

GUIDE TO LEASES AND THE BMA LEASE

A guide for GPs

Introduction

This guide summarises important information about the template GP lease that NHS Property Services has agreed with the British Medical Association (BMA), NHS England and the Department of Health. It tells you what is contained in the lease, why it is important to have one and the process for agreeing it.

It also tells you about the increased benefits of signing up to a lease by 30 November 2017. There is more detail further on, but to summarise NHS England will:

Reimburse the Stamp Duty Land Tax for the initial term (up to 15 years)

Contribute up to £1000 + VAT to your lease related legal fees (you can choose your own legal advisors)

Subsidise any increase in your service charge Management Fee for 2016/17 and 2017/18 if your total service charge cost has increased from 2015/16 levels

Why do I need a lease?

A lease is a legal agreement between your business and NHS Property Services Ltd and its purpose is to provide clarity on your occupation and costs.

Occupation

Having a lease means that you can be certain that you have secured the space that you need to provide services and manage your business, both now and in the future. This includes:

- What space is used exclusively by you, is shared between you and other tenants, or is totally excluded from your designated area
- How long your right to occupy the space lasts and how you can end it
- What your own liabilities are in terms of your occupation of the premises
- What services NHS Property Services provide to the building and what their responsibilities are towards their tenants

Costs

- Clarity about your occupation and associated building services allows us to provide: A detailed breakdown of all service charge costs, which will enable more accurate allocation of costs
- Clearer billing, as we will have full and accurate information to provide detail on how costs are calculated
- Rules about how rent will be reviewed
- Forecasting of future costs, which will assist future financial planning for tenants.

The shared aim of NHS England and NHS Property Services is to find the most effective ways of supporting the delivery of patient care through efficient use of NHS premises. With leases in place, we can be assured of the intentions of tenants and the longer term occupation of the property which will allow informed decisions about capital investment.

The template GP lease

The template GP lease has been developed between the BMA and NHS Property Services for GP practices that lease either the whole or only part of a building.

To encourage you to document your occupation using the template GP lease, NHS England has committed to offer certain additional benefits if you enter into a lease by 30 November 2017. These benefits are:

- **Stamp Duty Land Tax:** Stamp Duty Land Tax paid will be reimbursable, on proof of payment, for the initial term (up to 15 years)
- **Legal fees:** Legal fees you incur for the lease conveyance work will be reimbursable, on proof of payment, up to a maximum of £1,000 (plus VAT), regardless of which legal advisors you choose
- **NHS Property Services service charges:** NHS England will subsidise the Management Fee on your Service Charges for 2016/17 and 2017/18 if you complete a lease by the deadline of 30 November 2017

How to apply for these benefits

1. Make an application for reimbursement to your CCG/NHS England Directors of Commissioning Operations (DCO) by submitting the claim form to england.gppremisesfund@nhs.net

After you've signed your lease, you will also benefit from:

Appropriate rent review process

As NHS Property Services is committed to using the District Valuer for carrying out its rent reviews for all GP premises, there will never be a difference of opinion in your rental value between NHS Property Services and NHS England. Therefore no impediment to your reimbursement should arise as a result of a rent review.

VAT

If NHS Property Services owns your building, we will not charge VAT unless both you and NHS England agree to it. If NHS Property Services leases your property from a landlord and they have decided to charge VAT, NHS England has agreed to reimburse the VAT on your rent for the duration of your lease, should NHS Property Services charge the VAT on to you.

2. The CCG/NHS England DCO will review and endorse the claim before your practice is reimbursed by your Primary Care Commissioner

Standard terms

The standard terms of your lease include:

Term

The term, or length, of your lease is subject to agreement, to allow for mergers and exits from premises etc. We would expect the term to complement the requirements and nature of your core contract.

Repairs

The standard GP lease is a Full Repairing and Insuring lease ('FRI' lease). This is one of the standard types of lease in the property industry.

Tenant breaks

If you wish to end your NHS GP contract, or if it is terminated, you will be able to break your lease on giving reasonable notice.

Landlord breaks

NHS Property Services has the ability to end your lease only in the exceptional circumstance that you cease to hold a NHS contract or no longer deliver essential services under your contract for at least two months. This clause provides Commissioners with the ability to ensure business continuity from the premises and secures services for patients.

Rent reviews

Your first rent review will be at the end of year five, and three yearly thereafter. The basis of the review is to set the rent at the prevailing market value of the property at the time of review. This means your rent could go either up or down, so is in line with the principles

of reimbursement within the Premises Costs Directions.

Assignment

If you wish to pass on the lease to other practice partners or to a different practice that has a NHS contract, the process for assigning your lease has been made easier. You can make an application to NHS England to do this.

Service charges

Costs to be reasonable, proper, not for profit and shared on an open book basis.

Security of tenure

The lease will be 'contracted out' of your statutory right to security of tenure (1954 Landlord & Tenant Act) in order for the 'Landlord Break' outlined above to function. The practice of contracting out is very common practice in the property industry. If you require longer term occupational rights, we offer an option to renew the lease as a substitute.

Signing a lease: How the process works

The process for signing a lease can vary depending on your specific circumstances, however, the main steps are:

1

We will inspect and survey your building. The District Valuer will also make an assessment of the current market rent, instructed by NHS England

2

We will prepare a floor plan which will show your own exclusive space, any shared and common areas, and also any car parking.

3

We will issue a document called 'Heads of Terms' which will set out the main terms of your lease based on the GP lease template. We will also provide and discuss with you a detailed schedule of service charge costs associated with that accommodation and a schedule showing the planned and preventative maintenance for the property. Service charge costs will be agreed with tenants prior to signing the lease.

4

We discuss and agree the final Heads of Terms with you (including service charge costs) so that lawyers can then be instructed.

5

Finally, a lease will be drawn up and completed that documents the terms agreed with you.

During this process your property will be inspected by NHS Property Services and the District Valuer.

Frequently asked questions

When do I need to have a lease by?

The sooner we have agreed lease terms, the sooner we can be clear on the space you occupy and the facilities you use. Please note the closing date for applications for the benefits on offer is the 30 November 2017

Do I need legal/professional advice?

We would always recommend you seek legal advice to make sure you understand both parties' responsibilities within the lease. Signing a lease isn't just a matter for lawyers; it is important that you understand how we will interact during the term of your lease. Remember, NHS England will reimburse £1,000 plus VAT of your legal costs if you complete a GP template lease by 30 November 2017. You have the right to instruct the lawyers of your choice.

Do I have to use the GP template lease?

Our template lease has been developed with the interests of GPs and their NHS contracts in mind. We expect the vast majority of the terms to be standard and to fit your needs without need for negotiation. The only matters which require specific agreement are the length of the lease, the value of the rent and associated property charges and the extent of your premises. However, all premises are different so you should ensure that all other aspects of the lease are appropriate for your purposes.

Who will help me in agreeing the lease?

Each GP tenant will be supported through this process by a NHS Property Services nominated surveyor.

If I don't sign a lease can I avoid any increases in accommodation costs?

Accommodation costs increase over time with or without a lease agreement. However the benefit of having a lease is that, like any other form of contract, any increases have to be justified in accordance with the lease and you are able to plan more.

