

## An introduction to funding GP premises



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# The changing environment for primary care

Driven by numerous factors including:

- 1.The government desire to move substantial amounts of medical care from the acute trusts into primary care.
- 2.The national shortage of GPs.
- 3.The reluctance of younger GPs to take on ownership of premises as part of a wider reluctance to run the businesses within which primary care services are provided.
- 4.The merger of practices or practices operating from jointly operated premises.
- 5.The move to contracting through primary care networks as opposed to contracting with individual GP practices – DES services contracts.
- 6.The move from in person consultations to digital consultations.

## The legislative framework

- Part 4 of the National Health Service Act 2006
- Section 83(2) gives NHS England wide powers to decide who should hold a contract to provide primary medical services and what the terms of any such contract
- General Medical Services - or GMS – contract.
  - Section 89 provides that a GMS contract “*must contain such provisions as may be prescribed*” in Regulations
  - Section 87 provides “The Secretary of State may give directions as to payments to be made under general medical services contracts”
  - Regs for other terms are National Health Service (General Medical Services Contracts) Regulations 2015
- Personal Medical Services - PMS - Contracts
  - Contracts under s92
  - Regs are the National Health Service (Personal Medical Services Agreements) Regulations 2015

# Forms of Contracts

Three forms of contract for GP practices:

a)GMS Contracts;

b)PMS Contracts; and

c)Section 83(2) arrangement contracts - known as “Alternative Personal Medical Services” contracts or APMS contracts. This is the form of contract which tends to be used where an NHS body - such as an NHS Foundation Trust - takes over a GP practice and employs the GPs in the same way that hospital doctors are employees.

## NHS Contracts

- S9 of NHS Act
- Effect explained in *Pitalia & Anor v The National Health Service Commissioning Board* [2014] EWCA Civ 474
- R9 of PMS regs (opt out) and reg 10 of GMS regs (opt in)
- Dispute resolution by NHSLA
- Decisions can be subject to judicial review challenge: see *R (Hussain & Ors) v Secretary of State for the Health Department* [2010] EWHC 3351 (Admin)
- Interest is payable on awards: see *SSP Health Ltd v The National Health Service Litigation Authority (Primary Care Appeals Service) & Ors* [2020] EWCA Civ 1574

## Premises Payments under PMS Contracts

- Not covered by Secretary of State Directions
- Payments thus depend on what is in the contract
- Principles worked out in *National Health Service Commissioning Board v Silovsky & Anor* [2017] EWCA Civ 1389
- Premises payments for PMS contracts are governed by the terms of the contract, not by the sums that would be payable if it was a GMS contract.

# Premises Payments under GMS Contacts

## **National Health Service (General Medical Services - Premises Costs) Directions 2013**

- a) Part 1 contains a series of general provisions, including provisions relating to payments in circumstances where the Directions do not apply;
- b) Part 2 governs grants which are available for premises development and improvement;
- c) Part 3 governs professional fees and related costs which arise where GP practices occupied new or significantly refurbished premises;
- d) Part 4 governs grants relating to relocation or remortgaging by contractor;
- e) Part 5 governs recurring premises costs;
- f) Part 6 contains miscellaneous provisions.

## Claims under the 2013 Directions

- **Notional Rent**
- **Borrowing Costs**
- **Rent**
- **Sums for new premises and for redevelopment**

# Thank you for listening

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