NHS Property Services

CONSOLIDATED CHARGING POLICY

2017-18

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Contents

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Introduction

(1) Who does this policy apply to?

1. In order to drive more efficient use of space across the Government Estate, all public sector organisations are required to ensure that they charge their occupiers (or, if occupiers themselves, recognise) rent and service charges which better reflect the true market based cost of real estate to which the public sector is committed. This policy confirms how the Department of Health ('DH'), NHS England, and NHS Property Services Limited ('NHSPS') have agreed that this objective should be implemented in the properties owned or leased by NHSPS where NHS/DH entities or GPs occupy space in those buildings.

2. This policy is most relevant for currently undocumented tenancies however some parts are clearly flagged as not relevant to certain types of occupier or commissioner as other arrangements apply. More broadly, where a lease or other form of documentation is in place, the provisions of that document override any contradictory provision in this policy. Indeed, over time, it is intended that NHSPS should regularise all occupations, rendering some parts of this policy increasingly obsolete. In this context "regularise" means that either a lease, sub-lease, or an explicit formal agreement of some form is put in place to make the position between landlord and tenant/occupier absolutely clear.

(2) Changes from last year

3. In 2013 NHSPS inherited 3,400 properties from the former Primary Care Trusts ('PCTs') and began the complex task of rationalising multiple asset management systems and a wide array of property records. This meant that NHSPS's initial billing was sometimes hard to follow and/or inaccurate. Over the last few years DH, NHS England, NHS Improvement, and NHSPS have been working to try to address these issues, lay down some clear charging policies, and increase NHSPS's understanding of its estate, with the intention of agreeing a formal lease or licence with all occupiers. For example, in order to confirm exactly what is occupied and by whom, all properties have been inspected by the NHSPS Property Management team and, where necessary, the District Valuer ('DV'), and the quality of NHSPS data has exponentially improved. All occupiers that are being regularised should have been issued with a site, floor and occupancy plan with their heads of terms by the end of 2017.

4. In order to provide some certainty for planning purposes, and to provide an opportunity for this data collection to "bed in", the core of this policy is the same as the arrangements that have been in place since 1 April 2016; that NHSPS will charge a

market rent for its freehold space, and its leasehold space will be charged out at a largely pass-through cost[1].

5. The main body of this paper considers the core charging principles, and then specific details are outlined in the annexes. The most significant innovation is the publication of a means of handing back financial responsibility for qualifying vacant space (See Section (9)) in certain circumstances, to reduce the burden on commissioners and to strengthen the incentives for NHSPS to drive inefficiencies out of the estate for which it is responsible. The arrangements for the discretionary deployment of NHSPS capital at commissioners' request (and the revenue consequences for occupiers and their commissioners) have also been clarified under the capital expenditure section (See Section (7)).

6. However, alongside this paper we have also, for the first time, published a consultation document outlining those changes to the charging policy NHSPS wish to introduce from 2018/19. Following a period of feedback from our customers we will publish final proposals by the end of 2017 to allow them to be considered as part of future planning rounds. In future years this will be our normal mode of operation, with significant changes to the charging policy signalled in advance and shared for consultation in October each year.

[1] Note that charging market rents does not necessarily mean applying a fully commercial approach. This policy is designed to be proportionate and to take into account the best interests of tax-payers and patients (for example by prohibiting two NHS entities from contesting one another's independent property valuation so that public money is not spent on the same activity twice).

Charging and invoicing principles

(3) Regular charges

7. Rent for freehold and long leasehold buildings will be charged on a market rent basis. This will be determined by an external valuer applying market recognised valuation standards and presented as a value per square metre. Rental costs for NHSPS's leasehold buildings will be charged on the basis of a pass through to sub-tenant/licensee occupier(s) of the existing head lease rental charge[2], apportioned according to the percentage of the net rentable area[3] that a customer has of the total net rentable area of the building. A separate management charge is also payable for occupations in NHSPS leasehold buildings reflecting the work done by NHSPS and is set at 5% of the rent payable by the occupier, the notional funding for which is included within Clinical Commissioning Groups' ('CCG') baselines.

8. In the case of Private Finance Initiative ('PFI') buildings further information will follow on precise charges, however, in the meantime, occupiers of PFI buildings will continue to be billed on the same basis to which they are accustomed.

9. Service charge invoicing will also continue on a pass through basis and include a fixed management fee to cover the cost of providing the relevant services (see below). Optional facilities management services will be provided under the terms of separate facilities management arrangements, save where they are delivered through a fully serviced lease.

10. Where an external valuer[4] has been engaged and public funds spent, neither DH nor NHS England would normally expect an NHS entity to challenge the total value of these charges, though they might well dispute the amount of occupied space, or the time spent in it. This is relevant to the final rent/occupancy charge, which will of course be calculated with reference to the net rentable area ('NRA') occupied by the tenant/licensee, with a final "true up" after Q4.

11. Similarly, service charges will be monitored, controlled and accumulated at a building level. The service charge costs of each building will then be charged to occupiers in line with their percentage occupancy of the building. Unless there is an agreement to the contrary, the market rental and service charges attributed to common areas within

[2] The existing head lease rental charge is the market rental as determined at the time the original head lease was entered into, uplifted to reflect any subsequent rent reviews.
[3] The net rentable area is the combination of the net internal area ('NIA') of the occupier's exclusive demise and proportionate allocation of the NIA of any shared areas attributable to the occupier.
[4] For efficiency, the external valuer will be the District Valuer for all GP occupations and there will be no conflict of interest in the joint instruction of the District Valuer by NHSPS and NHS England and/or a CCG in all cases where a GP occupier is involved.

buildings are also charged to occupiers in line with the percentage of the total NRA within the building that they occupy[5]. For the avoidance of doubt, service charges will be recharged on an actual cost incurred basis (subject, of course, to the requirement that NHSPS will be taking all reasonable steps in a timely fashion to drive efficiencies and mitigate costs wherever reasonably practicable) and may include, security, waste management, health and safety, planned preventative maintenance, general maintenance and repairs, quality assurance, mechanical and engineering services, and various other landlord services as appropriate (e.g. grounds maintenance). For all occupations where a service charge arises, a management fee of 10% will be added to the service charges to cover NHSPS' costs in arranging and managing these services. For the items which are managed and paid for centrally by NHSPS of rates, utilities, insurance and superior landlord service charge, these will be identified and recharged under the separate heading of 'Additional Sums', together with a reduced management fee of 5%. The notional funding for all management charges and fees is included within CCG baselines.

12. It is understood that the basis for NHSPS management fee calculation and charging is quite "binary", and does not yet fully reflect the more nuanced approach seen as best practice in the broader commercial property market. Closer alignment with industry best practice should result in a more equitable basis for calculating management fees payable by occupiers and their commissioners so you will be pleased to find proposals to move in that direction in the Consultation Paper at Annex C (2).

13. Each customer will receive a single invoice in respect of the part or parts of each property that they occupy, which will separately itemise rent, service charges, additional sums, and optional FM services, but can be aggregated on request; and where relevant, supplier invoices will be available on demand[6].

14. A budget schedule of charges for the year will be presented in advance of Q1 bills so that relevant purchase orders can be put in place. Invoices will then typically be raised quarterly in advance so these invoices will be due for payment on the modern quarter days of 01 April, 01 July, 01 October and 01 January, however the periodicity of invoicing can be reduced to monthly, on request. As noted above the quarterly invoiced amounts will be fixed for the year and charges and associated management fees will, after year end, then be reconciled to the actual cost of services provided via an additional invoice/credit note as a year-end adjustment (the "true up" process). Notwithstanding this point, any significant changes in cost expectations will be communicated in a timely manner (usually when the annual schedule of charges is issued for Q1) so that occupiers have clarity about potential cost pressures/savings likely for the year. In the main we would expect variations from the initial forecast costs to be mostly driven by changes to occupation levels or unexpectedly high levels of

[5] In some cases, tenants will have an agreement in place to allocate the costs of common areas in a specific way (e.g. meeting rooms or designated reception areas). Where (and only where) there is a written agreement in place that is accepted by all relevant parties, the costs of common areas will be allocated and charged to occupiers in line with that agreement.

[6] Occupiers are however expected to be mindful of NHSPS's costs and DH and NHS England would usually expect this right to be discharged through spot-checks rather than in the course of normal business.

reactive maintenance (offset by any underperformance on planned preventative maintenance).

(4) Sessional space

15. When NHSPS was formed in 2013 a policy was put in place regarding sessional space under which the lead occupier (that is to say the occupier using the largest amount of a given site by area) would be charged the whole cost of providing any sessional space within that space, and expected to recharge that space on to the users of the space. This was done on the understanding that the lead tenant would be best placed to form a relationship with those booking rooms and to manage any such booking system.

16. This approach has not worked, and in practice local arrangements have been put in place to treat sessional space that is not subject to a documented lease with a lead occupier as if it were vacant space with NHSPS giving credit for any actual sessional space licence fees that it has, exceptionally, been able to collect.

17. To address this issue, we are consulting on some ambitious proposals to use a number of IT enhancements to allow a dynamic sessional space offering which should enable commissioners to participate (or not) in a gain-share/pain-share approach to making the best use of sessional space across the NHSPS estate. As outlined at Annex C (1) this approach is being piloted over the current year and ready for roll out during 2018/19.

18. Until such an alternative policy framework is published for sessional space the following billing cascade shall apply:
    a. Actual user of the space where this can be identified. Commissioners will work with NHSPS to assist with identification where possible.
    b. Where local arrangements for billing (to include a notional void charge to commissioners) have already been made, those arrangements shall continue.
    c. Where arrangements have not yet been agreed and bills remain disputed, NHS England and DH will support NHSPS and the affected commissioner to agree a sensible and pragmatic billing protocol pending introduction of the new approach during 2018/19.

19. Should any sessional space have the characteristics of void space, a commissioner's capacity to transfer the financial responsibility for it to NHSPS shall be determined in accordance with the vacant space policy set out in Annex A.

(5) Invoicing disputes

20. As noted above, we understand that the charging policies and the calculation of specific charges have not always been completely clear and some of the early billing was not as accurate as it should have been. This has led to disputes between NHSPS and their occupiers and relevant commissioners; and in some cases, payments have been withheld as a consequence. In order to help in resolving existing disputes, reduce the number and real scale of future disputes, and remove the risk of any part of the NHS having to consider legal action against another part, we have codified a clear set of principles which are consistent with the conduct generally expected of public bodies.

21. As noted above NHSPS will provide a schedule of charges for the year to occupiers in advance of the Q1 bills, and provide ten working days for comments on that schedule. Any comments received will be duly considered before bills are issued and a final schedule reissued, but absent any comments the original schedule will stand.

22. The principles for paying the resultant bills are as follows:
    a. All agreed invoices must be settled in full within standard payment terms as defined by Government policy (30 days). These terms apply to all suppliers including NHSPS, and late payment may attract interest charges.
    b. Invoices will continue to be issued, and payment will continue to be expected, until proper notice is given either under the terms of a lease or other formal documentation, or in accordance with the law relating to undocumented tenancies. Undocumented tenancies still require proper written notice to be given before vacation. Simply leaving a site (either wholly or in part) does not necessarily bring a tenant's liabilities and obligations to an end on the date they vacate.
    c. Invoices are payable by the entity consuming a service or occupying a site, other than where an explicit written agreement exists to define an alternative arrangement. In any event we expect to see any such alternative arrangements being phased out with all appropriate funds flowing through occupiers. Subsidies paid directly to NHSPS are not recognised by this policy as a normal tool of doing business, although it is recognised that existing arrangements need to continue whilst measures are put in place to phase out subsidised occupations.
    d. Payment for agreed elements in an invoice must not be withheld due to disputes over other elements in the invoice.
    e. Any dispute should be lodged promptly (within ten working days of receipt of invoice) with NHSPS and both parties and the parties should work in good faith to resolve any such dispute within the standard payment period.
    f. Disputes over levels of funding do not constitute valid grounds for disputing an invoice. Trusts/CCGs/GPs are expected to treat NHSPS bills as any other liability. Any cash flow or affordability issues should be resolved separately with the relevant parties and should not impact on payment of valid invoices.
    g. Where it is not possible to address a dispute relating to an invoice within the 30 days payment terms, occupiers are expected to pay any undisputed element within that 30-day period.
    h. To ensure future clarity and certainty we would expect all tenants to sign leases, sub-leases or licences (as appropriate to the space they occupy) as soon as possible if one is not yet in place.

(6) VAT

23. Following standard VAT rules, VAT will be included in invoices where a VATable supply is made by NHSPS to a customer. Whether invoiced items attract output VAT will follow tax rules as set by HMRC. Where irrecoverable input VAT arises at a property, this will be included within charges to customers.

