

**Welcome to Landmark Chambers’
‘GP Premises: An introduction to the legal
issues of property management for GP
practices’ webinar**

The recording may be accessed [here](#).

Your speakers today are...



David Elvin QC (Chair)



David Lock QC

Topic:
An introduction
to funding GP
premises



Justin Bates

Topic:
Managing
multi-user
buildings and
service charges

An introduction to funding GP premises



David Lock QC

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**

Managing multi-user buildings and service charges



Justin Bates

A case study

** Please note that whilst the building that I am discussing does actually exist, I have no knowledge of the title structure or how any of the users of the building actually operate. It is just used to illustrate some wider points **

Just up the road from my house

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From another angle



Users

What kinds of user?

- Top part is residential flats (with cladding...)
- Then office level
- Then two GPs surgeries and a pharmacy
- Café and car parking at ground level (private and semi-public)
 - Also access for the flats and offices via their own staircase and lifts
 - A fairly complicated plant room

Title structure

- Freehold of the whole
- Headlease of the whole (including car parking spaces)
- Underlease of the café, GPs surgeries and pharmacy (and some car parking spaces)
- Underlease of the office floors (and some car parking spaces)
 - sub-underlease of individual parts of the office?
 - licences of parts of the office
- Underlease of the flats
 - sub-underlease of each flat
 - occupational tenancies
-

What problems does that present?

Different regulatory position between users

- *e.g.* the cladding
 - Likely to be an issue for the flat owners (whether underlease or individual flat leaseholder) because of the EWS1 issue and mortgage concerns
 - Why do the other occupiers care?
 - Service charges likely to relate to the structure and exterior of the whole building regardless of benefit derived
 - Likely remedial costs of a few million
 - No government funding for any of the non-residential units
 - Impact on insurance?

What problems does that present (2)?

- Service charge allocation
 - How does each lease apportion service charges?
 - By floor area? By fixed percentage? By the discretion of the LL (or LLs surveyor)?
 - Commercial tenants have very few remedies and statutory protections
 - Residential tenants (and headlease of the whole – *Oakfern v Ruddy* [2006] EWCA Civ 1389) have an advantage over commercial tenants because of s.27A, Landlord and Tenant Act 1985
 - » FTT can re-allocate costs between use classes to benefit of residential tenants (e.g. *Aviva v Williams* [2021] EWCA Civ 27 and the three UT(LC) cases approved in that judgment)
 - » Leaseholders have ss.19, 20 etc LTA 1985 regardless of apportionment issues

What problems does that present (3)?

- Complex title structure leads to inconsistent and unclear obligations
 - Where do the repairing obligations sit?
 - How does a tenant enforce an obligation which is ultimately the responsibility of someone else under a different lease?
 - What do you do if the leases are inconsistent?

If commercial tenant wants to challenge service charges...

- See *Criterion Buildings Ltd v McKinsey & Co Inc and Another* [2021] EWHC 216 (Ch), as approved in *Gell v 32 St John's Road (Eastbourne) Management Company Ltd* [2021] EWCA Civ 789 and the “initial burden” on the tenant to show a *prima facie* case in any challenge.
- So any challenge needs to be front-loaded.

Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the Q&A section which can be found along the top or bottom of your screen.

Thank you for listening

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