

GP Premises and rent reimbursements

The space, from which GMS/PMS services are delivered, as used by GPs is reimbursed by the commissioner in addition to the global sum (practice payment). There are 2 principle reimbursement schemes: 'Notional Rent' where the premises is owned by the GP practice and 'Actual Rent' where the premises is owned by a landlord other than current partners of the practice - this latter category includes bodies such as pension funds and former partners who have now left the practice.

The rules for property reimbursements are described in detail within the 'Premises Directions 2013'.



NHS GMS Premises
directions 2013.pdf

Notional Rent

NHS England uses the District Valuer service to assess the 'current market rental' ("CMR") figure which is then used to set the notional rent payment. That value is usually fixed for 3 years – which is the normal review cycle. During the course of the review, commissioners should ensure that they are reimbursing the correct floor space (i.e. all space is not being used for excluded purposes such as 'private provision', 'dental' & 'vacant') and that the reimbursement is a fair (market) rate.

The CMR form is the starting point for any notional rent review. Practices are asked to complete the relevant sections and return it to NHS England who in turn instruct the District Valuer to undertake the review. The new rental valuation is always backdated to the due-date, and the normal (6 year) exclusion applies if a practice fails to complete a form at all, or is overdue in sending it in.

The cost of a 'typical' valuation by the District Valuer is around £350 - £700, which is at the expense of the commissioner, depending on the size of the premises and the amount of travelling involved in order to reach the site.

Actual Rent

The review period for an increase in the rate of actual rental is as specified within the individual lease document. This period can, in common with notional rent, be 3-yearly but could be yearly, 5-yearly or another period as specified. Rates of increase can be set with regard to the movement in a particular index such as CPI / RPI etc or can be a figure determined by the landlord from time to time.

The starting point for the rental-review process is when the practice submits to NHS England, a copy of the signed rent review memorandum ("RRM") which is an agreement between the tenant (the practice) and the landlord to increase the rental to an agreed value from a specified date. It is the responsibility of the practice to ensure that it takes adequate professional guidance (at its own expense) to ensure that the rate agreed is appropriate.

A CMR form is then completed before NHS England instruct the District Valuer. The commissioner is obliged to pay the LOWER of the RRM and the CMR figure – which is why it is important for the practice to be sure that the RRM figure is appropriate, otherwise it will incur a funding gap.

It is frequently the case that rental invoices will bear VAT at 20%, so this needs to be considered when setting budgets since the VAT is normally added to the (RRM / CMR) rental-reimbursement figure. Where a practice (because it is VAT-registered) is able to reclaim (from HMRC) some of the VAT then we reduce the reimbursement by that amount so that it does not make a profit from the exercise.

Full Repair & Insurance (“FRI”) Supplement

If the practice owns its premises, it will be responsible for all of the insurance costs and for the upkeep/repair bills. The CMR valuation is based on this being the position.

In the case of leased buildings there can be all sorts of combinations of the split of responsibility (between the landlord and the tenant) for the costs of insurance and repair. Naturally, the more responsibility which is taken by the tenant, the lower the rental charge will be. If reimbursement is calculated solely with reference to the rental, then the practice would have to fund all of the costs of (say) external repairs and external maintenance which are the most common landlord-exclusions.

Occasionally the lease will be written in a way which identifies the rental-deduction in respect of FRI but, where this is not the case, the District Valuer is asked to identify the rate of FRI supplement to be paid. This often will be stated as being 5% of the rental value and forms part of the CMR value.

For the purpose of reimbursement NHS England treats rental & any FRI supplement separately because FRI is an allowance and is not, therefore, subject to VAT.

Abatements

From time to time a practice may receive additional grant-funding to refurbish and/or extend its premises, normally (but not exclusively) where it owns its building. Where this is the case it would be unfair for the practice to receive immediate additional notional rent in respect of the additional space so an ‘abatement’ (delay) is applied. The abatement periods contained within the current directions are:

<u>Value of works</u>	<u>Abatement Period</u>
up to £100K	5y
100K - £250K	10y
>250K	15y

It should be noted that the abatement period is driven by the overall value of the works (ex VAT) and NOT the value of the grant. For this reason, in some cases, it may be more beneficial (for the practice) to fund all of the works and to decline a grant. This is a matter upon which the practice may wish to seek, at its own expense, professional advice in advance of entering into a grant-agreement.