24. Whether a building has been "opted to tax" will determine if output VAT is applicable to many items. No building that was not already "opted to tax" as at 1 April 2015 will be opted to tax without full involvement of DH and NHS England and only where it is beneficial to the health economy to do so. This is to ensure that there will be no increase in the VAT burden to commissioners as a whole.

(7) Capital expenditure recovery

25. In addition to the rental and service charges outlined above, in some cases, NHSPS will have invested its own capital in a property. The mechanism for recovering this capital can be found at Annex B, but in broad terms, NHSPS's own capital deployed for a new build or a discrete addition to or improvement of its own premises at the request of a commissioner or an occupier will be recoverable by NHSPS charging either an overall market rent or a supplemental rent to the existing market rent (based on HM Treasury capital recovery principles) to the extent that additions/improvements cannot be recovered by any corresponding uplift in market rental value.

26. Past capital expenditure which has been historically recovered by a depreciation recharge (or charge akin to depreciation) will continue to be recovered on the same basis (via the service charge from 2018/19) where the method of a supplemental rent cannot be applied.

(8) Dilapidations

27. Where NHSPS already has a lease or sub-lease in place the apportionment of dilapidations liability will be determined strictly in accordance with the terms of that lease/sub-lease. Opening condition surveys and a survey of condition at the end of a relevant tenancy will usually inform an assessment of the level of the outgoing tenant's covenants about keeping the premises in reasonable repair, fair wear and tear excepted. The lease/sub-lease (read in conjunction with any related licence for alterations) will normally establish the basis upon which (if at all) provision should be made in respect of tenant improvements that were undertaken during the lease/sub-lease term.

28. The arrangements leading up to the transfer of properties in to NHSPS on 1 April 2013 recognised that unless there was already a documented lease or sub-lease in place with a body that survived the reforms no incumbent occupier would have any dilapidations liability to NHSPS referenced to the period prior to 1 April 2013. It is expected that occupiers act responsibly where dilapidations relating to their occupation are identified.

29. As NHSPS formalises currently undocumented occupancies the resultant lease/sub-lease will need specifically to address the issue of dilapidations liability. It will be difficult for both NHSPS and the tenant to agree a position on tenant liability for condition issues that have accrued prior to lease/sub-lease formalisation without condition surveys contemporaneous with the tenant taking up occupation of the relevant space. However, the Department of Health and NHS England would encourage them to attempt to do so where there exists a sufficiently clear evidence base by reference to which an objectively sustainable delineation of responsibility and risk can be sustained (e.g. a clear statement that an occupier requested certain alterations).

30. When NHSPS negotiates leases/sub-leases with occupiers (both incumbent and new) it may offer the tenant an informed and fully objective choice in respect of dilapidations; the "traditional" approach (based on opening and closing condition surveys) will be the default option, unless after discussion with NHSPS, and having taken appropriate professional advice, a tenant feels more comfortable with an alternative approach to making provision for prospective dilapidations liability, e.g. a fixed "insurance premium".

31. Dilapidations costs themselves will, for leases granted by NHSPS in respect of its freehold premises, be calculated by NHSPS at the end of the occupancy. Dilapidations costs for leasehold premises will be mitigated and negotiated by NHSPS at the end of the sub-tenant's occupancy. In all cases the dilapidations costs will be agreed with the tenant on a case by case basis applying established market practice.

32. As an example, NHS England chose to support a time apportioned approach to sharing of NHSPS's liability to external landlords on NHSPS office premises leaseholds that transferred in to NHSPS from former PCTs that NHS England or a Commissioning Support Unit ('CSU') occupies in its own right.

33. For these NHS England organisations, a time apportioned sharing of NHSPS's ultimate dilapidations liability to its external landlord was felt to be exceptionally justified. The extent of NHS England's liability for dilapidations in respect of its occupation of NHSPS freehold premises will be as recorded in NHS England's documented lease with NHSPS in respect of the relevant space.

(9) Vacant space hand back scheme

34. Annex A outlines a “hand back” scheme for vacant space. Commissioners and CSUs seeking to apply that scheme will need to carefully consider the detail in that Annex, but in broad terms the scheme applies to the closed list of properties inherited by NHSPS in 2013 (with the exception of estate where a long-term commitment is in place such as a PFI concession agreement, or particularly onerous legacy leases). Within that closed list, where a commissioner is currently paying a void cost, it may surrender that responsibility to NHSPS if (and only if) the space meets a series of objective qualifying criteria, and the commissioner or CSU is prepared to make a vacating payment.

35. The criteria are designed to establish that the space is truly vacant, that the commissioner will support a related sale/sub-let, and that the space is objectively marketable/lettable. If this is the case and all void costs to date have been paid, then financial responsibility for the space may be “handed back” on receipt of a vacating payment to NHSPS equating to 6 months void cost if a freehold and 12 months if a leasehold. This payment will be discounted by 50% if the qualifying premises can be shown to have been continuously vacant since before 1 April 2016. Of note, in anticipation of high demand for the scheme, there will also be a minimum size requirement of 100 sq m NIA in the first two years of the scheme to help to manage volumes. To enable this policy, commissioners and CSUs will also now be required to maintain and share with NHSPS a list of all relevant properties together with a categorisation that identifies which are likely to be suitable for disposal, and the anticipated year of availability for their disposal. Strategic Estates Advisors will help commissioners and CSUs to prepare these.

36. In the development of this policy it has also become clear that the void cost liability to commissioners for space that has been subject to a documented occupancy since 1 April 2013, was not clear. For the avoidance of doubt, in those circumstances there is no void cost liability for commissioners, but they are required to be clear with NHSPS either that such space is surplus, or to agree with NHSPS how commissioners will help to ensure that commissioned activity is directed to vacant space so that NHSPS can mitigate its financial exposure to void costs by signing leases/sub-leases with providers commissioned to deliver such services. NHSPS will provide as much notice to commissioners as possible (minimum 3 months where leases have expired or are due to expire prior to 31 March 2018 and a minimum of 12 months in any other case) by notifying the Accountable Officer and Chief Finance Officer (or equivalent) of the relevant organisation of any impending void space. Absent any explicit confirmation of the need to retain the space, NHSPS will be able to assume that space is surplus and act accordingly.

37. The liability for voids in premises for which NHSPS has made a New Commitment at commissioners’ or CSUs’ request since 1 April 2013 will be determined by what any relevant supporting correspondence says. If, exceptionally, NHSPS undertook such a New Commitment in good faith without securing a prior formal support commitment from that commissioner in broadly equivalent terms to the Prescribed Format, that commissioner should support NHSPS in minimising the incidence/risk of voids by

exercising the powers available to it as commissioner to secure full utilisation of the relevant space and/or the realisation by NHSPS of any relevant space that ultimately proves to be surplus. For the avoidance of doubt the agreements established in those letters will always be taken to override any conflicting provision in this policy.

ANNEX A
Vacant space hand back scheme

A1. The initial part of this document explains the overarching principles of the vacant space hand back scheme ("Scheme"), how the Scheme works. There are also appendices which show a diagrammatic summary of the Scheme, proformae to be used for submissions to the Scheme and notification of the expiry of leases, and lists of PFI, and other onerous leases. An equivalent Vacant space handback scheme document relating to properties owned or leased to NHSPS's sister company, Community Health Partnerships Limited (CHP), is being issued separately by DH, NHS England and CHP at the same time.

(1) Overarching principles

A2. If and to the extent that any space in a Qualifying Property (as defined below) has at any time after 1 April 2013 been subject to a properly completed lease/sub-lease by which NHSPS is/was bound ("Tenanted Space") then the occupier (or former occupier) shall have no financial responsibility to NHSPS in respect of that space otherwise than as provided for in that lease/sub-lease and, following its vacation of that space in accordance with the terms of that lease/sub-lease, neither it, nor any CCG nor NHS England nor any other NHS England body shall have any actual or contingent liability to NHSPS in respect of any void thereby created. However, relevant commissioners should work with NHSPS as described in Section (5) below to ensure that in anticipation of the vacation of Tenanted Space relevant commissioners confirm that on vacation by the current documented occupier the relevant space will or will not be surplus to NHS requirements so that:

a. If surplus, NHSPS can confidently plan to mitigate the exposure of the NHS as a whole to the on-going costs of holding and managing space which is surplus; or
b. If not surplus, NHSPS and relevant commissioners can engage in a timely manner to ensure that use of Tenanted Space for NHS purposes (whether as sessional space or by a replacement tenant) continues after it is vacated by the current documented occupier.

A3. Commissioners/CSUs will have no financial responsibility whatsoever to NHSPS in respect of vacant space in any Qualifying Property unless either it, or the provider of a clinical service for which it has principal commissioning responsibility, can reasonably be assumed to have been the most recent occupier and that occupation was undocumented. Void costs attributable to all other occupations (e.g. by other Arm's Length Bodies, Local Authorities or service providers commissioned by them) shall be NHSPS's sole responsibility.

A4. Commissioners/CSUs are responsible for covering the irreducible cost to NHSPS of holding vacant space or as a result of the space becoming vacant in a Qualifying Property in which NHSPS has a continuing legal interest and which has not also been a Tenanted Property. Void costs for such NHSPS properties are currently charged to the relevant CCG, to NHS England or to another NHS England body until

the space has been "realised" by NHSPS by way of sale, lease termination, lease surrender, lease, sub-lease or licence to occupy, as the case may be. Actual responsibility for void costs is generally determined by reference to the functionality of the vacant space and either the identity of the commissioner/CSU most recently in actual undocumented occupation of the space in question (in the case of office accommodation) or (in the case of clinical space or administration space that is ancillary to a clinical service) the commissioner having principal commissioning responsibility in respect of the clinical service (or the majority of the clinical services, if more than one) for which the space in question was designed/principally intended.

A5. Responsibility for void costs in respect of space immediately previously occupied by a CSU on an undocumented basis will remain with that CSU before and after any externalisation. Responsibility for void costs in respect of space formerly occupied on an undocumented basis by a CSU that ceases to exist before any externalisation will remain with NHS England. Responsibility for void costs in respect of space formerly occupied on an undocumented basis by a Primary Care Support Services ('PCSS') provider, but vacated after the externalisation of the PCSS service will remain with NHS England.

A6. As more and more of the NHSPS estate is represented by New Commitments (as described below) and more and more occupancies within Qualifying Properties have been successfully formalised in signed leases, sub-leases or licences as part of NHSPS's lease regularisation programme, both the scope of this Scheme and commissioners'/CSUs' historic financial exposure to legacy estate void costs will significantly reduce over time.

A7. NHSPS's general role in respect of vacant space in a Qualifying Property is:

a. with its occupiers and their commissioners, actively to anticipate, lead the planning for and manage the incidence of vacant space;
b. as commissioners periodically re-tender clinical services, actively to help and support them to commission services to minimise the incidence of vacant space in NHSPS premises that are fit and suitable for the provision of 21st century healthcare and to free up, for realisation or re-purposing, estate that is less fit for purpose and no longer required by commissioners to support the provision of healthcare services;
c. to mitigate holding costs pending realisation; and
d. promptly to take all reasonable steps to mitigate the exposure of the NHS as a whole to the on-going costs of holding and managing space in NHSPS premises that are surplus to NHS requirements through sale, lease termination, lease surrender or lease, sub-lease or licence, as the case may be.

A8. In respect of new primary/community based infrastructure commitments that NHSPS makes at a commissioner's request after 1 April 2013 (be that acquiring new premises, entering into new superior leases or deploying discretionary capital to fund and undertake material improvements/additions to existing estate) ('New Commitments') commissioners have accepted that where such a commitment relates to occupancy by commissioned service providers, there is a need to provide to NHSPS a binding support letter that commits the relevant commissioner to exercising its powers as a commissioner to ensure that relevant space is fully occupied by commissioned service providers throughout a minimum agreed term. Commissioner

support letters are to be provided in a standardised format as more particularly described in Commissioner Support Letter for New Developments or Works to Existing NHSPS Premises (the "Prescribed Format"). These entail a commissioner commitment to ensure that NHSPS is not financially disadvantaged should the commissioner fail, through its primary support commitment, to ensure that the relevant premises are fully occupied.

A9. Commissioners are expected to act responsibly in requesting and formally supporting New Commitments by NHSPS to meet robustly established service need so the risk of material voids occurring in premises where a New Commitment has been made should be remote. However, in the unlikely event that voids do occur in New Commitment premises in respect of which commissioners have provided a support letter in substantially the Prescribed Format then the terms of that commissioner support letter as provided at the time the relevant New Commitment was entered into will govern the duties and responsibilities of the relevant commissioner(s) and NHSPS/CHP to the exclusion of the Scheme described below.

