

Premises Development Previously Approved by PCTs

Area teams should be aware of business cases that have been considered previously by PCTs and be clear on the legal position in relation to NHS England's responsibilities to progress developments, which have previously been approved. In most cases, NHS England will be bound to reimburse current market rent for the new premises when a new application for rent reimbursement is received, following the prior approval of the development by the PCT. This is subject, of course, to the application and the development itself (including specifically the rent payable) according with the business case and approval.

Paragraph 55(a) in the [2013 Premises Costs Directions](#) provides that "any act" by the PCT before 1 April 2013 in respect of the exercise of the functions of the PCT under the 2004 Directions is deemed to be an act of NHS England. In addition, paragraph 55 (b) reinforces the position that the actions of the PCT (whether completed or on-going) will be adopted by NHS England.

The strength of NHS England's position, in any particular case, will depend on precisely what was agreed by the PCT and how it was agreed. Where an AT is considering not progressing with a development previously approved by a PCT, substantive legal advice on the issue should be sought. NHS England will need to assess whether it is in a position to renege on the decision of the PCT should it be so minded (which it has now, by virtue of the new Directions, adopted as its own), and to do this will need to know how that decision was documented and the background to it.

Whether it is now open to NHS England to withdraw an approval that it has already given is complex, and turns on a number of public law principles regarding the exercise of statutory powers by public bodies, including the principle of legitimate expectation. The principle of legitimate (or reasonable) expectation applies to the way that public bodies exercise statutory powers and may arise either from an express promise given on behalf of a public authority or the existence of a regular practice which the other party can reasonably expect to continue.

In summary, the presumption should be that the PCT's approval of developments should be adhered to unless there is an operational justification for not doing so, together with a sound legal basis for the change of approach. There would also, clearly, be adverse PR implications of a withdrawal of approval, and likely significant dispute with the GPs.