to be £119,990.

- 5.3 I note that parties were asked for comments on the report of the Advisor. In a letter dated 27 January 2025, Aitchison Raffety provided comments but did not dispute the Advisor's conclusions regarding the level of rent payable as at 30 November 2018. Aitchison Raffety requested that *"the costs incurred conducting the NHS Resolution process are paid in full by the Hampshire and Isle of Wight ICB"*. Whilst I note the comments regarding the length of time it has taken to draw this matter to a conclusion, there is no power, as set out in the Regulations, for me to award costs.
- 5.4 In a letter dated 5 February 2025 the DV, on behalf of the Commissioner, has provided comments but has not disputed the Advisor's conclusion regarding the level of rent payable as at 30 November 2018. Those comments were that the report unfairly characterised the DV's approach to disputes and in some instances were personal in nature and asked for these to be removed.
- 5.5 In a letter dated 6 February 2025 the Commissioner, was supportive of the observations of the DV and stated that in its view these concerns *"can only be addressed by the instruction of a second Independent Expert"*.
- 5.6 I am of the view that it has been particularly unhelpful to have had two responses from effectively the same 'side' i.e. the Commissioner/its representative where one response accepts the Advisor valuation but raises concerns whereas the other endorses those concerns but suggests a second appointment is necessary.
- 5.7 Turning first to the Commissioner's request, it might be helpful to explain that the RICS appointment is not on an 'Expert' basis. In this jurisdiction, the appointment is made as an advisor in order to provide me with unfettered advice so that I can make a final determination.
- 5.8 With regard to the DV's concerns which were endorsed by the Commissioner, I have given these careful consideration. I consider the report draws on the Advisor's experience in the field, how the Advisor approached the evidence and the emphasis placed on certain evidence at the expense of other evidence. The DV may have found the Advisor's comments unpalatable but I also note that the Advisor regarded some of the evidence and research submitted by the Contractor's representative as unworthy of detailed consideration.
- 5.9 I do not believe there is any basis for seeking a second appointment. In my view, the rationale in the advice to me is robust and the comments offered do not advance the initial dispute. Furthermore, the valuation has not been challenged. On this basis, I am not persuaded to depart from the advice to me.
- 5.10 For the reasons given in the report from the Advisor, I accept the recommendation on the current market rent of the subject premises with effect from 30 November 2018, which is £119,990.
- 5.11 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**