A10. However, the vast majority of the NHSPS current estate portfolio transferred to them on 1 April 2013 from the former PCTs. It is voids in this "legacy estate" and the associated holding costs pending realisation that have proved most contentious:

a. Covering void costs represents a continuing pressure on commissioners' already constrained resources;
b. In many cases existing voids in the legacy estate are difficult for commissioners to mitigate by directly commissioning the provision of services from the vacant space. This is particularly the case where voids are in premises which are poorly located, too small, too big, are in poor condition, are not suitable for modern healthcare provision, cannot support key service dependencies, or are not consistent with current service planning; and
c. In many cases commuting commissioners' exposure to on-going void costs will require NHSPS to realise the premises/space in question and, with NHSPS's capacity to recover void costs from commissioners pending disposal, many commissioners feel that the company's priorities and their own significantly lack alignment.

A11. The introduction of the Scheme seeks to achieve a more transparently managed alignment of commissioners'/CSUs' and NHSPS's interests and priorities in respect of qualifying voids in the estate for which legal and financial responsibility transferred from the former PCTs on 1 April 2013 and in respect of which there has been no subsequent material New Commitment. This is achieved by providing commissioners/CSUs with the ability to commute their otherwise open-ended responsibility for covering void costs on qualifying surplus space by making a one-off "Vacating Payment".

A12. The Scheme also seeks in part to operate as a counterweight to the introduction of market rents in all NHSPS properties so that the financial burden of the responsibility for vacant space in PCT legacy assets can be tangibly reduced. It will also incentivise behaviours which will lead to more efficient use of space, thereby reducing the overall cost of accommodation to commissioners/CSUs, as well as minimising funds flowing out of the wider "health economy". Commissioners can, through the routine exercise of powers available to them as commissioners when

clinical services are periodically re-tendered, generally require commissioned NHS service providers ("Providers") to provide those services from specified premises when awarding new service provider contracts[7].

A13. This Scheme, coupled with the basis of the formal commitments required from commissioners/CSUs to support New Commitments should not only bring about better utilisation of core estate and the timely release of buildings surplus to commissioning requirements, but it should also result in a lessening pressure on finite commissioning budgets from the on-going cost to the NHS of excess capacity, under-utilisation and redundancy in the NHSPS estate.

A14. For the avoidance of doubt, should any premises be added to the NHSPS portfolio after 1 April 2013 without the explicit prior support of relevant commissioners recorded in substantially the Prescribed Format, the commissioners shall have no liability or responsibility to NHSPS in respect of voids in those premises or otherwise unless and until (if at all) any New Commitment is made in respect of those premises at the specific request of one or more commissioners and with the explicit support of relevant commissioners recorded in substantially the Prescribed Format.[8]

(2) Who is able to use the Scheme

A15. The Scheme is open to all CCGs and NHS England, which includes all CSUs. To avoid doubt, the Scheme also applies to relevant estate used for the provision of PCSS if and to the extent that NHS England or a CSU has any continuing financial commitment in respect of it on the basis described above. The Scheme is not open to other Arm's Length Bodies, Local Authorities, or Providers.

(3) Properties in scope of the Scheme

A16. The Scheme applies to any qualifying space in a qualifying property.

A17. A property will be a "Qualifying Property" if:

a. it transferred to NHSPS on 1 April 2013 pursuant to a PCT or Special Health Authority transfer scheme under the Health and Social Care Act 2012 ("Transfer Scheme") or should have so transferred and was actually transferred shortly afterwards by a supplementary Transfer Scheme or a Secretary of State for Health Transfer Scheme; and

b. it is not an Out of Scope Asset (see below).

A18. Space in a Qualifying Property will be "Qualifying Space" if:

[7] Legal advice has confirmed that location specific commissioning is lawful and within the powers of commissioners.
[8] Support letters only valid if signed by the Accountable Officer or Chief Financial Officer (or equivalent) of the CCG, NHS England national executive, NHS England region team or CSU in question.

a. it is:
    i. “marketable” and/or “lettable”; and
    ii. a self-contained unit[9]; and
    iii. surplus; and
    iv. “vacant” and not subject to a valid and subsisting written tenancy or licence agreement at handback; and
    v. free of debt properly due to, and recoverable by NHSPS from a relevant commissioner/CSU,
    vi. all as more particularly described in Section 4, Step 3 below; and
b. it is identified on the relevant commissioner’s current Realisation List (see below) (i.e. as potentially “surplus” in the current or following financial year).

A19. A property will be an Out of Scope Asset:

a. if and to the extent that it represents a New Commitment undertaken by NHSPS at the specific request of one or more commissioners with the explicit support of relevant commissioners recorded in substantially the Prescribed Format; or
b. if it was procured through PFI and as such is subject to a PFI concession/project agreement which transferred to NHSPS on 1 April 2013 pursuant to a Transfer Scheme under the Health and Social Care Act 2012. The closed list of NHSPS’s PFI properties is set out in Appendix E and comprises those which are designated as PFI by the International Financial Reporting Standards Interpretations Committee: 12 ‘Service Concession Arrangements’ (“IFRIC 12”); or
c. it is a leasehold property that would otherwise be a Qualifying Property but the terms of the lease that transferred to NHSPS on 1 April 2013 pursuant to a Transfer Scheme under the Health and Social Care Act 2012 are so onerous as to render that property (or space within it) unmarketable/unlettable otherwise than on a significant loss-making basis. The closed list of NHSPS’s properties in this category is set out in Appendix F; or
d. if NHSPS does not have a continuing legal interest in it (e.g. where the NHSPS interest is only to deliver FM services, or Provider owned or leased properties).

A20. Points to note:

a. Each commissioner/CSU, working in conjunction with NHSPS and CHP Strategic Estates Advisors, must maintain its own complete list of space in Qualifying Properties for which it is actually or contingently financially responsible either as an occupying tenant (principally office accommodation) or for covering void costs if/when a provider of services that that commissioner is primarily responsible for commissioning ceases to provide such services from that space. A suggested template for that list, known as a Realisation List, can be found at www.property.nhs.uk/charging-policy-2017-18, and should categorise each discrete unit of space as either:
    i. Category 1: currently surplus or likely to be surplus in the current financial year; or
    ii. Category 2: short term hold – likely to be to surplus in the next following financial year; or

[9] A minimum size requirement of 100 sq m may apply in the first two years of the Scheme (commencing 1 April 2017).

iii. Category 3: medium term hold – likely to be surplus in the financial year immediately following the Category 2 financial year; or
iv. Category 4: long term hold (which will be all relevant space that is not designated as Category 1, 2 or 3 space).

b. A Realisation List for the purposes of the Scheme will be comprised of the discrete units of space designated as Category 1 or Category 2 space.
c. Commissioners and CSUs must collaborate with Strategic Estates Advisors to establish and maintain their current Realisation Lists and keep their Realisation Lists up-to-date. To bring some structure to this case-by-case updating activity, revisions to property categorisation will then be accepted by NHSPS in the form of revised Realisation Lists no more frequently than twice per financial year.
d. Many CCG commissioners will already have listed and categorised relevant space in their initial strategic estates plans ("SEPs"). Should their SEP include such detail, their SEP can readily function as their initial Realisation List for the purposes of the Scheme, pending any required revision as described above.
e. Where a sub-tenancy agreement is in force in respect of relevant space, its terms will prevail. Any hand back of financial responsibility otherwise than strictly in accordance with that occupancy agreement will need to be separately negotiated, but there is no presumption that NHSPS must accept the space back earlier than the occupancy agreement provides for.
f. Qualifying Space in a Qualifying Property that is sessional / bookable space is within the scope of this Scheme. However, before commissioners/CSUs make a submission to the Scheme in respect of such space commissioners/CSUs should consider carefully the framework set out in Annex C (1) which describes how NHSPS will, over 2017/18, develop and pilot a much more dynamic, collaborative and risk sharing approach to optimising the use of sessional/bookable space.

(4) How the Scheme works

A21. The operation of the Scheme is best described by breaking it down into a number of steps.

Step 1: Identify candidate vacant space

A22. The source of candidate Qualifying Space is from each Realisation List. Strategic Estates Advisors who are familiar with local areas will support and collaborate with each commissioner or CSU to assemble its initial Realisation List (in a standard format), drawing, as relevant, from CCGs' existing SEPs and known / developed strategy for individual sites/properties.

A23. As the Realisation List is likely to be sensitive, locally and centrally agreed control measures will be necessary. Commissioners/CSUs should liaise with local Strategic Estates Advisors to agree where disclosure of information contained within the Realisation List could result in a negative commercial, public relations, or human resources impact.

Step 2: Making a submission to the Scheme

A24. Where a commissioner/CSU wants to apply the Scheme to a particular unit of space, this is initiated by the commissioner/CSU completing a Property Vacation Notice ('PVN') and being authorised and signed by:

a. in the case of a CCG, the Accountable Officer and the Chief Financial Officer and be copied to the Director of Finance of Local NHS England Direct Commissioning Organisations (DCOs), or in the London Region, to the Financial Assurance Team;
b. in the case of NHS England, the Director of Finance of the local NHS England DCO or Regional Team (as the context may require). If a DCO PVN, be copied to the NHS England Regional Director of Finance or if in the London Region, the Financial Assurance Team; or
c. in the case of a CSU, the CSU Managing Director and be copied to NHS England CSU Transition Team.

A25. The PVN sets out the commissioner's/CSU's request and gives details of the property or space proposed to be handed over, and includes information on its vacant status, future commissioning need, and the proposed date of handover. It also provides assurance from the signatory(ies) that the information contained in it is complete and accurate in all material respects and that all necessary prior assurance and approvals have been completed in accordance with applicable governance arrangements.

A26. The PVN can be downloaded from www.property.nhs.uk/charging-policy-2017-18 and when completed is to be submitted to a dedicated NHSPS email address of vacantspace@property.nhs.uk which is continuously monitored by the central NHSPS Vacant Space team in London. A copy of the PVN proforma can be found at Appendix B.

A27. A PVN will be deemed to have been received by NHSPS on the date of transmission to the email address referenced above in the absence of any delivery failure message having been received by the sender before midnight on the same day ("Date of Receipt").

Step 3: Assessment of the vacant space

A28. When a PVN is received by the NHSPS Professional Services team, the candidate vacant space will promptly be assessed by the team, in conjunction with its relevant property manager, to determine whether it is Qualifying Space in a Qualifying Property and thus meets the qualifying criteria for the Scheme.

A29. For candidate vacant space to potentially qualify, it must be in a Qualifying Property and on the relevant commissioner's Realisation List. This will be the first checkpoint.

A30. To then finally qualify as Qualifying Space the candidate vacant space will need to be objectively assessed as being marketable and/or lettable, comprised of a self-

contained unit, surplus to commissioner requirements, vacant at handback and free of debt properly due to, and recoverable by NHSPS from the relevant commissioner/CSU.

Marketable

A31. To be marketable, space must be a self-contained unit capable of being a separate exclusive demise with unfettered freedom of access.

A32. Where candidate vacant space:

a. requires works to be undertaken to make it a self-contained, exclusively demisable unit; and
b. those works mandate additional works/measures to secure compliance by the separated unit with statutory health and safety requirements that would not have been necessary had:
    i. that unit remained part of a larger contiguous space; and
    ii. the occupiers and former occupiers of the Qualifying Property fully complied with any applicable obligations on their part relating to statutory compliance or repair and condition; and
    iii. NHSPS otherwise fully complied with any applicable obligations on its part relating to statutory health and safety requirements and/or repair and condition in respect of the Qualifying Property,

then that candidate vacant space will not be capable of being assessed as marketable until such works have been undertaken and it achieves compliance with such additional statutory health and safety requirements.

A33. If ancillary space and car parking which was legitimately used by the previous occupier of the candidate vacant space is not made available as well, this could render the space unmarketable.

Lettable

A34. For candidate vacant space to be lettable NHSPS must have the legal and contractual ability to let the property. This means NHSPS must have a legal interest in the property and also that all subordinate legal interests to NHSPS have been or will, at hand back, have been extinguished i.e. the space is not or will no longer be subject to a live documented agreement.

A35. In the event the space is subject to a live documented agreement, the opportunity can still be assessed for realisation, based on its commercial merits.

A36. For NHSPS leaseholds, there must be no unusual prohibitions or restrictions on alienation and any terms in the head lease which need to be reflected in the underlease must not be so onerous as to make it objectively impossible to secure a tenant. For the avoidance of doubt, head lease provisions that make alienation subject to obtaining the superior landlord's consent/licence will not be treated as unusual.