Once an abatement period ends the commissioner is responsible for the payment of the full CMR value of any additional space created by the capital works.

It follows that those responsible for the administration of grant-funding schemes should liaise closely with NHS England's property-reimbursement staff to ensure that abatement periods are implemented as appropriate. Sometimes these come to light when the District Valuer carries out a routine valuation and then queries the provision of additional space, all of which incurs extra cost in the valuation process.

Changes to Building Size, Use & Ownership

This is perhaps the most important element for delegated CCGs to be aware of.

It is not unknown for GPs to extend their own premises, use vacant space, or to enter in to leases, and then to seek approval for (or just expect) additional rental-reimbursement. The commissioner has the right to decline to make rental payments where there has not been pre-authorisation. In fact, a literal interpretation of the directions would be that the commissioner MUST decline such applications – although many commissioners take the view that, where they recognise and agree that additional space is required, they will meet the costs. In that event, though, it is possible for the commissioner to protect its budget by placing restrictions on reimbursable areas/values etc.

One of the most common scenarios that arises is when a GP(s), who are in receipt of notional rent, negotiates a 'deal' with others, which could be another GP(s) to change the ownership of the building and renting it back. Often the resident GPs think that, by simply passing-over the notional rent received, they are somehow entitled to continue to receive the reimbursed notional rent from NHS England. This is DEFINITELY NOT the case.

When a change of ownership is anticipated, which will take the building out of the control of the partners of the practice (this INCLUDES a transfer to say a pension fund / limited company owned by the current partners), then the prior approval of the commissioner is required – both of the general proposal and of the specific contents of the lease.

Before authorising rental reimbursements in respect of a proposed new lease, the commissioner will need to consult its estates strategy to establish whether or not it wishes to enter into a new commitment at that site. For example, there may be additional unused space at another very local building. Also, not all commissioners would wish to tie themselves in to the 30-year rental of a very low-quality site in an area of declining population, where there is already over-provision of GPs.

Assuming that a decision is made to agree to a leasing arrangement, then the contents of that proposed lease become important. Clearly the initial rental value and the term will be of immediate interest but the commissioner needs also to consider all of the proposed Ts & Cs of the lease. Some common problem-causing items are set out below, although the following list is not exhaustive:

- Rental review dates/intervals
- Rental review mechanisms
- Late payment clauses (at present, presumably because of low interest rates, many landlords are not invoking their rental review clauses at the correct time. Instead they are leaving the reviews for several years and then charging (punitive) penalty interest rates for 'late payment' as defined within the supporting leases)
- Excessive notice periods
- Absence of break-clauses
- Restrictions on times / days of use

- Change of tenant

Where a practice has not obtained prior approval for a lease AND the commissioner has elected to authorise reimbursement of rental then the commissioner can choose to apply whatever restrictions it likes, for example to the amount of space reimbursed, the term of reimbursements and / or the part(s) of the lease which will not be accepted.

If the actual lease which the practice signs turns out not to have the same content as that previously authorised then this, quite clearly, would count as a 'not previously authorised' transaction.

Appeals

The practice has the right to appeal, at the commissioner's expense, in the event that it does not agree with the value of CMR as assessed. Often practices choose to use the services of professional 'no win no fee' agents to represent them.

In the event of an appeal, NHS England request the details of the basis of that appeal together with evidence of the comparable local rents being relied upon to support a claim that "you're not paying us enough for the space". All evidence is passed over to the District Valuers' office and the effect of their subsequent recommendation is back-dated to the due date of the original valuation.

In the (very rare) event that an appeal cannot be settled by the District Valuer then the normal contractual dispute-resolution process would apply.

Considerations for delegated CCGs.

A commissioner has no effective power to block an increase in rental payment, as recommended by the District Valuer, so some CCGs with delegated responsibility have taken the view that there is no value in bringing such items, for decision, to their commissioning committees and this effectively delegates transactional authority back to NHS England.

This has the advantage of removing several routine items, which might otherwise clog up the agendas, from meetings, thereby leaving time in those meetings for the discussion of higher-value increases and for consideration of changes of space / ownership.

An example of one decision-tree is attached for reference and/or consideration. This committee can consider whether to adapt this process for North East Lincolnshire.



