

Premises Costs Directions 2024

16 May 2024

Bryn Morgan
Partner

“They're excellent - they're very professional and very experienced.”

Chambers 2021

For more information visit us at www.hempsons.co.uk

All change!

- PCD 2024 in force **10 May 2024**
- Transitional provisions (PCD 58)
 - Existing funding arrangements under 2004 or 2013 PCDs will now be paid under 2024 PCDs
 - PCD 2013 preserved application of PCD 2004 for pre-2013 arrangements
- 2004 and 2013 PCDs are revoked (PCD 59) – subject to small exceptions relating to old borrowing costs schemes

New rent review process applies to future reviews under existing leases and notional rent reviews

100% Improvement Grants and New Schemes

100% Improvement Grants (PCD 12)

Types of schemes that can be funded extended to include:-

1. **Purchasing land for extensions** to practice premises (PCD 8(1)(a)) and related SDLT (PCD 31)
2. **Fit out** costs of premises, during or immediately after construction, where GPs are to be the tenant (PCD 8(1)(k)) –
 - can be paid to the Landlord as a premium for the new or significantly refurbished premises in return for abated rent – during or on completion of development (PCD 32(2));
 - NHSE must be satisfied that the lease and collateral warranties can be assigned to NHSE or “its nominee” (PCD 10(3))

100% Improvement Grants and New Schemes

3. **Environmental impact improvements** may now be funded if NHSE is satisfied, acting reasonably, that they "*provide a net financial benefit to the health service*" (PCD 9(g)) – mirrored under CMR disregard (Para 3(e), Part 1, Sch 2)

Funding explicitly not allowed for:-

costs related to compliance with **minimum standards** – except where scheme relates to reasonable extension of telephone facilities or required by a new statutory requirement (PCD 9(i))

Grant conditions

- New thresholds for “guaranteed minimum period of use” and abatement periods :-
 - less than £144,000, at least 6 years;
 - £144,000 or more but less than £360,000, at least 9 years;
 - £360,000 or more but less than £660,000, at least 12 years;
 - £660,000 or more but less than £1,200,000, at least 15 years; and
 - £1,200,000 or more, at least 18 years
- New PCD 13 on “Repayability” of grants by GPs if GMS contract terminated within “guaranteed minimum period of use”
- NHSE may require the contractor to enter a grant agreement (PCD 7(4)(b)) –PCD 12 requirements (eg repayment) and *“any other conditions NHSE consider necessary to ensure value for money”*

DV OR Appointed Valuer

ICB can seek VFM advice from the district valuer or from a suitably qualified professional registered with RICS ("the appointed valuer")

Applies to (amongst other things):-

- VFM of premises development or improvements (PCD 10(1)(c))
- VFM of terms of new leases (PCD 32(1)(b))
- Current Market Rent (PCD 34(1)(b))
- Top Up Rent (PCD 34(4))
- Notional Rent (Part 3 of Schedule 2)

Process for Rent Reviews

Para 4(e), Part 2, Schedule 2

(i) the contractor must agree with the landlord a proposed revised market rent
(ii) the contractor must provide information to NHSE as to this proposed rent, along with *evidence of the negotiation between the contractor and the landlord (which may or may not include a formal valuation)*
NB no need for signed review memorandum at this stage

(iii) NHSE must consider the proposed rent, taking advice from the district valuer or appointed valuer
(iv) NHSE must confirm to the contractor whether NHSE will provide reimbursement at the level of the proposed rent or at a lower level, and

(v) the contractor must either enter into a rent review memorandum, signed by the landlord and the contractor, recording the change in the level of rent charged; or renegotiate the revised rent with the landlord (for example, if NHSE agrees to reimbursement at a lower level than the proposed rent),

neither NHS England nor the ICB may negotiate directly with landlords or those acting on behalf of landlords during this process

BUT prior to determining the amounts payable in respect of the rent on first setting of the amount of rent, NHSE must invite the landlord of the premises and the contractor, before the amount of rent is determined, to make representations to NHS England regarding the level of the current market rent Para 4(c)

Utilisation of premises

- PCD 5(3) - Where NHS England makes a payment to a contractor under these Directions, it must (a) consider with the contractor, in a case where NHS England considers it appropriate, whether any opportunities exist for additional, multi-functional use of the premises, or any part or parts thereof, in respect of which the payment is made.
- PCD 14(3) - If (a) NHS England and the contractor agree under direction 5(3)(a) that there is an opportunity for another body to share occupation of part or all of the practice premises and a written agreement is required to evidence that occupation; the contractor can apply for reimbursement of professional expenses.
- PCD 49 contains further details on how these arrangements may, possibly temporarily, affect the level of premises funding.

VAT and Overpayments

GPs to use reasonable endeavours to secure agreement to lease stating that VAT will not be charged on the rent

- On a sale and leaseback (if unsuccessful ICB has a discretion over reimbursement of VAT)
- Where the GPs are occupying on 10 May 2024 and paying rent, have not completed a lease and are seeking to do so (if unsuccessful ICB must reimburse VAT)

PCD 33(5) to(9)

New PCD 56 on recovery of overpayments from GPs including where commissioners have made mistakes.

Last Partner Standing Protections?

New PCD 54 applies where:-

- GPs hold lease and receive rent reimbursement;
- GMS contract terminated before the end of the lease because the contractor wants to retire; and
- They are unable to secure a successor or another contractor to whom the lease may be assigned.

Requires NHSE to produce a protocol setting out criteria for determining whether or not to *recommend* that the lease be assigned to any nominee of NHS England.

Discussion



Contact

Disclaimer: These slides are made available on the basis that no liability is accepted for any errors of fact or opinion they may contain. The slides and presentation should not be regarded as a comprehensive statement of the law and practice in this area. Professional advice should be obtained before applying the information to particular circumstances



Bryn Morgan

Partner

t: 020 7484 7518

e: b.morgan@hempsons.co.uk

