

Premises Guidance/Information

Negotiations on the 2013 Premises Costs Directions

The Premises Costs Directions have now been published here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/184017/NHS_General_Medical_Services_-_Premises_Costs_Directions_2013.pdf The supplementary guidance will be jointly drafted by the DH and GPC before being published in April / May.

NHS Property Services (NHSPS) Leases

Because of the scale of undocumented occupations for GP tenants across England, the process of ownership transfer from PCTs to NHS Property Services (NSHPS) is very much behind schedule (the original deadline was 1st April). NHSPS will be issuing temporary Memorandums of Occupation (MoOs) until such time as practices can agree and sign lease arrangements. This means there is no absolute rush to sign a lease by 1st April (unless practices have taken their own legal advice and are satisfied with any draft agreements circulated by PCTs).

GPC has urgently commissioned external property lawyers to comment on a draft model lease agreement recently shared with us by the Department, and will update on this shortly. If the lease is reasonable, GPC proposes to agree to it being used as a national template for all NHSPS-owned premises occupations. The GPC will also produce supplementary generic advice on lease arrangements for use by members. It remains extremely important, however, that all GPs seek independent legal and financial advice before signing any commercial agreement, such as a lease. BMA Law can obtain preferential rates for all members for external property law advice. They can be contacted via info.bmalaw@bma.org.uk

NHSPS will have an option to include full repairing and insuring (FRI) terms within practice lease agreements. The 2013 Premises Costs Directions confirms that internal and external repairing and insuring costs will be included in rent reimbursements. The template actual leasehold rent determination letter, shared with us by the Department of Health (DH) and to be used by all NHS Commissioning Board Area Teams, also confirms that the Board will be including additional funding within rent reimbursements to cover the cost of any external repair or buildings insurance liabilities:

Included in the above total amount, is the figure of [£] towards the cost of the value of your tenant responsibilities for external repairs and maintenance/or building insurance. Once the cost of any building insurance responsibility has been met, the balance should be invested appropriately in a 'sinking fund' to meet external repairs and maintenance which arise.

Where there is agreement from all parties to include FRI terms within the lease, practices would need to agree a schedule of

condition with NHSPS, as existing dilapidation should be noted before a lease is signed.

Current reimbursement payment arrangements will roll over into the new financial year and Area Teams will be assuming responsibility for this. If GP tenants in NHSPS premises believe service charges are being calculated incorrectly, a record should be kept and issues should be flagged up with the new landlord company as soon as possible. NHSPS have assured GPC that they intend to achieve economies of scale on service charges (e.g. by tendering for utilities, cleaning etc) and will pass these savings onto practices.

Stamp Duty Land Tax (SDLT)

External property lawyers are currently considering scenarios where leases will attract SDLT charges and are due to provide advice imminently. Department and NHS Property Services (NHSPS) officials have assured GPC that NHS England (formerly known as the NHS Commissioning Board) will be reimbursing all SDLT charges on new leases for NHSPS premises (the 2013 Premises Costs Directions will allow for reimbursement). Charges will also be one-off costs, and will definitely not be annual. GPC are seeking to clarify that this is the case with expert lawyers, and have also requested confirmation as to whether specific changes to leases also attract new SDLT charges.

Practices must ensure they take independent financial advice relating to SDLT before signing a lease agreement, as this can be a significant expense. GPC will be issuing updated guidance on this matter following receipt of advice from the expert property lawyers.