NHS E Process to
agree Rent Increases

Statistics

NEL CCG spends around £4.4m annually on the rental of its GP estate which serves nearly 170,000 patients, making the average property-rental cost per patient £26.13

The remaining six CCGs in the North Yorkshire & Humber Region spend between £8.16 and £16.49 on property rental per patient. The overall North Yorkshire & Humber region's average premise rental cost per patient is £13.16

Recommendations

The Committee are asked to:

- note the explanation of the GP Premises rent reimbursements.
- agree to adopt the process as detailed in the decision-tree diagram
- agree whether all rent appeals/disputes and decisions associated with these are to be considered by the Committee or if this can be delegated to responsible CCG officers

NEL GP Premises rent issues to consider

The following rent reimbursement requests have been received from NHS England and the CCG are asked to consider these and make a decision around payment. This is prior to any local policy/procedure being approved by the Committee, therefore on this occasion these issues have been brought to this meeting.

Greenlands Surgery , New Waltham – actual rent

The New Waltham branch of Greenlands Surgery was formerly occupied by Dr Bedi, who held a PMS contract with NHS England. There had been a lease agreement with the landlord and prior to December 2015, the reimbursement rate was £8,860. As from 15 December 2015, a new lease was entered into for a 10 year period for £10,000 per annum, but it appears that this was not agreed or authorised by NHS England. NHS England have recently become aware of this and have informed us that as per the Premises Directions, the Commissioner(now the CCG under delegated rights) has the option to decline this increase and claw back the payments made.

This issue is further complicated by the fact that Dr Bedi resigned from his contract on 12 December 2015, just prior to the lease and this was passed to the new partner Dr Raghwhani. It is not clear what involvement Dr Raghwhani had in respect of the increase to the agreement. NHS England have continued to reimburse at the £8860 figure. Any difference between the £8860 and the £10,000 will have been met by the practice.

NHS England have now instructed the District Valuer to obtain a valuation and he has confirmed that £10,000 would be in line with CMR and has also identified also that there should be a FRI supplement of £500, bringing the total reimbursement to £10,500pa.

The Committee are asked to consider the following:

- If the increased amount(as recommended by the District Valuer) should now be reimbursed in full to the practice
- If agree to reimburse, what date this should take effect from e.g. from the date the District Valuer undertook the valuation or from today's date

Stirling Street Medical Centre, actual rent

NHS England have notified the CCG that they have received a rent review from the District Valuer for Stirling Street Medical Centre. This is dated wef 25/7/2016. Stirling Street premises is a shared user site, Virgin Care are responsible for a portion of the building which is non GP use.

The following practices are located in Stirling Street:

B81606 Dr Mathews
B81644 Humberview Surgery
B81012 Dr Kumar
B81655 Greenlands Surgery

The previous rent reimbursement is as follows:

B81606 Dr Mathews	£46,317
B81644 Humberview Surgery	£45,488
B81012 Dr Kumar	£53,612
B81655 Greenlands Surgery	<u>£53,779</u>
	£199,196

The whole-building revaluation figure of £224,000(including Virgin Care) sets the new GP-rental figures at:

B81606 Dr Mathews	£46,950
B81664 Humberview Surgery	£46,099
B81012 Dr Kumar	£54,343
B81655 Greenlands Surgery	<u>£54,499</u>
	£201,891

All of the above figures are ex VAT, so the actual cash impact is 20% higher (ie the real increase is **£3,234pa**).

The Committee are asked to:

- Agree to the increase of £3234 inc VAT as from 1 April 2018. It should be noted that the backdated amount prior to this will be the responsibility of NHS England.

Cromwell Road Medical Centre

NHS England have notified the CCG that they have received a rent review from the District valuer for Cromwell Road Medical Centre. This is dated wef 2/11/2015. Cromwell Road premises is a shared user site, NHS Property Services are responsible for a portion of the building which is non GP use.

The previous rent reimbursement is as follows:

B81108 Dr Sinha	£108,117
B81606 Dr Mathews	£ 60,600
B81663 Core Care Family Practice	<u>£111,568</u>
	£280,285

The whole-building revaluation figure of £407,825 sets the new GP-rental figures at:

B81108 Dr Sinha	£109,338
B81606 Dr Mathews	£ 61,296
B81663 Core Care Family Practice	<u>£112,845</u>
	£283,479

All of the above figures are ex VAT, so the actual cash impact is 20% higher (i.e. the real increase is £3,833pa).

The Committee are asked to:

- Agree to the increase of £3833 inc VAT as from 1 April 2018. It should be noted that the backdated amount prior to this will be the responsibility of NHS England.