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March 2026
FOI_7789

The following information was requested on 17 March 2026:

Under point 4.3 of the PREMISES COSTS – CURRENT MARKET RENT GUIDANCE, we are referred to SHA/18735, yet there isn't a copy online anywhere.

Guidance extract below:

"With respect to disputes as to the appropriate level of CMR, it has been determined that the three years start to run when the Commissioner reports to the contractor a CMR with which the contractor does not agree (see SHA/18735)."

Can you please provide a copy of this case?

Our Response

Please, see the copy of case SHA/18735 attached below.

Section 40 – Personal Data Exemption
We have redacted the personal data we believe that disclosure is exempt under Section 40(2) by virtue of section 40(3A) (a) of the FOI Act, where disclosure to a member of the public would contravene one or more of the data protection principles. The data protection principles are set out in Article 5 of the General Data Protection Regulation. We take the view that it would not be fair or lawful to disclose such information, and any disclosure would therefore contravene the first data protection principle.

The individuals were not told, (and have therefore not consented to) their personal information would be used in this way, and we do not believe they would have a reasonable expectation that their personal data would be released in this way. NHS Resolution believes it has a responsibility to protect those individuals' information, as disclosure could potentially cause damage and/or distress to those involved.

This concludes our response to your request.

If you are not satisfied with the service that you have received in response to your information request, it is open to you to make a complaint and request a formal review of our decisions. If you choose to do this, you should write to Joanne Appleby, Deputy Data Protection Officer for NHS Resolution, within 28 days of your receipt of this reply. Reviews of decisions made in relation to information requests are carried out by a person who was not involved in the original decision-making about the request.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a review of the decision. Generally, the Information Commissioner will not make a decision unless you have exhausted the local complaints procedure. The address of the Information Commissioner's Office is:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

https://ico.org.uk/

NHS Resolution

7 September 2017

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FILE REF: SHA/18735

DECISION MAKING BODY: **NHS WEST KENT CCG (CCG)**

GMS CONTRACTOR: **DR [redacted] AND PARTNERS**

PREMISES: **BEARSTED MEDICAL PRACTICE
YEOMANS LANE
MAIDSTONE
KENT
ME14 4DA**

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

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

RE: **CURRENT MARKET RENT**

1 Introduction

1.1 As GMS Providers, the above contractor has referred the matter of current market rent for dispute resolution under the provision of Paragraph 101, Schedule 5 of the NHS (General Medical Services Contracts) Regulations 2004.

1.2 The NHS (General Medical Services Contracts) Regulations 2015 (the "Regulations") came into force on 7 December 2015. The Regulations apply to an agreement to which the National Health Service (General Medical Services Contracts) Regulations 2004 applied immediately before this date. The Contractor's GMS Agreement indicates a commencement date of 29

March 2004 and I therefore consider that the Regulations apply to this dispute.

1.3 The Secretary of State for Health has directed that NHS Resolution exercise the functions of dispute resolution on his 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 June 2017, the contractor through its representative Invicta Chartered Surveyors (Invicta), applied to NHS Resolution for Dispute Resolution. In the first instance the contractor asked that the CCG be directed to complete local dispute resolution on the question of the appropriate current market rent in respect of the Premises applicable from 12 September 2011. In the alternative, if it is found that local dispute resolution has been exhausted, it is dissatisfied with the figure of £156,000 for current market rent (as assessed by the CCG's predecessor) and wishes to appeal against this assessment.

2.2 I have had regard to the following documents (together with any enclosures and annexures) made available to me in consideration of this matter:

2.2.1 General administrative correspondence from NHS Resolution's file;

2.2.2 Application from Invicta dated 22 June 2017;

2.2.3 Letter from NHS Resolution to the CCG dated 30 June 2017;

2.2.4 Representations received from CCG dated 10 July 2017;

2.2.5 Letter from NHS Resolution to both Invicta and CCG dated 27 July 2017;

2.2.6 Observations received from Invicta dated 15 August 2017.

3 Statutory Framework

3.1 The Regulations apply in this case. 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 agreement 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 75(1) (where the agreement is not an NHS contract).”

3.2 Recurring premises costs such as current market rent payments are dealt with in the NHS (General Medical Services – Premises Costs) Directions. In this case it is the 2004 version of the Directions which applies to payments that have been made before April 2013 (the Directions). Part 5 of the

Directions allows the CCG to make payments to the contractor, and allows for a three yearly review.

