

REPORT ON RICS/NHS DISPUTE RESOLUTION PROCEDURES BY THE PRIMARY CARE PROPERTY FORUM

INTRODUCTION

The NHS (General Medical Services – Premises Costs) (England) Directions 2004 sets out the basis for the assessment of rental payments in respect of surgery premises both owned by GPs (notional rent) or by third party landlords (Lease rent). The method to challenge the the rent is set out within the NHS (GMS and PMS) Contract Regulations 2004.

Following the judicial review of the appeal system the NHS Litigation Authority (NHSLA) approached the RICS to set up a panel of sector specialist valuers to act as Expert Advisors in 2009. Following an interim period of trialling the arrangement the RICS/ NHSLA have now produced updated guidance (January 2012) which takes effect 1 April 2012.

A summary of the changes following a decision by the NHS LA to seek advice on the level of rent reimbursement is set out below :-

- 1 RICS DRS shall nominate an Advisor and advise the NHSLA of the contact details of the Advisor within 4 weeks max.
- 2 Within 5 working days of being told who the Advisor is send to that Advisor a set of case papers pertaining to the application for dispute resolution. This shall include a comprehensive package of information including observations and representations (Submissions and Replies) obtained from the Parties. The Parties will be notified of the identity of the Appointed Advisor.
- 3 The Advisor shall not seek any further submissions from either party.
- 4 The Advisor shall decide whether to visit the subject premises and whether an external viewing of comparable properties is required.
- 5 The Advisor shall report no later than 2 months after nomination. The Advisor shall not send a copy of the report to the parties.
- 6 The fees of the Advisor reporting on the notional rent will be in the range of £1,000 - £1,500 (excl VAT) plus expenses.
- 7 Where the Advisor is involved in more complex cases eg,
 - 7.1 larger modern health centres,
 - 7.2 landlord owned,
 - 7.3 subject to a lease where rent reimbursement is linked with the lease rent,the above fee guide will not apply. In these instances the Advisor will agree with the NHSLA at the time of appointment/commencement of the referral an appropriate Advisor fee.

- 8 Any RICS guidance issued to the Advisor shall be approved by the NHSLA for CMR purposes.
- 9 The Costs of RICS and the Advisor shall be met by the NHSLA.

It should be noted that prior to an appeal being made to the NHS LA they will have to be satisfied that a PCT's Local Dispute Resolution Procedures have been fully utilised. Such local procedures vary but inevitably include all initial negotiations with the District Valuer.

The current NHSLA Protocol for the Dispute Resolution of Current Market Rents dated February 2010 remains as current best practice guide when considering the acceptance of an appeal under the NHS GMS and PMS Contract Regulations 2004.

Prior to the White Paper the DoH had drafted guidance to the NHS Premises Costs Directions 2004 which was thought to be a prelude to updating the Directions themselves. However we are unaware of any current plans to update the Directions within the Health and Social Care Act 2012.