Self-contained

A37. Candidate vacant space must be comprised of a self-contained unit (and for NHSPS properties, of at least 100 sq m NIA, unless it is a whole property of less than 100 sq m NIA, for the first two years of the scheme, commencing 1 April 2017). A self-contained unit is not an aggregation of non-contiguous rooms.

Surplus

A38. Relevant commissioners must have confirmed in writing in the PVN that the space is permanently no longer needed for commissioned services and is no longer required by commissioners themselves or for the provision of healthcare services.

Vacant

A39. The space must be vacant by the date of hand back specified in the PVN. This means it must be unoccupied and where the space was immediately previously occupied by a commissioner or CSU, properly de-commissioned (all IT and telephony has been de-activated), clear of all furniture and belongings, and left in a clean and tidy state with all waste removed.

Debt free

A40. At hand-back there must be no outstanding arrears properly due to, and recoverable by NHSPS/CHP from a relevant commissioner/CSU in respect of the space (i.e. a commissioner/CSU must be up-to-date on all charges properly due to and validly invoiced to the commissioner/CSU by NHSPS/CHP for the space).

Disregards

A41. The assessment will not take into account the following matters:

a. Period until sale (freeholds & long leaseholds);
b. Period until a head lease break / expiry (leaseholds);
c. Potential letting and/or rent free voids (for sub-letting);
d. Planning Use Class (B1 office, D1 medical, etc); and
e. Condition / repair.

Step 4: Assessment outcomes

A42. There are three possible outcomes to an assessment:

a. The space is Qualifying Space under the Scheme;
b. Conditional qualification into the Scheme, where current circumstances render the space unable to qualify, but where additional steps, if taken, would enable the space to qualify (e.g. because works would be necessary to create a self-contained contiguous unit); or
c. Non-qualification for the Scheme, where the nature or circumstances of the space are a permanent prohibition to realisation.

A43. Given that higher volumes of PVNs can be expected in 2017/18 and 2018/19 NHSPS may initially need some flexibility to prioritise those PVNs that drive the biggest savings for commissioners generally during those two financial years. Accordingly, in respect of PVNs submitted during financial years 2017/18 and 2018/19 in respect of candidate space in buildings of less than 100 sq m NIA, if that space should otherwise technically be assessed as Qualifying Space under the Scheme, NHSPS may nonetheless validly confirm its assessment as not currently qualifying for the Scheme by stipulating a date no later than 31 March 2019 after which the relevant commissioner/CSU can resubmit its PVN without any minimum size restriction applying.

A44. The outcome of the assessment will be communicated in writing to that commissioner/CSU via the dedicated email address, including the rationale for the decision should it be a conditional qualification or non-qualification, within 15 working days of the Date of Receipt of a properly completed PVN, unless an alternative timescale is specifically agreed with the submitting commissioner/CSU.

A45. If the commissioner/CSU disputes the assessment as so communicated the commissioner/CSU or NHSPS may refer the matter for expert determination. Regardless of the outcome of any expert determination, the fees and expenses of the expert will be shared and paid 50:50. The expert will (unless specifically agreed otherwise) be an independent professional who is a Member or Fellow of the Royal Institution of Chartered Surveyors.

Step 4A: Property qualifies for the Scheme

A46. Where candidate vacant space complies with all qualifying criteria for the Scheme, handover to NHSPS will be achieved following:

a. The space being vacant (as per the criteria above) has been confirmed by the relevant NHSPS property manager (with the proviso that the fulfilment of this action should not delay the date of hand back); or
b. Where applicable, compliance with the conditional qualification requirement where the space was subject to works to achieve realisation; and
c. Full payment by the relevant commissioner/CSU of the Vacating Payment within the NHSPS standard invoice settlement period.

A47. Note that ongoing irreducible costs to NHSPS of holding vacant space or as a result of the space becoming vacant will remain the responsibility of the relevant commissioner/CSU until the above matters are delivered. Therefore late settlement of the Vacating Payment will mean the relevant commissioner/CSU will continue to be billed for the vacant space until the Vacating Payment is received.

A48. NHSPS will then at its own risk dispose of the Qualifying Space as best fits the circumstances dependent on its tenure and prevailing market conditions.

Step 4B: Property conditionally qualifies for the Scheme

A49. Qualification will sometimes need to be conditional where the candidate vacant space could qualify for the Scheme, but there are currently some issues preventing its qualification, and these can be resolved. Typical situations where this may arise can include one or a combination of:

a. works are needed to create a separate lettable unit from the vacant space; or
b. internal/external relocation of occupier(s) needed to create a lettable unit.

A50. Where the assessment determines that a conditional qualification is the outcome, it should have a recommended option for the space to achieve qualification as Qualifying Space. This should be set out in writing and communicated to the relevant commissioner/CSU, together with a breakdown of any estimated one-off costs that will need to be paid in addition by the commissioner/CSU to deliver the option, as well as an outline delivery plan. The cost estimate will be a desktop exercise undertaken on a basis that is consistent with the basis upon which NHSPS generally undertakes discretionary refurbishment/improvement works at commissioners'/CSUs' request in its buildings as more particularly described in Section (7) to give an order of magnitude to the overall cost of satisfying the criteria for qualification as Qualifying Space.

A51. The commissioner/CSU will determine if the recommended option is value for money and affordable, and determine whether to proceed. The following actions will apply depending on the decision of the commissioner/CSU:

a. If the commissioner/CSU wants to proceed with the recommended option, upon the conditions for qualification being fulfilled, the space will follow the 'qualifies' procedure. At this point a more detailed and specific cost proposal will need to be generated by NHSPS and agreed with the commissioner/CSU.
b. If the commissioner does not want to proceed then it will be reclassified in the commissioner's Realisation List as Category 3 or 4 (medium/long-term hold) space and the commissioner/CSU will continue to be charged void irreducible costs associated with NHSPS continuing to hold the space until the situation changes to allow progression to possible hand-back under the Scheme.

Step 4C: Property does not qualify for the Scheme

A52. Occasionally, candidate vacant space will fail the assessment for reasons which cannot be resolved. In these situations, the rationale for the non-qualification of the space for the Scheme will need to be set out in writing and communicated to the commissioner/CSU.

A53. The space will be reclassified in the commissioner's/CSU's Realisation List as Category 3 or 4 (medium/long-term hold) space and the commissioner/CSU will continue to be charged the irreducible void costs associated with NHSPS continuing to hold the space unless the situation changes to allow progression to possible realisation, although there will be situations where this may not be possible.

Step 5: Vacating payment

A54. The Vacating Payment is a one-off sum comprising the combination of accommodation costs (see paragraph A55 below) and exit costs (see paragraph A58 below).

A55. Accommodation costs:

a. Rent for Qualifying Properties that are:
    i. freehold or long leaseholds, the market rent attributable to the Qualifying Space from the most recent market rent valuation carried out by NHSPS for that Qualifying Property building; or
    ii. other leaseholds, the proportion fairly attributable to the Qualifying Space of the pass-through head lease passing rent, and to take into account any outstanding review or a known review event arising in the 12 months vacating payment period,
b. Service Charge proportion fairly attributable to the Qualifying Space;
c. Additional Sums fairly attributable to the Qualifying Space (minimised to take into account vacant nature of space);
d. FM charges fairly attributable to the Qualifying Space (minimised to take into account vacant nature of space), and
e. Management Charge proportion fairly attributable to the Qualifying Space (leaseholds only).

A56. On the basis of a vacating payment period (commencing on the date of the PVN outcome assessment notification from NHSPS to the commissioner/CSU or 15 working days from the relevant Date of Receipt of a properly completed PVN) of:

a. 6 months' accommodation costs for freeholds/long leaseholds; or
b. 12 months' accommodation costs for all other leaseholds,

These periods can reduce where appropriate e.g. owing to a head lease break within 12 months of hand back.

A57. Where space in a Qualifying Property was vacant before 1st April 2016 and remains vacant then subject to NHSPS/CHP receiving a confirmatory PVN from the relevant commissioner/CSU and the candidate vacant space qualifying as Qualifying Space, the Vacating Payment due from the relevant commissioner/CSU in respect of that Qualifying Space shall be discounted by 50%.

A58. Exit costs:

Any costs arising from works or actions to allow a conditionally qualifying vacant unit to achieve a qualifying status. These could include:

a. Works to the vacant space to create a proper and independently compliant lettable unit;

b. Work to achieve the vacant status;
c. Professional fees for exercising underlease breaks/surrenders; and
d. Any reasonable and unavoidable costs arising from the termination of services no longer required to be delivered to the space being handed back.

A59. Void charges to commissioners/CSUs and any Vacating Payment will be subject to any applicable VAT. However, HMRC have confirmed that neither such payment will currently be subject to the addition of VAT.

A60. Should an undocumented occupier of candidate vacant space vacate that space otherwise than by giving the correct period of notice required to terminate its undocumented tenancy:

a. the candidate vacant space may validly be made the subject of PVN upon or at any time after that occupier's vacation and the date its tenancy legally expires, as to be agreed with NHSPS; but
b. that occupier's commissioner shall have no liability whatsoever for any Vacating Payment referable to any part of the vacating payment period that overlaps with the residue of the vacating occupier's required notice period for which that occupier remains primarily liable under the tenancy it has with NHSPS.

A61. Should an occupier of candidate vacant space have given notice to terminate its tenancy but does not vacate on the appropriate termination date (i.e. holds over) and that candidate vacant space was made the subject of a PVN in anticipation of that occupier vacating on that agreed date:

a. the holding over occupier will remain responsible for the rental and running costs of the candidate vacant space up to the quarter day at the end of the quarter during which the occupier actually vacates; and
b. that occupier's commissioner shall have no liability whatsoever to NHSPS for that part of the Vacating Payment that is referable to any part of the vacating payment period that overlaps with the remainder of the relevant quarter for which the vacating holding over tenant remains primarily liable under the above arrangements after its actual departure.

A62. The Vacating Payment does not include:

a. Head lease surrender premium, or marketing and professional fees for sales or lettings (as these will be met by NHSPS); or
b. Dilapidations & reinstatement costs,

all of which, as between NHSPS and a commissioner operating the Scheme, are the responsibility of NHSPS.

Step 6: Disposal

A63. When a property qualifies for the Scheme, the route to disposal will be determined by the nature of vacant space and the NHSPS tenure. NHSPS responsibilities in the period until disposal will follow typical lines:

a. Service delivery managers will be responsible for minimising holding costs until disposal;
b. Property managers will be responsible for disposing of short leaseholds and parts of buildings in accordance with internal policies and disposal protocols (both issued separately);
c. Asset transaction managers will be responsible for disposing of entire freeholds and long leaseholds; and
d. Property support managers will be responsible for tracking and reporting disposal and performance of vacant space submitted and which qualifies for the Scheme.

(5) Tenanted space

A64. No later than 12 months (in the case of expiries, and as soon as practicable in the case of actual/anticipated termination) before the lease/sub-lease in respect of Tenanted Space will expire or terminate NHSPS will notify the relevant commissioner(s) Accountable Officer and Chief Financial Officer (or equivalent) in writing to that effect ("Lease Expiry Notification") [10] and the relevant commissioner will be expected, as soon as practicable thereafter, but in any event within 6 months of the date of the Lease Expiry Notification, to confirm that on vacation by the current documented occupier the Tenanted Space will or will not be surplus to NHS requirements.

A65. Where a tenant break is anticipated to be exercised as a result of the termination of a contract for commissioned service provision (for whatever reason), then commissioners are required to inform NHSPS, as soon as practicable, in advance of this likelihood, and for the future need of the affected space for future commissioned services. It is expected that NHSPS and commissioners will work together in advance of all lease terminations in order to allow strategic and financial planning, and value for money to be considered in all cases of tendering of services.

A66. If a commissioner confirms that the Tenanted Space will be surplus, NHSPS will be entitled then to take all necessary steps to realise the Tenanted Space as soon as practicable after the current occupier of that space has vacated so as to mitigate the exposure of NHSPS and the NHS as a whole to the on-going costs of holding and managing space which is surplus.

A67. If a commissioner confirms that the Tenanted Space will not be surplus it will thereby commit to working in good faith with NHSPS to define the basis upon which the relevant commissioner can and will exercise its powers as a commissioner to help NHSPS to ensure that Tenanted Space is, to the fullest extent reasonably practicable, well utilised for healthcare purposes after the current documented occupier vacates, and retain the responsibility for covering ongoing irreducible costs to NHSPS for holding the space until such time as it is properly occupied.

