

20 December 2018

FILE REF: SHA/18853
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DECISION MAKING BODY: NHS ENGLAND (WEST MIDLANDS AREA TEAM)

GMS CONTRACTOR: DR T EATON AND PARTNERS

PREMISES: ENGLETON HOUSE SURGERY
2 VILLA ROAD
COVENTRY
CV6 3HZ

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 current market rent of the subject premises with effect from 20 May 2014 which is £77,900.

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RE: NOTIONAL RENT

1 Introduction

- 1.1 As a GMS Provider, the above named contractor has referred the dispute of current market rent assessment as at 20 May 2014 for dispute resolution under the provision of Part 12 of the NHS (General Medical Services Contract) Regulations 2015.
- 1.2 The Secretary of State for Health and Social Care 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.
- 1.3 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 received on 1 February 2018, 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 £67,425 as reported to NHS England 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 £88,200 with effect from 20 May 2014.
- 2.2 I have had regard to the following documents made available to me in consideration of this matter:
 - 2.2.1 Letter from GP Surveyors dated 1 February 2018
 - 2.2.2 Letter from GP Surveyors dated 7 June 2018

- 2.2.3 Letter from GP Surveyors dated 13 June 2018
- 2.2.4 Email from NHS England dated 15 June 2018
- 2.2.5 Email from GP Surveyors dated 6 July 2018
- 2.2.6 Letter from GP Surveyors dated 11 July 2018
- 2.2.7 Email from NHS England dated 17 July 2018
- 2.2.8 Letter from NHS England via DVS dated 17 August 2018
- 2.2.9 Letter from NHS England via DVS dated 30 August 2018
- 2.2.10 Letter from GP Surveyors dated 31 August 2018
- 2.2.11 Email from NHS England dated 5 September 2018
- 2.2.12 Letter from GP Surveyors dated 12 September 2018
- 2.2.13 Email from GP Surveyors dated 25 October 2018
- 2.2.14 Email from NHS England dated 26 October 2018
- 2.2.15 Email from GP Surveyors dated 9 November 2018
- 2.2.16 Email from NHS England dated 9 November 2018
- 2.2.17 The report from the Advisor dated 6 December 2018

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 Part 5 of the GMS Statement of Financial Entitlements indicates recurring premises costs such as notional rent payments are dealt with in the NHS (General Medical Services – Premises Costs (England) Directions 2004. Part 5, paragraph 42 of the Premises Costs Directions allows the PCT to make payments to the contractor, and allows for a three yearly review.
- 3.3 Where a contractor has been receiving reimbursement under the Directions since before 1 April 2013, the 2004 version of the Directions applies to each review of that reimbursement in accordance with the transitional provisions in paragraph 56(1) of the 2013 version of the Directions.
- 3.4 Representations were originally been sought on the basis of the 2013 Premises Cost Directions. Parties were advised that the 2004 Premises Cost Directions are the relevant Directions and apply in this case and were provided with the opportunity to amend their representations to reflect this. No amendments to the representations were received from either party.

- 3.5 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 Preliminary 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 I note that the District Valuer contended that the revised current market rent as at the date fixed for review was £67,425. I further note that the total figure upon which the contractor seeks to rely is £88,200. I note that the Advisor appointed by NHS Resolution recommends the value to be £77,900.
- 5.2 I note that a copy of the Advisor's report was forwarded to parties for comment; I further note that neither party have provided any comments upon it.
- 5.3 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.
- 5.4 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 20 May 2014 which is £77,900.

Primary Care Appeals