

April 2019

Dear Colleague,

Re: Lease Regularisation

The Department of Health and Social Care is committed to initiatives to improve property utilisation and value for money. As part of this, they are supporting a regularisation of tenancy arrangements of NHS owned and leased properties, between NHS Property Services (“NHS PS”) (acting as landlords for the health system) and NHS entities and contract holders (tenants).

NHS England (working with NHS Property Services) is encouraging GPs and Providers of all types to formalise their tenancy agreements.

With a formal arrangement on a property’s lease in place, we can deliver benefits to both tenants and the wider NHS, including:

- Improved understanding of the true cost of occupation,
- Better informed decisions about the best location for services,
- Clear incentives to encourage more efficient use of space.

We’re aware that a full lease may not be possible for every occupier, due to – for example – agreements over service charges. And so, we have three options available:

- Full lease – a formal, documented agreement covering rent, facilities management and service charges. This remains the preferred option for NHS PS, NHS England and occupiers.
- Rental Agreement Letters – an interim measure, giving you clarity on rent and the agreed payment terms for your occupation while we continue to work with you on agreeing facilities management support, other services and ultimately lease terms
- Open Space – we’re building a digital platform to find and book sessional space rooms and can offer your practice a license to join.



For more information on the latter two options, please refer to the wider pack of supporting materials.

This effort has been running since 2013 and we are now keen to resolve outstanding cases and reach agreement. **GP Practices and Providers are expected to enter open discussions with NHS PS, with a view that by April 2020 all tenants will occupy under one of the forms of agreement as outlined above.** Where it is evident that GPs and Providers are failing to engage, the Department of Health and Social Care and the NHS bodies may seek legal recourse.

A lease is a legal agreement between the tenant and landlord, it is the preferred basis of occupation in the NHS and provides clarity on:

Occupation

Tenants can be sure they have what is needed to provide services and manage their business, both now and in the future. This includes:

- What space can be used exclusively by the tenant and how (as well as details on any shared or common areas the tenant may have rights over);
- How long the right to occupy the space lasts and how it can be terminated;
- What liabilities there are in terms of the tenant's occupation of the premises;
- What services NHS Property Services provides to the building.

Security and Ensuring Patient Care

Tenants can be confident that they can deliver their services from their practice premises and comply with its contractual commitments. Such security is impossible with an informal or unwritten arrangement.

It is in the best interests of patients for their GPs to occupy safe and compliant practice premises on a secure legal footing, with arrangements to provide financial stability and certainty.

Costs

Clarity of occupation and associated building services allows the landlord to provide:

- More accurate allocation of costs;
- Clearer billing with full and accurate information;
- Detail on how costs are calculated and the rules about how rent can be reviewed;
- Certainty as to what may or may not be re-charged to the practice (e.g. service costs);
- Forecasting of future costs.



Reimbursement

Under the Premises Costs Directions, GPs must prove the tenancy of the premise represents good value for money. A formal, documented lease agreement is evidence for this, and can support claims for rent reimbursement.

Investment and Improvement

Any application for a premises improvement grant under the Premises Cost Directions must include evidence that the practice benefits from adequate security of tenure, for at least as long as the guaranteed minimum period of NHS use specified in the Directions. A formal, documented lease for a fixed term is the best evidence for this security.

In addition, grants made from the Estates and Technology Transformation Fund and Strategy and Transformation Partnership capital programme are subject to the same requirement. Finally, landlords will be unlikely to commit any of their own capital to improving a building where the tenant does not have a formal lease.

Together, the NHS bodies will support the drive to regularise tenancies, to reduce disputes and to offer certainty across the system.

For more information, such as an appendix of property terms and case studies of the lease signing process, please refer to the wider support pack from NHS Property Services <https://www.property.nhs.uk/property/managing-leases/>.

NHS England and NHS Improvement