4 Consideration

4.1 I note that in its application letter of 22 June 2017 Invicta applied for dispute resolution "under the provisions of clause 101 of the National Health Service (GMS Contracts) Regulations 2004". As noted in paragraph 1.2 above, it is the 2015 Regulations which apply. However, the wording is, in substance as relating to this application, the same in both versions. Section 101(4) of the 2004 Regulations requires disputes of this kind to be referred "within a period of three years beginning with the date on which the matter giving rise to the dispute happened or should reasonably have come to the attention of the party wishing to refer the dispute." The 2015 Regulations state that the request for dispute resolution must be made "before the end of the period of three years beginning with the date on which the matter giving rise to the dispute occurred or should reasonably have come to the attention of that party."

4.2 I note that both parties agree that the dispute relates to a review of the current market rent for the Premises rent due on 12 September 2011 (letter of 21 September 2011 from DV to the Kent Primary Care Agency (the CCG's predecessor) and letter of 22 June 2017 from the contractor's representative to this Unit).

4.3 On 5 October 2011 the CCG's predecessor wrote to the contractor confirming that the DV had valued the current market rent at £156,000 (a nil increase) "In his opinion the current market rent as at 12 September 2011 is £156,000 per annum". On 15 December 2011 the contractor replied stating "I am writing to tell you that we do not accept the proposed increase of rent".

4.4 After this there was sporadic correspondence between the contractor and the CCG's predecessor. In November 2015 the contractor's representative informed NHSPS that the landlord was seeking to appoint an independent expert to determine the review between the landlord and contractor under the provisions of the lease. This determination of a reviewed rent of £158,000 was provided in March 2016. The CCG (through NHSPS in a letter of 18 April 2016) informed the contractor that it did not accept that the current market rent that it was required to reimburse under the Directions was more than £156,000.

4.5 Further correspondence ensued until the CCG's letter to the contractor of 30 September 2016 in which it expressed its view that local dispute resolution had now been exhausted and the contractor's next step would be to appeal to this Unit. On the same day the contractor took issue with this assertion, stating that in its view local dispute resolution had never been started. The contractor's position being that the actions it had taken were in relation to the rent review obligations in its lease, not in relation to local dispute resolution associated with disputes under the Regulations and Directions.

4.6 In my determination the referral to this Unit must take place within 3 year beginning with the date on which the matter giving rise to the dispute occurred. I asked the parties to make submissions as to when this point arose in my letter of 27 July 2017. I received a response from Invicta. It was

submitted by Invicta (in reference to the 2004 Regulations, but for these purposes nothing turns on this) that the dispute arose either:

4.6.1 On 14 March 2016, the date of the independent expert's determination of the rent under the provisions of the lease

4.6.2 On 30 September 2016 when the CCG stated that local dispute resolution had been exhausted.

4.7 I do not agree with either submission:

4.7.1 The independent expert's determination was produced in accordance with the processes required under the lease of the Premises. This process is between the landlord and contractor as tenant and has nothing to do with the Regulations or any referral to this Unit.

4.7.2 The Regulations do not state that the 3 year period begins when any local dispute resolution mechanism has been exhausted, nor does it refer to any local dispute resolution having been started. The period begins when the matter giving rise to the dispute occurred or should have reasonably come to the attention of the contractor. The matter giving rise to this dispute occurred when the CCG's predecessor wrote to the contractor on 5 October 2011 confirming that the DV had valued the current market rent at £156,000. This is the figure with which the contractor is in dispute. This dispute was evidenced by the letter from the contractor of 15 December 2011 in reply which stated "I am writing to tell you that we do not accept the proposed increase of rent". The dispute therefore arose on 5 October 2011 (or a slightly later date when that letter was received, it is date stamped 14 October 2011) when the CCG's assessment of current market rent was communicated to the contractor.

4.7.3 Even if the contractor is correct in its submission that the letter of 28 December 2011 is evidence that the CCG's predecessor did not believe that a dispute for the purpose of the Regulations had arisen (and I think the words highlighted by Invicta could just as easily be read to refer to the process of dispute resolution) the CCG's predecessor was mistaken in its belief. As a matter of fact, once the PCT had communicated its view of the current market rent which the contractor did not accept, the matter giving rise to a dispute had occurred and had come to the attention of the contractor.

4.8 I therefore determine that the contractor is out of time to bring this dispute to this unit as it is more than 3 years since the dispute arose on 5 October 2011 (or shortly after when the letter was received). For this reason I cannot make a determination on either of the grounds of referral detailed in 2.1 above.

[redacted]

[redacted]

Head of FHSAU