[10] Accountable Officer and the Chief Financial Officer in the case of a CCG and in the case of NHS England the Finance Director of the local NHS England DCO or Regional Team (as the context may require)

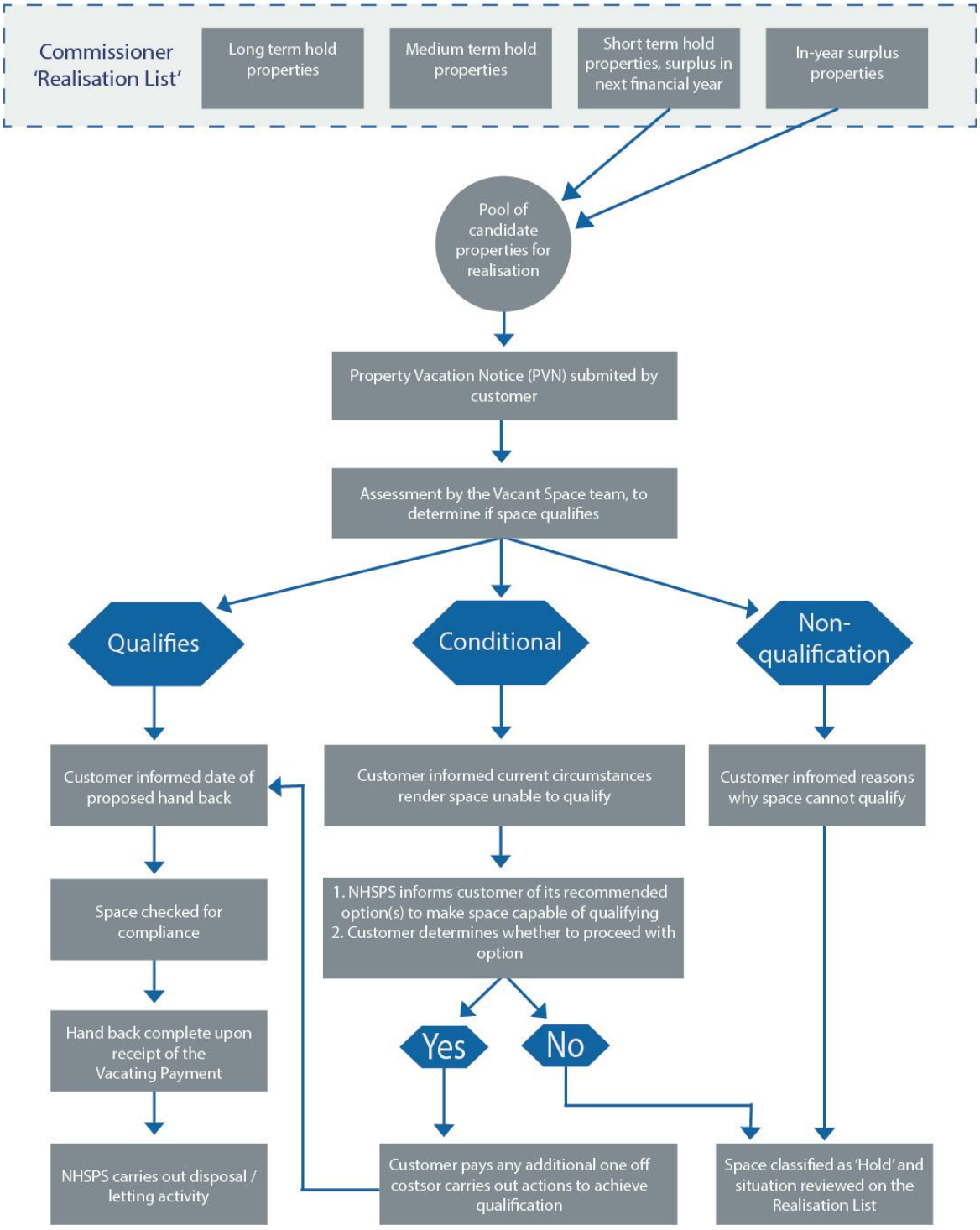
A68. If within 6 months of receipt of a Lease Expiry Notification (3 months where leases of Tenanted Space have expired or are due to expire prior to 31 March 2018) a commissioner fails either:

a. explicitly to confirm in accordance with the immediately preceding paragraph that the Tenanted Space will not be surplus; or
b. to respond to such notification at all;

then NHSPS shall (unless through discussion with the relevant commissioner NHSPS otherwise agrees) be entitled to proceed in respect of the Tenanted Space as if the relevant commissioner had confirmed the space to be surplus.

Appendices to Annex A

A. Summary diagram of the Scheme



B. Property Vacation Notice

APPLICANT DETAILS	
Formal name of applicant commissioner	
Named contact	
Job title of named contact	
Email address of named contact	
Daytime phone number(s) for contact	

PROPERTY WHERE SPACE IS BEING PROPOSED FOR HAND BACK	
Property name	
Address of property	
Postcode of property	
Date of submission of this form	

PROPERTY DETAILS		
NO.	QUESTION	RESPONSE (delete as applicable)
1	Does the space offered for hand back comprise the whole or only part of the building?	Whole building / Only part of the Building
2	Is the space being offered for hand back space which the commissioner/CSU occupies or has formerly occupied?	Yes / No If yes, please answer questions 3a - d. If no, please answer questions 3a – c.

3a	If only part of the whole building is offered for hand back, please describe the extent of the space being offered for hand back, including any car parking spaces lawfully used.	
3b	Is the space offered for hand back accessible directly from common parts / shared areas i.e. not through another occupier's or your own retained exclusive space?	Yes / No (If no, please give details)
3c	Is the space offered for hand back completely partitioned off from any neighbouring occupiers or any space not to be handed back?	Fully partitioned / Not fully partitioned
3d	a) If the space being offered for hand back is not currently occupied, has it already been cleared of all contents, furniture & rubbish and all equipment deactivated / de-commissioned?	Yes / No (If no, please give details)
	b) If no, when will this be fully delivered?	Date: Comments:
4	a) Is the space being offered for hand back still in use / occupied?	Yes / No (If yes, please give details)
	b) If yes, when will it become vacant?	Date space will become vacant: Comments:
5	Do you confirm that the space is permanently no longer required for all future commissioning requirements whether for commissioner direct use or for the provision of health services and further confirm that the information contained in this application is complete and accurate in all material respects and that all necessary prior assurance and approvals have been completed/obtained in accordance with applicable governance arrangements.	Yes / No

6	Any further comments in support of this application?	

SIGNATORY #1	
Signed	
Print name	
Job title	
Date of signature	

SIGNATORY #2 (if required)	
Signed	
Print name	
Job title	
Date of signature	

This Property Vacation Notice must be signed by and copied to:	
CCG PVNs	SIGNED BY: Accountable Officer and the Chief Financial Officer COPIED TO: Director of Finance of Local NHS England Direct Commissioning Organisations (DCOs), or in the London Region, to the Financial Assurance Team
NHSE PVNs	SIGNED BY: Director of Finance of the local NHS England DCO or Regional Team (as the context may require) COPIED TO: If a DCO PVN, be copied to the NHS England Regional Director of Finance, or if in the London Region, the Financial Assurance Team
CSU PVNs	SIGNED BY: CSU Managing Director COPIED TO: NHS England CSU Transition Team

C. Lease expiry notification

COMMISSIONER NAME	
COMMISSIONER CODE	
Date of Notification	
Commissioner response needed by	

LEASES DUE TO EXPIRE IN 12 MONTHS

Property name	**Description of leased space** e.g. part gound floor and whole 1st floor	**Address of property**	**Postcode**	**NHSPS property ref.**	**Name of occupying tenant**	**Lease Expiry Date**	**Is sublease inside the 1954 Act?**	**NHSPS Tenure**	**Comments** e.g. NHSPS head lease expiry date or next break date

SIGNATORY (Please duplicate signatory box for each signatory)	
Signed	
Print name	
Job title	
Date of signature	

D. List of PFI properties held by NHSPS

NHSPS Reference	NHSPS Zone	PFI Property Name & Address	Relevant CCG
RPCH01	North East	Redcar Primary Care Hospital, West Dyke Road, Redcar, TS10 4NW	South Tees
SECH01	North East	Sedgefield Community Hospital, Salters Lane, Sedgefield, TS21 3EE	Durham Dales, Easington and Sedgefield
SPCC03	North East	Stanley Primary Care Centre, Clifford Road, Stanley, DH9 0AB	North Durham
CORC02	North West	The Cornerstone Centre, 2 Graham Street, Beswick, Manchester, M11 3AA	North Manchester
WHHC07	North West	Whitegate Health Centre, 150-158 Whitegate Drive, Blackpool, FY3 9ES	Blackpool
MACH01	North Central	Mansfield Community Hospital, Stockwell Gate, Mansfield, NG18 5QJ	Mansfield & Ashfield
BAHC05	North Central	Batley Health Centre, 130 Upper Commercial Street, Batley, WF17 5ED	North Kirklees
CLHC06	North Central	Cleckheaton Health Centre, Greenside, Cleckheaton, BD19 5AP	North Kirklees
DEHC02	North Central	Dewsbury Health Centre, Wellington Road, Dewsbury, WF13 1HN	North Kirklees
EDHC03	North Central	Eddercliffe Centre, Bradford Road, Liversedge, WF15 6LP	North Kirklees
RAHC05	North Central	Ravensthorpe Health Centre, Netherfield Road, Ravensthorpe, Dewsbury, WF13 3JY	North Kirklees
TFCH01	North Central	The Friary Community Hospital, Queens Road, Richmond, DL10 4UJ	Hambleton, Richmondshire and Whitby
BRCH01	East	Brentwood Community Hospital, Crescent Drive, Shenfield, Brentwood, CM15 8DR	Basildon and Brentwood
DANH01	East	Danetre Community Hospital, London Road, Daventry, NN11 4DY	Nene
HECH01	East	Herts and Essex Community Hospital, Cavell Drive, Bishops Stortford, CM23 5JH	East and North Hertfordshire
JOCH02	East	Johnson Community Hospital, Spalding Road, Pinchbeck, Spalding, PE11 3DT	South Lincolnshire
PCCC01	East	Peterborough City Care Centre, Thorpe Road, Peterborough, PE3 6DB	Cambridgeshire and Peterborough
SMCH01	East	St Margarets Community Hospital (Epping Forest Unit), The Plain, Epping, CM16 6TN	West Essex
QMUH02	London	Queen Marys University Hospital, Roehampton Lane, Roehampton, London, SW15 5PN	Wandsworth
WCFH02	London	Willesden Centre for Health and Care, Robson Avenue, Willesden, London, NW10 3RY	Brent
FHCF01	South East	Farnham Local Care Centre, Hale Road, Farnham, GU9 9QL	North East Hampshire and Farnham
GRCH01	South East	Gravesham Community Hospital, Bath Street, Gravesend, DA11 0DG	Dartford, Gravesham and Swanley
LAAL02	South East	Lymington New Forest Hospital, Wellworthy Road, Lymington, SO41 8QD	West Hampshire
LICH02	South West	Liskeard Community Hospital, Clemo Road, Liskeard, PL14 3XD	Kernow
WMCH01	South West	West Mendip Community Hospital, Old Wells Road, Glastonbury, BA6 8JD	Somerset

