

27 October 2020

Arena Point
Merrion Way
Leeds
LS2 8PA**FILE REF:** SHA/23319**DECISION MAKING BODY:** NHS ENGLAND &
NHS IMPROVEMENT –
SOUTH EAST REGIONTel: 0203 928 2000
Fax: 0207 821 0029
Email: appeals@resolution.nhs.uk**GMS CONTRACTOR:** DR M ROGERS & PARTNERS**PREMISES:** 19 THE ESPLANADE, RYDE, ISLE OF WIGHT
PO33 2EH**DISPUTE RESOLUTION:** NHS (GENERAL MEDICAL SERVICES CONTRACT)
REGULATIONS 2015**DIRECTIONS:** NHS (GENERAL MEDICAL SERVICES – PREMISES
COSTS) DIRECTIONS 2004**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 24 September 2016 which is £39,400.

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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 24 September 2016 for dispute resolution under the provision of Part 12 of the NHS (General Medical Services Contract) Regulations 2015.
- 1.2 The National Health Service (General Medical Services Contract) 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 Contract) Regulations 2004 applied immediately before this date. The Contractor's information indicates a GMS Contract 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 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 received on 8 January 2020, 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 £30,900 (later revised to £35,500) 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 £50,550 (later revised to £52,670) with effect from 24 September 2016.

- 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 from GP Surveyors ("GPS") on behalf of the contractor dated 8 January 2020;
 - 2.2.2 GPS representations by letter dated 3 February 2020;
 - 2.2.3 GPS email dated 12 February 2020 with additional information;
 - 2.2.4 GPS emails dated 14 & 17 February 2020 with additional information;
 - 2.2.5 The District Valuer (on behalf of NHS England & NHS Improvement – South East Region) representations by letter dated 9 March 2020;
 - 2.2.6 GPS observations by letter dated 3 April 2020;
 - 2.2.7 The District Valuer (on behalf of NHS England & NHS Improvement – South East Region) observations by letter dated 30 June 2020;
 - 2.2.8 Various communications between GPS, NHS England & NHS Improvement and NHS Resolution between 21 July 2020 and 12 August 2020;
 - 2.2.9 The report from the Advisor dated 15 October 2020.

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 2004. 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 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, in advice to NHS England contended that the revised CMR as at the date fixed for review was £35,500. I further note that the total figure upon which the contractor seeks to rely is £52,670. I note that the Advisor appointed by NHS Resolution recommends the value to be £39,400.
- 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 24 September 2016 which is £39,400.

Head of Operations
Primary Care Appeals