Premises Costs Directions 2024

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Since about 6 months after the 2013 Premises Costs Directions ("PCDs") were published, people have been clamouring for change and dates of promised updates have come and gone. Finally, the long-awaited update has been published and we set out below the key changes that have been made.

Key Changes

Improvement Grants

There is a lot more detail in the 2024 PCDs on improvement grants, in some cases clarifying existing practice and, in other cases, making some significant changes:

- The maximum amount a grant can be made for is now up to 100% of the cost of the project (previously it was capped at 66%).
- There is now the ability to include the costs associated with improving the environmental impact of premises (e.g. solar panels, replacement windows, etc.). However, the practice must show that there will be a net financial benefit to the health service.
- The minimum guaranteed periods of use in respect of any works funded by an improvement grant have been reduced and are now as follows:
    - Less than £144k – at least 6 years
    - £144k to £360k – at least 9 years
    - £360k to £660k - at least 12 years
    - £660k to £1.2m – at least 15 years

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- £1.2m or more – at least 18 years.

- The requirement to enter into a grant agreement or similar has been formalised. Whilst this was often a requirement of grant funding under the 2013 PCDs to record the various agreed terms, the need for this type of agreement has been formalised in the 2024 PCDs.

- NHS England now has the ability to agree to waive the requirement of the practice to repay a grant if the relevant core contract comes to an end during the minimum guaranteed period mentioned above. This discretion can be exercised by NHS England if they consider it appropriate in all the circumstances. Whilst it remains to be seen how this discretion will be used by NSH England, it may give Practices some comfort to know that the power for NHS England to waive the obligation to repay the grant exists.

Shared Spaces

Practices and NHS England must consider whether any opportunities exist for multifunctional use of premises – essentially to share space. NHS England can consider reimbursing such space or, if appropriate, reducing reimbursement for such space if, for example, it is income-producing for the practice. This may go some way to solving some of the issues associated with PCNs occupying spaces – though, as always, much will depend on how this is used in practice. Usefully, there is now the ability for the practice to recover the cost of professional fees incurred in putting into place shared arrangements.

Additional Reimbursable Costs

BID levies (the charge made by the local authority if your premises are in a Business Improvement District) are now reimbursable.

Retiring Property Owning Partners

Where a premises is owned by partners within a practice, and the last of the property-owning partners retires from the Practice, NHS England must reassess the amount to be reimbursed to the Practice under CMR (current market rent) principles rather than continue to pay notional rent. Effectively, they must treat the practice as if they hold a lease of the premises. It will, therefore, be important to make sure suitable succession planning is in place and, if needed, formally agree to a lease with the retiring property-owning partner(s) rather than allowing the notional rent to simply be passed onto them.

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Changes Specific to Leasehold Surgery Premises

Rent Reviews

Under the 2013 PCDs, the practice was required to reach an agreement with the Landlord on the new rent following a rent review and a memorandum recording the new rent to be submitted to NHS England for approval. This caused quite a few challenges as these memorandums could, in some cases, be legally binding between a landlord and a tenant – yet the rent was still to be agreed by the NHS. Under the 2024 PCDs, this has been changed, and rather than submitting a rent review memorandum, the practice will instead be required to 'show evidence of negotiation of the rent' to NHS England.

This simplifies the issues around rent review memorandums but risks creating uncertainty as to what level of negotiation needs to have taken place and how this is evidenced. It will take time to see how this translates across different regions and different District Valuers – will they be looking for different evidence?

One point to note is that NHS England is now able to take advise from other qualified surveyors as to valuation, and not just from the District Valuer. It will be interesting to see how many surveyors take up this opportunity (those currently with the relevant experience are likely to act for providers and maybe, or feel, conflicted about acting for NHS England) and whether this has any impact on the current delays arising from the backlog of valuations in the sector.

Acceptance of Current Market Rent ("CMR") valuation

Unless the NHS and the practice agree on an alternative period, Practices now have 12 weeks in which to accept or not accept a determination of the CMR by the NHS (this is both at the start of the lease and following any rent review. If the practice does not do this then the NHS must not reimburse the CMR to the practice. It will therefore be crucial to make sure the NHS's assessment of the CMR is formally approved (or not), in particular following any rent review process where it may be easy to forget to do this.

PFI/LIFT Premises

The amount to be reimbursed to Practices who have leases of PFI or LIFT property is to be the amount NHS England considers reasonable, having regard to the terms on which the premises are occupied. This may provide some support to Practices in these buildings where a significant amount of the Landlord's profit is generated by way of the provision of maintenance and services to the building, which would not ordinarily be reimbursed to the GPs.

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Last Person Standing

There is an attempt to deal with the issue around where Practices are unable to secure successors (either new partners or another practice or entity taking on their core contract) but are still tenants under leases at the point their core contract comes to an end. In these instances NHS England must produce a protocol setting out their criteria for deciding whether or not to recommend that lease is assigned to a nominee of NHS England. Again, much will depend on how NHS England (or the relevant ICBs) decide to utilise this new responsibility – there is certainly no requirement on NHS England to take an assignment of every lease in this scenario. In addition, much will depend on the terms of the relevant lease and whether it is actually capable of assignment to which ever nominee NHS England may nominate.

It will be important to Practices to make sure the assignment provisions in a lease are as wide and flexible as possible to give them as much chance as possible to utilise these provisions should they become necessary – and to appropriately succession plan to avoid needing to use them at all.

Contact us

Our Healthcare & Social Care team is ready to assist you with any questions regarding the updated Premises Costs Directions. Please get in touch with any queries at online.enquiries@LA-law.com or 0344 967 0791.

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