E. List of very onerous leasehold properties held by NHSPS

NHSPS Reference	NHSPS Zone	Onerous Lease Property Name & Address
CPPC02B01	North East	Cleadon Park Primary Care Centre, South Shields, NE34 8PS
CRHC09B01	North East	Coatham Road Health Centre, Redcar, TS10 1SR
CSHC03B01	North East	Clarence Street Health Centre, Stockton-on-Tees, TS18 2EP
EAHC02B01	North East	Eaglescliffe Health Centre, Stockton-on-Tees, TS16 9EA
EVMC01B01	North East	Evenwood Medical Centre, Bishop Auckland, DL14 9SU
HPCC03B01	North East	Hexham Primary Care Centre, Hexham, NE46 1QJ
LOWG01B01 LOWG01B02 LOWG01B03	North East	1, 2 & 3 Low Grange, Middlesbrough, TS6 6TD
NEMC02B01	North East	Newcastle Medical Centre, Newcastle-upon-Tyne, NE1 7XR
TRIM01B01 TRIM01B02	North East	Units 2 & 11 North Ormesby Health Village, Middlesbrough, TS3 6AL
EASC02B01	North West	Eastham Clinic, Wirral, CH62 9AN
GRES03B01	North West	Greenway Road Surgery, Birkenhead, CH42 7LX
PRHC03B01	North West	Princeway Health Centre, Frodsham, WA6 6RX
VCHC01B01	North West	Victoria Central Health Centre, Wallasey, CH44 5UF
MOMC02B01	North West	Moorgate Medical Centre, Bury, BL9 0NJ
TPCC02B01	North West	Townside Primary Care Centre, Bury, BL9 0SN
WMHC01B01	North West	Waters Meeting Health Centre, Bolton, BL1 8TT
WOHC05B01	North West	Woodley Health Centre, Stockport, SK6 1ND
MIHC03B01	North West	Minerva Health Centre, Preston, PR1 6SB
NDMC01B01	North West	Newton Drive Medical Centre, Blackpool, FY3 8NX
SAPC01B01	North West	St Annes Primary Care Centre & Dental Unit, Lytham Saint Annes, FY8 2EP
WVHC03B01	North West	West View Health Centre (Podiatry Rooms), Fleetwood, FY7 8GU
FIHC03B01	North West	Fingerpost Health Centre, St Helens, WA9 1LN
HGHC02B02	North West	Heald Green Health Centre, Cheadle, SK8 3JD
HEAC03B01	North Central	Health Central, Hull, HU2 8LN
SKHC03B01	North Central	South Kirkby Health Centre, Wakefield, WF9 3AP
SJBP01B01	North Central	St James Business Park, Knaresborough, HG5 8QB
RIMC01B01	North Central	The Ridge Medical Centre, Bradford, BD7 3JX
BSHS01B01 STHC05B02	West Midlands	Buildings 1 & 2, Stratford Healthcare Centre, Stratford-Upon-Avon, CV37 6NQ
LAWC01B01	West Midlands	The Ladies Walk Centre, Dudley, DY3 3UA
THPC01B01	West Midlands	Tile Hill Primary Care Centre, Coventry, CV4 9PN
HALC02B01	West Midlands	The Halcyon Birthing Centre, Smethwick, B66 1JE
UCCM01B01	West Midlands	Urgent Care Centre Manor Hospital, Walsall, WS2 9PS
NVHC01B01	East	Nazeing Valley Health Centre, Waltham Abbey, EN9 2NW
UNHC01B01	East	Student Wellbeing Centre, Lincoln, LN1 1RD
WNHA01B01	London	West Norwood Health and Leisure Centre, London, SE27 0DF
ACFH01B01	South East	Aldershot Centre for Health, Aldershot, GU11 1AY
BINH01B01	South East	Bicester Community Hospital, Bicester, OX26 6HT

NHSPS Reference	NHSPS Zone	Onerous Lease Property Name & Address
TONH01L01	South East	Townlands New Hospital, Henley-on-Thames, RG9 2EB
BRMC06B01	South East	Broadwater Medical Centre, Worthing, BN14 8JE
CNWM01B01	South East	Chipping Norton War Memorial Community Hospital, Chipping Norton, OX7 5FA
EMBC01B01	South East	Emberbrook Centre, Thames Ditton, KT7 0EB
OXTU01B01	South East	Oxted Therapy Unit, Oxted, RH8 0NQ
PRCC03B01	South East	The Charter PABX Room, Abingdon, OX14 3LZ
SWPC01B01	South East	Sidney West Primary Care Centre, Burgess Hill, RH15 8HS
WHIS01B01	South East	Whitehorse Surgery, Gravesend, DA11 8BZ

ANNEX B
Capital expenditure recovery

B1. Works required either to maintain Landlords statutory compliance responsibilities, or Landlords leasehold obligations will be funded by NHSPS, with no additional recourse to occupiers or commissioners and no upward pressure on rent or service charges[11].

B2. On the other hand, where capital which is not Third Party Sourced Capital[12] is deployed by NHSPS in funding and undertaking either a new build or a discrete addition to (or extension of) existing NHSPS premises (the "Premises") at the specific request of a commissioner (or a Provider with the approval of its commissioner); it will be recoverable by NHSPS charging (but only charging) some combination of:

a. a market rent; or
b. in the case of existing NHSPS Premises, an uplifted market rent to reflect the resultant enhancement in the value of NHSPS's reversionary interest in the Premises);

for the premises in question.

B3. The determination of market rent (in the case of new builds) or amount of any such upward adjustment to market rent (in the case of relevant works to Premises) will need to be validated/set by the Valuation Office Agency or, where NHSPS and the relevant commissioner have the authority to agree otherwise, by a suitably qualified independent expert owing a duty of care jointly to NHSPS and the relevant commissioner. To give NHSPS comfort that the resulting rental obligation will be supported over the whole implied period a commissioner support letter will be signed by the relevant commissioner in substantively the same form as the exemplar drafts in the appendices to this Annex, and that can be downloaded from www.property.nhs.uk/charging-policy-2017-18.

B4. It is worth noting however that in the vast majority of cases works undertaken by NHSPS in respect of its Premises at the request of a commissioner will result in either an up-lift in the market rent or a supplemental rent, but not both.

[11] However, depending upon NHSPS standard proforma lease terms, the "source" of such capital might, in part, be through the accrual of sinking funds provided for in the service charge provisions contained in a relevant tenants lease with NHSPS.

[12] Capital will be considered to be Third Party Sourced Capital if it is capital (or a capital asset) made available to NHSPS otherwise than by DH by way of equity subscription or generated by NHSPS itself either through normal commercial borrowing or through the disposal of assets previously vested in it. Examples of Third Party Sourced Capital will include assets/resources awarded to NHSPS under Section 106 contributions/CIL. The deployment of Third Party Sourced Capital will not result in any uplift to market rent and/or the charging of supplemental rent by reference to the amount of Third Party Sourced Capital so deployed.

B5. In those circumstances where, as above, NHSPS and the relevant commissioner agree that capital deployed by NHSPS in undertaking works to Premises should have no impact on the value of NHSPS's reversionary interest and thus no impact on the passing market rent for the Premises; and provided that NHSPS has also confirmed to the relevant commissioner and any applicable NHSPS tenant/sub-tenant that the impact on the Premises of the works in question will be disregarded in all subsequent rent reviews undertaken in accordance with the rent review provisions contained in any relevant lease/sub-lease affecting the Premises ("Rent Review"); the supplemental rent will be calculated as follows:

Supplemental Rent ('SR') = (A÷B)

B6. In exceptional circumstances where NHSPS and the relevant commissioner agree that capital deployed by NHSPS in undertaking works to Premises should properly be recoverable in part through an increase in market rent for the Premises (because a proportion of the works in question enhance the value of NHSPS's reversionary interest) but in part also by charging a supplemental rent then in such circumstances the supplemental rent will be calculated as follows:

Initial Supplemental Rent ('ISR') = (A÷B) – [(CxD) ÷B]

B7. For the purpose of making any calculation of supplemental rent:

A = outturn cost of the relevant works (including a cost of capital reflecting extant Treasury policy as captured in "Managing Public Money", and possibly reflecting a management charge not exceeding the lower of 10% and such amount as would represent a full actual cost recovery for NHSPS where the cost is not otherwise directly recovered by NHSPS or reflected in its general overhead cost base);

B = the number of years (recorded in the formal commissioner letter that supports the NHSPS investment in undertaking the relevant works) for which the relevant commissioner has confirmed that it will commission relevant services from the refurbished/improved premises;

C = E-F;

D = the useful economic life (determined in accordance with the accounting policies NHSPS is required to apply at the time that the calculation of ISR is required to be made) of the asset in respect of which the refurbishment/improvement works have been undertaken and which have resulted in C being a positive number;

E = market rent agreed or determined to be chargeable by NHSPS for the Premises after taking account of the positive impact that some/all of the refurbishment/improvement works has had on the value of NHSPS's reversionary interest in the Premises underlying asset); and

F = the market rent in respect of the Premises applicable immediately before taking due account of the positive impact that completion of the refurbishment/improvement works would have on the value of NHSPS's reversionary interest in the Premises);

B8. Supplemental rent will be apportioned to individual occupiers in the same proportions as the NIA occupied by them bears to the total NIA within the Premises, unless an alternative written agreement exists.

B9. On each occasion (a "Review Date") that during period B:

a. NHSPS grants a new occupational lease of the whole or any part of the Premises in respect of which NHSPS is then entitled to charge a supplemental rent per the above; or
b. the market rent in respect of an existing lease of the whole or any part of the Premises in respect of which NHSPS is then entitled to charge a supplemental rent per the above is reviewed upwards in accordance with the rent review provisions contained in the lease in question, then the Supplemental Rent chargeable to the occupier in question from that Review Date will be recalculated as follows:

Revised Supplemental Rent ('RSR') = (A÷B) – [((C x (G÷F)) x D) ÷B]

Where:

A, B, C, D, E and F have the meanings/values ascribed to them above; and

G = the market rent for the Premises in question applicable immediately after the Review Date.

Appendices to Annex B

A. Commissioner support letter for new developments or works to existing NHSPS premises

Date:
Dear [*insert name of CEO of NHSPS*]
Re: [*insert details*]

Background

1. [*insert CCG name*] Clinical Commissioning Group (the "CCG") [and NHS England][13] [has] [have] requested that NHS Property Services Limited ("NHSPS") funds and [undertakes the development of [*insert description*] [carries out capital works] (the "Capital Works") [as detailed in the specification in Appendix 1 to this letter ("Specification")] to [*insert property details*] (the "Premises").
2. This letter sets out the binding agreement between the CCG and NHSPS [and between NHS England and NHSPS] in relation to NHSPS funding and undertaking the Capital Works in respect of the Premises.
3. The budgeted total capital cost to NHSPS of carrying out the Capital Works is £[insert total capital cost figure] [plus VAT] (the "Budgeted Capital Cost").

NHSPS Commitments

4. NHSPS has agreed to carry out or procure the carrying out of the Capital Works in accordance with the Specification and to use all reasonable endeavours to do so at the Budgeted Capital Cost.
5. NHSPS has agreed that it will notify the CCG [and NHS England] of any material changes to the Specification for, and design of the Capital Works and seek the CCG's [and NHS England's] prior written approval to any associated increase to the Budgeted Capital Cost.
6. The CCG [and NHS England each] agrees not unreasonably to withhold or delay consent to any increase in the Budgeted Capital Cost [and agrees that where it has approved an increase to the Budgeted Capital Cost this increase will be reflected in the outturn costs used to determine any applicable uplift to the current market rent and/or any supplemental rent ("Supplemental Rent")] applicable to Premises if they already form part on NHSPS's existing estate.
7. In line with the prevailing national framework Capital Expenditure Recovery Policy ("the Charging Policy") established between the Department of Health ("DH"), NHS England and NHSPS (where a copy of the applicable version of which is set out in Appendix 2 to this letter), NHSPS and the CCG [and NHS England] have agreed that the costs reasonably and properly incurred by NHSPS in completing the Capital Works will be recoverable by NHSPS charging to its occupiers, a [market rent][14] [an uplift to the existing market rent for the Premises and/or a Supplemental Rent] (but only over a period of [insert number of years] years (the "Repayment Term"))[15].
8. [In relation to GP premises only, the District Valuer (DV) has been appointed [jointly] by [NHSPS and] [the CCG] [NHS England] and has confirmed in his opinion that [*insert details*] represents [*insert details e.g. a VfM rent for this scheme based on a size of*

[13] NHS England only relevant if the Capital Works relate to Premises used for the provision of primary care (GP services, community dental etc) or specialised services.
[14] Use this option if the Capital Works represent a new development.
[15] Use/adapt this text if the Capital Works relate to Premises that are already part of NHSPS's property portfolio.

[insert number]sq m Gross Internal Area and [insert number]sq m Net Internal Area ("NIA")].

Commissioner Commitments

9. In consideration of the commitments on the part of NHSPS recorded in this letter the CCG [or, as the context may require, NHS England] (the "Relevant Commissioner") agrees, to the fullest extent permitted by law, to commission the services set out alongside its name (or such other services for which it has primary commissioning responsibility as it may substitute) (the "Relevant Services") from the proportion of the NIA of the Premises designated for the provision of each Relevant Service (the "Relevant Space"), all as set out in the table below, to ensure full utilisation of the Relevant Space in the provision of the Relevant Service for a minimum period of at least the Repayment Term.

