



NHS Property Service Charge Ruling – What Does it Mean for GP Practices?

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As GPs will be aware, a long-running dispute exists with NHS Property Services Ltd (NHSPS), centred around whether NHSPS is entitled to charge service charges on its GP tenants and occupiers, in the way it has been doing in recent years. The judgment in the first of two trials concerning this issue has been handed down and has found in favour of NHSPS on almost all issues.

Background

Prior to 2013, Primary Care Trusts (PCTs) owned a large amount of the primary care estate. PCTs would reimburse the GPs their premises costs (as the NHS commissioner) and then receive these costs back from their GP occupiers (as their landlord). This circular funding model inevitably caused a blurring of their two roles. Relevant to this 'test case' was the fact that in their role as landlords, PCTs often had a practice of not insisting that leases were agreed upon and entered into (after all, they were in funding the tenant so in effect paying rent to themselves), and also often failed to fully charge, if they charged at all, for services they provided to their tenants and occupiers.

When these roles were separated in 2013, with the relevant primary care estate being transferred to NHSPS by way of statutory vesting orders, the lack of written documentation and the multitude of differing practices by PCTs caused significant problems for both NHSPS and GPs. Added to this, NHSPS later decided to move to a 'full recovery model' for service charges, more akin to arrangements you may see in the private sector. For GPs, this has meant that their service charges have increased dramatically over the years, and oftentimes without any written basis on which the parties can look to for clarity. This has caused something of a stand-off between some GP practices and NHSPS – the fundamental question being whether NHSPS was entitled to change the way service charges were demanded and managed? Alternatively, does underlying property law mean that NHSPS should have continued to apply the policy and practice of PCTs, on the basis that these practices formed rights and obligations that should have transferred to NHSPS along with the legal title to the properties.

The trial

Five individual GP practices bought the claim against NHSPS, supported by the British Medical Association. The

trial focused on the various property law questions to try to resolve the issues, and it was billed as a test case. Given the number of practices and the complexity of the issues being tested, the judgement ran to 170 pages. This article does not try to replicate the full detail of the cases, but in short, NHSPS were successful on almost all of its claims. Some of the key findings were:

- When parties have been negotiating for a new or renewal lease for a period of time, even when that period of time has been many years and with many periods of time not engaging with negotiations, it is unlikely that the tenancy can be viewed as a periodic tenancy and the tenant will not benefit from the security of tenure provisions. The occupation arrangements can more correctly be classed as that of a 'tenant at will' (an arrangement that can be terminated by either party on notice) whilst terms of the new lease are agreed upon.
- Where there are no written arrangements in place as to what services are to be provided by the landlord, the Court will look to the conduct of the parties to determine what was intended. In these instances, it was held that the landlord could reasonably be expected to supply services and that it would be reasonable for the tenant to reimburse them the cost of this.
- The costs incurred by the landlord in providing services can, in most cases, extend to charging the tenants for the internal management costs of the landlord associated with the provision of the services.

What does the outcome of the trial mean for GPs?

Firstly, affected GPs should not panic. Whilst this trial was described by the BMA as a test case, it was actually a trial involving 5 individual GP practices who each had their own individual set of circumstances. Land law, and in particular the law around leases, is complex and turns on the facts and circumstances of each individual case. The decisions made in this judgement apply only to the relevant practices involved in the trial. Each and every occupant of an NHSPS building will have a different history, set of circumstances and potentially different legal position and the decisions reached in this judgement will not necessarily be relevant to all. GPs should not assume that this 'test case' sets a precedent for them all, they should take independent legal advice on their own set of circumstances – the result may well be different.

Secondly, this trial is the first of two trials and it primarily considered property law principles as to whether historic PCT arrangements were transferred to NHSPS. The judge declined to hear or decide on any issues around the reasonableness or otherwise of the service charge amounts actually being charged by NHSPS – this is all to be dealt with in trial 2 to be heard at later date. Therefore, even if a GP practice may now be clearer that they will be obliged to pay a service charge to NHSPS, it is not necessarily the case that the amount being charged by NHSPS is correct.

It is important for GPs to keep accurate records of the services they receive, what they are being charged for and what they have paid. Engaging with NHSPS over these charges may enable the parties to agree on a satisfactory resolution to the issue and they are being encouraged to start this process. Professional support is available from both solicitors who can help guide GPs as to what their specific circumstances may require them to pay, and from surveyors who may be able to provide advice as to the reasonableness of the specific charges compared to market norms.

Finally, what this trial does emphasise is the need to take appropriate independent professional advice. Having a properly negotiated and drafted lease from the outset can prevent many of these issues going forward, and being fully advised of your likely outgoings and charges means you can budget accordingly and avoid unexpected expenses.

Our solicitors work with GP practices and medical professionals nationwide. If you would like to speak to one of our healthcare law specialists, please email online.enquiries@LA-law.com or call 023 8082 7422.

[Read Bethan's interview with GP Online on this topic.](#)