

18 December 2020

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LS2 8PA**FILE REF:** SHA/22176Tel: 0203 928 2000  
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Email: [appeals@resolution.nhs.uk](mailto:appeals@resolution.nhs.uk)**DECISION MAKING BODY:** NHS ENGLAND**GMS CONTRACTOR:** DR THOMAS & PARTNERS**PREMISES:** PEAR TREE SURGERY  
KINGSBURY  
B78 2NR**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 I accept the recommendation on the abated current market rent of the subject premises with effect from 15 September 2016 which is £65,230.

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## **1 Introduction**

- 1.1 As a GMS Provider, the above named contractor has referred the dispute of current market rent assessment as at 15 September 2016 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 May 2020, the contractor through their representative, applied to NHS Resolution for Dispute Resolution. The letter stated that the contractor remained dissatisfied with the revised abated notional rent figure of £57,055.15 as reported to NHS England and sought to argue that the abated notional rent in respect of the contractor's surgery premises should have been assessed at a higher figure of £69,580 with effect from 15 September 2016.
- 2.2 I have had regard to the following documents made available to me in consideration of this matter:

- 2.2.1 Initial application from GP Surveyors on behalf of the contractor dated 10 July 2019, together with enclosures
- 2.2.2 Various email correspondence between the parties and NHS Resolution
- 2.2.3 Revised application from GP Surveyors on behalf of the contractor dated 1 May 2020, together with enclosures
- 2.2.4 Representations received from GP Surveyors on behalf of the contractor dated 1 May 2020, together with enclosures
- 2.2.5 Representations received from the District Valuer Services (“DVS”) on behalf of NHS England dated 30 July 2020, together with enclosures
- 2.2.6 Observations received from GP Surveyors on behalf of the contractor dated 18 August 2020, together with enclosures
- 2.2.7 Observations received from DVS on behalf of NHS England dated 20 August 2020, together with enclosures
- 2.2.8 The report from the Advisor dated 7 December 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 abated CMR as at the date fixed for review was £63,553. I further note that the total abated figure upon which the contractor seeks to rely is £69,580. I note that the Advisor appointed by NHS Resolution recommends the abated current market rent for the premises to be £65,230.
- 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 not 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 abated current market rent of the subject premises with effect from 15 September 2016 which is £65,230.

**Jonathan Haley**  
**Head of Operations, Primary Care Appeals**