Relevant Commissioner	**Relevant Service**	**Current Provider of the Relevant Service** ("Current Provider")	**Relevant Service subject to Co-commissioning** (yes/no)	**Relevant Space** (expressed as the percentage of total NIA of Premises which is designated for the Relevant Service)

10. [During the Repayment Term, delegated responsibility for the commissioning of primary medical and general medical services ("GP Services") is expected to pass fully between NHS England and the CCG and after it has fully passed there are limited circumstances in which that responsibility might pass back to NHS England. In respect of any Relevant Service that is a GP Service the commissioner commitment provided for in paragraph 10 above in respect of that Relevant Service shall be owed to NHSPS by whichever of NHS England or the CCG has the principal commissioning responsibility for such services at the relevant time, but not both of them and neither NHS England nor the CCG shall have any liability or responsibility to NHSPS for the acts or omissions of the other while that other held the principal commissioning responsibility for GP Services.[16]]
11. The Relevant Commissioner agrees to use all reasonable endeavours to ensure that each Current Provider will promptly enter into a [[sub-]lease]/[variation of its [sub-]lease] of the Relevant Space with NHSPS. [If the Capital Works relate to Premises that are already part of NHSPS's property portfolio any such lease, sub-lease or deed of variation will make provision for any applicable up-lift in market rent and/or any applicable supplemental rent (in addition to the market rent) for the duration of the lease term and (where applicable) to include the formula set out in the Charging Policy to provide for the Supplemental Rent to be subject to downwards only review in the circumstances and in the manner prescribed in the Charging Policy.][17] Your and our

[16] The direction of travel seems to anticipate that certain specialised services which NHS England currently commissions may at some future point be subject to delegation to/some form of co-commissioning arrangement with CCGs. Paragraph 11 can readily be adapted to embrace a broader range of services than just GP Services if/when plans for extending CCG commissioning responsibility to specialised services become more tangible.
[17] Modify and include if the Capital Works relate to Premises that are already part of NHSPS's property portfolio.

expectation is that each Current Provider [sub-]lease will be a term equal to that Current Provider's service contract and will contain a mutual break right should the Current Provider's service contract be subjected to earlier termination.[18]

12. The Relevant Commissioner will in a timely manner as and when necessary during the Repayment Term carry out any re-procurement of Relevant Services in order to ensure full utilisation of the Relevant Space in the provision of Relevant Services during the Repayment Term and shall keep NHSPS updated as to the progress with its re-procurement.
13. In preparation for a Relevant Commissioner going out to tender for the re-provision of Relevant Services we would expect NHSPS to provide/approve draft text for inclusion in the Relevant Commissioner's tender pack to ensure that what the Relevant Commissioner requires of tenderers accords with the commitments described in this letter. We would also expect NHSPS to provide the Relevant Commissioner with a final form of lease/sub-lease that meets the requirements described in paragraph 15[19] below to include in its tender pack in relation to the prospective occupancy of the Relevant Space.
14. The Relevant Commissioner will ensure that the tender documents it issues in connection with any re-procurement of Relevant Services will, to the fullest extent permitted by law, require that the new Provider(s) will:
    a. provide the Relevant Service(s) from the Relevant Space;
    b. before taking up occupation of the Relevant Space, enter into a lease/sub-lease with NHSPS:
        i. for a term equal to their service contract term;
        ii. reserving a market rent and, if applicable, the Supplemental Rent;
        iii. that if applicable includes the formula set out in the Charging Policy to provide for any applicable Supplemental Rent to be subject to downwards only review in the circumstances and manner prescribed from time to time by the Charging Policy; and
        iv. that is no more onerous than any applicable superior lease by which NHSPS is bound and is otherwise fully consistent with the Charging Policy.
15. The CCG [and NHS England each] recognises and acknowledges that:
    a. NHSPS will be placing reliance on its commitments as set out in this letter when NHSPS commits to funding and undertaking the Capital Works; and
    b. if it fails to honour its commitments to NHSPS under any of paragraphs 10, 12, 13 and 15 above then, to the extent that such failure is not caused by or fairly attributable to a NHSPS act or failure to act (in a timely manner, or at all) the Relevant Commissioner will be responsible for ensuring that NHSPS is not financially disadvantaged as a result.
16. We and you have acknowledged and agreed that:
    a. where the commitments in this letter conflict with nationally agreed policies in respect of charging commissioners for vacant space in the Charging Policy, the terms of this letter shall prevail;
    b. if at any time the Premises or a material part of the Premises should cease permanently to be required for the provision of health services we and you will work together and in good faith to achieve a sustainable solution as soon as is reasonably practicable to mitigate the cost to the NHS of continuing to hold that surplus space; and

[18] As a matter of best practice and to minimise at the outset the inherent risk of occupying providers not ultimately formalising leases/sub-leases commissioners are very strongly encouraged to ensure that before any irrevocable commitments are made (by NHSPS or commissioners) in respect of the Capital Works all significant known actual/intended occupiers of the Premises have already signed leases, sub-leases or agreements for lease.
[19] Green highlighted paragraph numbers may need to be changed depending on whether the GP specific paragraphs 8 & 10 are included within the letter.

c. this letter is not intended to, and does not give to any person other than NHS England, the CCG and NHSPS any rights to enforce any provisions contained in this letter except for any statutory successor in title, or non-statutory successor NHS organisation, or Secretary of State company carrying out the same or similar functions as the parties to this letter.

17. Please countersign and return the enclosed duplicate of this letter to confirm acceptance, acknowledgement and agreement to its terms on behalf of NHSPS.

Yours sincerely,

Signature: ……..……..……....

Name of Director signatory: ……..……..……
for and on behalf of [*insert name of CCG*]

[Signature: ……..……..……..……

Name of Director signatory: ……..……..…..
for and on behalf of NHS Commissioning Board]

[On Duplicate: Accepted, acknowledged and agreed for and on behalf of NHSPS

Signature: ……..……..……..……..

Name of signatory: ……..……..……...

Position of signatory: ……..……..……..
NHS Property Services Limited]

Appendix 1 - Specification of the Capital Works

[*Insert Specification*]

Appendix 2 – Extract of the Capital Expenditure Recovery Policy from the Charging Policy

[*Insert copy of the Policy*]

B. Commissioner support letter for a new lease commitment by NHSPS

Date:
Dear [*insert name of CEO of NHSPS*]
Re: [*insert details*]

Background

1. [*insert CCG name*] Clinical Commissioning Group (the "CCG") [and NHS England][20] [has] [have] requested that NHS Property Services Limited ("NHSPS") takes a lease[21] ("Lease") of [*insert property details*] ("Premises") for a term of [*insert lease term and, if it is the case, the opportunities that NHSPS will have to break the Lease*] at an initial rent of £[*insert initial rent*] ("Initial Rent") and otherwise on the terms and conditions set out in the [heads of terms] [draft lease] in Appendix 1 to this letter.
2. [In relation to GP premises only, the District Valuer ("DV") has been appointed [jointly] by [NHSPS and] [the CCG] [NHS England] and has confirmed in his opinion that the Initial Rent represents a value for money rent for this scheme based on a size of [[*insert number*]sq m Gross Internal Area] [[*insert number*]sq m Net Rentable Area ("NRA").]][22]
3. This letter sets out the binding agreement between the CCG and NHSPS [and between NHS England and NHSPS] in relation to NHSPS entering into the Lease.

NHSPS Commitments

4. NHSPS has agreed as soon as reasonably practicable after the date of this letter to enter into the Lease.
5. NHSPS has agreed that it will notify the CCG [and NHS England] of any material changes to the final form of the Lease from those reflected in Appendix 1 to this letter and seek the CCG's [and NHS England's] prior written approval to any such change.
6. The CCG [and NHS England each] agrees not unreasonably to withhold or delay consent to any material change so notified in accordance with paragraph 5[23].

Commissioner Commitments

7. In consideration of the commitments on the part of NHSPS recorded in this letter the CCG [or, as the context may require, NHS England] (the "Relevant Commissioner") agrees, to the fullest extent permitted by law to commission the services set out alongside its name (or such other services for which it has primary commissioning responsibility as it may substitute) (the "Relevant Services") from the proportion of the NRA of the Premises designated for the provision of each Relevant Service (the "Relevant Space"), all as set out in the table below, to ensure full utilisation of the Relevant Space in the provision of the Relevant Service for a minimum period of at least [*insert number of years*] (the "Committed Term").

---

[20] NHS England only relevant if the Capital Works relate to Premises used for the provision of primary care (GP services, community dental etc) or specialised services.
[21] This form of support letter assumes that NHSPS is entering into a newly granted lease at Commissioners' request. It can be readily adapted if NHSPS is taking an assignment of an existing lease instead – text to be adjusted is highlighted in yellow.
[22] Relevant where premises include space intended for occupation for the provision of GP services.
[23] Green highlighted paragraph numbers may need to be changed depending on whether the GP specific paragraphs 2 & 8 are included within the letter.

Relevant Commissioner	**Relevant Service**	**Current Provider of the Relevant Service** ("Current Provider")	**Relevant Service subject to Co-commissioning** (yes/no)	**Relevant Space** (expressed as the percentage of total NRA of Premises which is designated for the Relevant Service)

8. [During the Committed Term, delegated responsibility for the commissioning of primary medical and general medical services ("GP Services") is expected to pass fully between NHS England and the CCG and after it has fully passed there are limited circumstances in which that responsibility might pass back to NHS England. In respect of any Relevant Service that is a GP Service the commissioner commitment provided for in paragraph 7 above in respect of that Relevant Service shall be owed to NHSPS by whichever of NHS England or the CCG has the principal commissioning responsibility for such services at the relevant time, but not both of them and neither NHS England nor the CCG shall have any liability or responsibility to NHSPS for the acts or omissions of the other while that other held the principal commissioning responsibility for GP Services.[24]]
9. The Relevant Commissioner will in a timely manner as and when necessary during the Committed Term carry out any re-procurement of Relevant Services in order to ensure full utilisation of the Relevant Space in the provision of Relevant Services during the Committed Term and shall keep NHSPS updated as to the progress with its re-procurement.
10. The Relevant Commissioner will ensure that the tender documents it issues in connection with any re-procurement of Relevant Services will, to the fullest extent permitted by law, require that the new Provider(s) will:
    a. provide the Relevant Service(s) from the Relevant Space;
    b. before taking up occupation of the Relevant Space, enter into a lease/sub-lease with NHSPS:
        i. for a term equal to their service contract term;
        ii. reserving a market rent;
        iii. that is no more onerous than the Lease and is otherwise fully consistent with the prevailing national policy framework established between DH, NHS England and NHSPS.
11. The CCG [and NHS England each] recognises and acknowledges that:
    a. NHSPS will be placing reliance on its commitments as set out in this letter when NHSPS commits to entering into the Lease; and
    b. if it fails to honour its commitments to NHSPS under any of paragraphs 7, 9, and 10 above then, to the extent that such failure is not caused by or fairly attributable to a NHSPS act or failure to act (in a timely manner, or at all) the Relevant Commissioner will be responsible for ensuring that NHSPS is not financially disadvantaged as a result.

[24] The direction of travel seems to anticipate that certain specialised services which NHS England currently commissions may at some future point be subject to delegation to/some form of co-commissioning arrangement with CCGs. Paragraph 8 can readily be adapted to embrace a broader range of services than just GP Services if/when plans for extending CCG commissioning responsibility to specialised services become more tangible.

Shared Commitments and Acknowledgements

12. NHSPS agrees promptly to negotiate and use all reasonable endeavours to complete an occupational lease with each Current Provider in respect of the Relevant Space reserving a market rent and otherwise on the basis of the [heads of terms][draft sub-lease] set out in Appendix 2 and the Relevant Commissioner agrees to use all reasonable endeavours to ensure that each Current Provider promptly completes such sub-lease. Your and our expectation is that each Current Provider sub-lease will be a term equal to Current Provider's service contract and will contain a mutual break right should the Current Provider's service contract be subjected to earlier termination.[25]
13. In preparation for a Relevant Commissioner going out to tender for the re-provision of Relevant Services we would expect NHSPS to provide/approve draft text for inclusion in the Relevant Commissioner's tender pack to ensure that what the Relevant Commissioner requires of tenderers accords with the commitments described in this letter. We would also expect NHSPS to provide the Relevant Commissioner with a final form of lease/sub-lease that meets the requirements described in this letter to include in its tender pack in relation to the prospective occupancy of the Relevant Space.
14. We and you have acknowledged and agreed that:
    a. where the commitments in this letter conflict with nationally agreed policies in respect of charging commissioners for vacant space the terms of this letter shall prevail;
    b. if at any time the Premises or a material part of the Premises should cease permanently to be required for the provision of health services we and you will work together and in good faith to achieve a sustainable solution as soon as is reasonably practicable to mitigate the cost to the NHS of continuing to hold that surplus space;
    c. [there is no requirement on NHS NHSPS to] [NHSPS shall not] enter into the Lease until NHSPS has entered into a[n agreement for sub-]lease in respect of Relevant Space with:
        i. Current Provider [*insert Provider name*] for a term [to *insert date*] [for *insert number o*years][26];
        ii. Current Provider [*insert Provider name*] for a term [to *insert date*] [for *insert number* years];]
        iii. [etc;]
    d. this letter is not intended to, and does not give to any person other than NHS England, the CCG and NHSPS any rights to enforce any provisions contained in this letter except for any statutory successor in title, or non-statutory successor NHS organisation, or Secretary of State company carrying out the same or similar functions as the parties to this letter.

