



Resolution

2nd Floor
151 Buckingham Palace Road
London
SW1W 9SZ
Telephone: 020 7811 2700

August 2019
FOI_3929

The following information was requested on 29 July 2019:

RE: Manchester - Whitley Road Medical Centre

Please can you forward to me details of this particular case which affects all pre 2013 built and funded GP Surgeries etc.

I cannot find it on your website?

Our Response

The decision letter was issued on 6 June 2018. Please see attached.

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 [Tinku Mitra](#), Head of Corporate and Information Governance 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

6 June 2018

1 Trevelyan Square
Boar Lane
Leeds
LS1 6AE

FILE REF: SHA/19873

Tel: 0113 86 65500
Fax: 0207 821 0029
Email: fhsau@resolution.nhs.uk

DECISION MAKING BODY: NHS ENGLAND MIDLANDS & EAST (Central Mids)
Greater Manchester Health and Social Care
Partnership (NHS England)

GMS CONTRACTOR : DR H WEINSTOCK AND PARTNERS

PREMISES: WHITLEY RD MEDICAL CENTRE,
1 WHITLET RD,
MANCHESTER,
M40 N7QH.

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

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

RE : CURRENT MARKET RENT (CMR)

1 Introduction

- 1.1 As GMS Providers, the above contractor has referred the matter of current market rent for dispute resolution.
- 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.

Advise / Resolve / Learn

NHS Resolution is the operating name of NHS Litigation Authority – we were established in 1995 as a Special Health Authority and are a not-for-profit part of the NHS. Our purpose is to provide expertise to the NHS on resolving concerns fairly, share learning for improvement and preserve resources for patient care. To find out how we use personal information, please read our privacy statement at www.nhs.uk/About/PrivacyPolicy.aspx



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Until 2020



- 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.

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

- 2.1 In a letter of 27 March 2018, the contractor, through its agents GP Surveyors (GPS) applied to NHS Resolution for Dispute Resolution. The application is to determine the CMR, the nature of the dispute is described at para 3.1 of the submission as "*The appropriate NHS rent reimbursement that [the contractor] should receive...*". While the submission does not make it explicit, the CMR in question is that which would be payable from 1 April 2016. The submission confirms that the LDR Protocol has not been followed and that NHS England has not instructed a surveyor to act on its behalf. Neither party has provided valuation evidence. NHS England has appointed Ward Hadaway Solicitors (WH) to represent it.
- 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 Lease of the Premises dated 24 April 2008 from Assura Properties UK Ltd to the contractor (Lease);
 - 2.2.3 Extract from GMS contract variation 1 April 2017;
 - 2.2.4 Application letter from GPS 27 March 2018;
 - 2.2.5 Response to application from WH 15 May 2018;
 - 2.2.6 Observations from GPS 24 May 2018;
 - 2.2.7 Observations from WH 23 May 2018;
 - 2.2.8 Copy emails passing between NHS England and the contractor or GPS of various dates from 21 December 2016 to 17 October 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 CMR payments are dealt with in the NHS (General Medical Services – Premises Costs) Directions. Both the contractor

and NHS England have assumed that the 2013 version of the Premises Costs Directions applies to this dispute.

- 3.3 I note that the Lease commenced in April 2008. In a letter from Cecilia Reed of the DVS of 13 February 2014 to NHS England, Ms Reed states that she has consulted her previous file for the Premises from 2010. She confirms that in April 2010 the rent was £28,300 pa and £35,000 in April 2013. From this I assume that the contractor had been receiving current market rent payments under the Lease from at least 2010, and more probably since the start of the Lease in 2008.
- 3.4 This being the case, the Premises Costs Directions 2004 apply to the payments received by the contractor as per the transitional provisions at paragraph 56 (1) of the 2013 Premises Costs Directions. Paragraph 56(1) states: "*Where immediately before 1st April 2013, a Primary Care Trust [now NHS England] was making payments to a contractor under Part...5 (recurring premises costs),...of the 2004 Directions, the Board must continue to make those payments as if the 2004 Directions, as in force immediately before 1st April 2013, continued to apply, and those Directions are to be treated as directions to the Board.*"
- 3.5 Paragraph 33 of the 2004 Premises Costs Directions requires that current market rent reimbursement is to be determined in accordance with Parts 1 and 2 of Schedule 2 to the Directions.

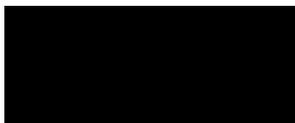
4 Consideration

- 4.1 The Lease provides for the rent payable to be reviewed no earlier than 1 April 2010 and thereafter no more frequently than every three years. (Schedule 4 paragraph 3(b)). I assume from the letter from the DVS mentioned in paragraph 3.3 above that the rent was reviewed on 1 April 2010 and 1 April 2013 before the current review in dispute, being 1 April 2016.
- 4.2 The DVS letter suggests that the contractor has been receiving rent reimbursement under the Premises Cost Directions from at least 2010. Nothing that either party has said in this referral suggest otherwise. Therefore, the transitional provisions in the 2013 Premises Costs Directions, referred to in paragraph 3.3 above, provide that it will be the 2004 Premises Costs Directions that will apply to any application for CMR reimbursement with respect to the Lease.
- 4.3 Parts 1 and 2 of Schedule 2 to the 2004 Premises Costs Directions set out the process by which CMR reimbursement is calculated. There is no requirement (equivalent to paragraph 4(c)(iv) in the 2013 Directions) that a rent review memorandum is provided before the calculation can begin. In any event, a rent review memorandum for the review in question was provided to NHS England on 7 November 2017.
- 4.4 There is, however, a provision in paragraph 4(c)(i) of Part 2 of Schedule 2 of the 2004 Directions that NHS England must review its assessment of CMR "*when the landlord undertakes a rent review provided for in the lease unless the landlord's review does not result in a change to the level of rent charged*". The Rent Review memorandum dated 24 April 2017 in respect of the review

from 1 April 2016 and signed by the contractor and its landlord records that the rent has been reviewed at a nil increase and will remain at £35,000 per annum.

5 Determination

- 5.1 I am satisfied that the 2004 Premises Costs Directions apply to this dispute.
- 5.2 In accordance with paragraph 33 of the 2004 Premises Costs Directions the CMR is to be determined in accordance with Parts 1 and 2 of Schedule 2 to the those Directions.
- 5.3 In accordance with paragraph 4(c)(i) of Part 2 of Schedule 2, NHS England is not required to review its assessment of CMR unless the rent under the lease has changed as a result of a rent review conducted under the provisions of the Lease.
- 5.4 As the rent review memorandum for the review under the Lease undertaken for 1 April 2016 recorded no change to the rent payable under the Lease, NHS England cannot be required to review the CMR. Therefore this application is dismissed.



Lisa Hughes
Head of FHSAU