

**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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## London

180 Fleet Street  
London, EC4A 2HG  
+44 (0)20 7430 1221

## Birmingham

Cornwall Buildings  
45 Newhall Street  
Birmingham, B3 3QR  
+44 (0)121 752 0800

## Contact

✉ [clerks@landmarkchambers.co.uk](mailto:clerks@landmarkchambers.co.uk)  
🌐 [www.landmarkchambers.co.uk](http://www.landmarkchambers.co.uk)

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