15. Please countersign and return the enclosed duplicate of this letter to confirm acceptance, acknowledgement and agreement to its terms on behalf of NHSPS.

Yours sincerely,

[25] As a matter of best practice and to minimise at the outset the inherent risk of occupying providers not ultimately formalising leases/sub-leases commissioners are very strongly encouraged to ensure that before any irrevocable commitments are made (by NHSPS or commissioners) in respect of the Lease all significant known occupiers of the Premises have already signed leases, sub-leases or agreements for lease as appropriate.

[26] See footnote to paragraph 12.

Signature: ……..…….……....

Name of Director signatory: ……..…….…….
for and on behalf of [*insert name of CCG*]

[Signature: ……..…….…….……

Name of Director signatory: ……..…….…..
for and on behalf of NHS Commissioning Board]

[On Duplicate: Accepted, acknowledged and agreed for and on behalf of NHSPS

Signature: ……..…….…….……..

Name of signatory: ……..…….……...

Position of signatory: ……..…….……..
NHS Property Services Limited]

Appendix 1 – The [heads of terms of the lease] [draft lease] of the Premises

[*Insert [heads of terms] [draft lease]*]

Appendix 2 – The [heads of terms of the sub-lease(s)] [draft sub-lease(s)] of the Premises

[*Insert [heads of terms of the sub-lease(s)] [draft sublease(s)]*]

ANNEX C
Consultative proposals

(1) An improved approach to sessional space

C1. As noted in the main Charging Policy above there is currently no accurate data for how much sessional space is in operation across the NHSPS portfolio. However, an NHSPS analysis in December 2016 (based on 3,353 properties), identified 390 properties that provide a sessional offering. By contrast NHSPS currently bills 164 customers for sessional space, with the disconnect arising from the lack a formal policy or data exchange with occupiers. Initial estimates are that even more space could be used in this way with some modest adaptions.

C2. DH has therefore set the company a target of creating an improved sessional space offering in order to drive higher usage of the space available and unlock efficiency savings across the portfolio. In response to this requirement to regularise, expand, and improve on this offering NHSPS has put in place a plan to:

a. establish an accurate understanding of the NHSPS Estate, including properties, occupation, utilisation and financial information;
b. analyse existing sessional space to determine true sessional space;
c. work with other NHS organisations such as the CCGs to explore solutions for the booking, billing and management of sessional space; and
d. create and manage a portfolio of true sessional space through identification, viability testing, rationalisation, and cost analysis.

C3. The eventual detailed solution will have regard to available stock and economies of scale. Potential options may include anything from entire buildings providing sessional space to part-floor/multi-room options. These would be enabled through different operational models. CHP has already put in place a pilot scheme whereby centre managers are recruited into their portfolio to manage sessional space. NHSPS are engaged with CHP to understand the proposal and will share the results of the pilot. Similarly, the North West Collaboration of London CCGs is exploring an outsourced approach with Regus and the output of this study will be considered. NHSPS are piloting a real-time, open web portal, which adopts proprietary booking and billing software. The solution will provide an intuitive, flexible solution to allow users the ability to book, manage and pay for the space they need, while providing flexible models to manage a large, diverse, and complex portfolio. It is envisaged that the NHSPS sessional space solution will possess suitable future proofing to be able to accommodate the whole NHS estate's sessional space requirements.

Activity	Timeline	Resources
Identify and analyse potential pilot models & properties	Completed	Strategic AM, E&A, Finance, IT, CCGs
Initial pilot testing 6 properties	Apr 2017 – September 2017	Initial pilot testing 6 properties
Extended pilot Increase to 20 properties	From Oct 2017	Extended pilot Increase to 20 properties
Sessional space business model developed and ready for rollout	April 2018	Sessional space business model eveloped and ready for rollout

C4. As well as the booking system, NHSPS will develop the necessary operational, management and pricing models. Inevitably sessional space will need to be charged out at higher than 100% of the market rental cost in order to allow NHSPS to manage the risk of the space not being filled. The size of the premium is likely to vary in accordance with the relative risk of the site remaining underutilised, and could see a charge of anything from 110% to 200% of market rent. Any such assessment would of course need to be reviewed in a dynamic manner connected to data collected from the NHSPS IT solution.

C5. How actively commissioners engage with NHSPS in helping to optimise utilisation of sessional space will impact on the relative risk in a particular built environment of sessional space under-utilisation and this in turn will impact on the excess, above market rent, per hour that NHSPS would have to charge to absorb vacancy risk.

C6. So it is likely that commissioners will be offered at least an option to share in the operation of the model under a "gainshare/painshare" arrangement, and different models of this might be possible in different areas of the country. By taking part in the approach, commissioners might be able to gain another "lever" capable of assisting in removing their vacant space liability by directing providers to sessional space to free up what might then be Qualifying Space in a Qualifying Property.

(2) Refining the NHSPS charging model

Potential revisions to service charges

A. Service charge management fee

C7. Current situation

A uniform fee of 10% on the service costs, which is discounted to 5% when applied to rates, utilities, insurance and superior landlord's service charge.

C8. Proposed revision

A different basis of fee on the service costs where it is based on an appropriate industry benchmark fixed fee which is set by the size of the building. Fee rates would be set according which band size the building fell within. The management fee would be reviewable annually by either tracking changes in published benchmarks, or be indexed.

C9. Rationale

The revised approach is accepted as industry best practice and accords to the Royal Institution of Chartered Surveyors ('RICS') Service Charge Code. Fee rates tend to be similar to a 10% fee, but by moving away from the mark-up approach, it removes the incentive to the managing agent/landlord of loading the service charge with unwarranted costs in order to inflate their fee.

B. Service charge accounting year

C10. Current situation

The service charge accounting year for all NHSPS properties is the financial year.

C11. Proposed revision

NHSPS has the freedom to agree with occupiers an alternative service charge accounting year.

C12. Rationale

Robust service charge accounting can never be delivered in the timescales that finance officers ideally require when closing their financial year accounts. Industry norms for service charge accounting show that it often takes at least four months, if not longer. Keeping a service charge year to the financial year optimistically assumes that final reconciliation of actuals can be delivered very soon after financial year close. As the desired outcome cannot be delivered, it makes sense not to overburden NHSPS property management accountants unnecessarily every financial year end, but to spread the workload throughout the year. It is though recognised that an alternative approach may be difficult to reconcile to the basis upon which the NHS routinely undertakes annual planning and the associated allocations process.

C. Service charge apportionment for additional services or higher standards of service

C13. Current situation

All service charge costs are apportioned strictly pro rata with tenants.

C14. Proposed revision

Liability for provision of services outside of core hours to rest with those customers who request them. Higher standards of service provision for common parts and shared areas required by medical occupiers are a customer specific requirement and financial liability for the overage in cost compared to standard service provision to rest with those customer(s) who requested them.

C15. Rationale

Allows for the equitable allocation of cost where any extra cost burden is to lie solely with the party/parties who want it, and not with those who do not want it or benefit from it.

ANNEX D
Glossary

Item	Description / Definition
Alienation	The ability to dispose all or part of leased premises by way of assignment or sub-letting. The freedom of action for a tenant to alienate will be determined by the terms of the lease.
Arm's-Length Body	Arm's-length body ('ALB') is a commonly used term covering a wide range of public bodies, including non-ministerial departments, non-departmental public bodies, executive agencies and other bodies, such as public corporations and companies in which the department has a significant shareholding.
Common Parts	The parts of a multi-occupied building which are used by or for the benefit of all occupiers. Unlike Shared Areas, this type of space has no rental value. As Common Parts and Shared Areas are similar in nature, they are sometimes collectively referred to as "common areas".
Commissioner	A commissioner means either: • A Clinical Commissioning Group • NHS England (including Commissioning Support Units) A commissioner can also be a tenant for its own occupation.
Dilapidations and Reinstatement	Dilapidations are customers' works (or a payment made by a customer in lieu of works) to deliver the occupied space back to the level of repair and decoration as specified in its lease. Reinstatement covers the restoration of the space back to its original specification if there have been some alterations (e.g. removal of demountable partitioning and making good of the floor/wall/ceiling to restore the space back to open plan).
Demise	Space that is for the exclusive occupation by an individual organisation or other legal person.
FM charges	The payment in respect of the services that NHS PS provides within a customer's demise.
Head Lease	The lease held by NHSPS from a superior landlord. The definition for the purposes of this document is not sensitive to the number of layers of legal interest above NHSPS.
Leasehold	In the context of this policy document, a legal interest derived from a lease that has a term which is typically no more than 25 years and is subject to a market rent.
Legal interest	Having contractual rights in a property which derive from being a freeholder, leaseholder or licensee. A legal interest held by NHSPS does not necessarily mean that it has an extant ability to occupy and control space where a customer is in occupation.
Licence	A document giving permission for something. With regard to occupying space, it is in effect permission for a customer to use space on a non-exclusive basis for a set period of time (ideally no more than 6 months) in return for a monthly licence fee.

Item	Description / Definition
Long Leasehold	A lease which typically has a minimum term of tens of years where the main value of the leasehold interest was purchased by way of a single premium payment when taking the lease. A rent may be chargeable but this is usually for “a peppercorn” or a modest ground rent figure, which if subject to review, usually has a long period of years between review dates. The extent of landlord’s and tenant’s covenants is usually reduced thereby giving the tenant greater flexibility as to what it can do with the property.
Market rent	The rent / licence fee derived from a market rent valuation (as determined by an external professional valuer) taking into account the actual specification of the space delivered to the customer (including landlord’s fixtures & fittings).
NIA	The Net Internal Area as defined by the Royal Institution of Chartered Surveyors (‘RICS’) document named “Property Measurement”.
NRA	The Net Rentable Area is the sum of the NIA for a demise and of the NIA for the proportion of the shared area associated with that demise.
Opt to tax	Land (and buildings on it) is exempt from tax e.g. VAT. However, the holder of a legal interest in land or a property has the one-time ability to waive the exemption to tax for the whole legal interest i.e. it can “opt to tax” the property. For leasehold properties, if a superior landlord has opted to tax the building, that does not mean that all subordinate leases are then automatically opted to tax too; it is discretionary for each separate legal sub-interest in the building.
Passing rent	The level of rent currently payable under a lease, taking into account any settled rent reviews.
Planning Use Class	The legal use(s) of a property (as denoted by an alphanumeric “use class”) as defined in the Town and Country Planning (Use Classes) Order 1987. A change of use within the same use class does not need planning permission, but a change to a different use class usually does.
Reversionary Interest	The interest that reverts to a landlord after a property comes back into its possession following the expiry or termination of leases/occupations on the property.
Section 106 contributions/CIL	A section 106 agreement is designed to make a development possible that would otherwise not be possible, by obtaining concessions and contributions from the developer. It forms a section of the Town And Country Planning Act 1990. S106 contributions remain the primary means to ensure that developments pay for infrastructure that supports them, and can pay for anything from new schools, clinics, roads to affordable housing. The Community Infrastructure Levy (‘CIL’) is similar in purpose to section 106 contributions but is levied on a much wider range of developments and according to a published tariff schedule.
Service Charge	The payment in respect of services delivered by the landlord on a non-profit basis for the benefit of all occupiers only in relation to the Common Parts and Shared Areas of a building. It is inclusive of a Service Charge Management Fee.
Service Provider	An entity that is contracted by a commissioner to provide specific health or community services, e.g. NHS Foundation Trusts and NHS Trusts.

Item	Description / Definition
Sessional Space	Space within a building that is intended for occasional, non-continuous use by different parties.
Shared Areas	The parts of a multi-occupied building which are used by more than one customer (usually all customers) and also has a rental value. As Shared Areas and Common Parts are similar in nature, they are sometimes collectively referred to as “common areas”.
Sinking Fund	A fund formed by periodically setting aside money for the replacement of a wasting asset for which the occupier(s) has financial responsibility (for example, major items of plant and equipment, such as heating and air-conditioning plant, lifts, etc.). It is usually intended that a sinking fund will be set up and collected over the whole life of the wasting asset.
Sub-lease or Underlease	The lease held by a customer from NHSPS. The definition for the purposes of this document is not sensitive to the number of layers of legal interest (if any) above NHSPS.

NHS Property Services