

Signing an Occupation Agreement with us

Frequently Asked Questions

2020



Introduction

In February 2020, the Department of Health and Social Care and NHS England & Improvement published a letter ([read here](#)), which laid out the importance of all occupiers of NHS Property Services (NHSPS) buildings signing a formal occupancy agreement.

We are keen to support you wherever we can in this process, and so have prepared the following list of frequently asked questions.

For any outstanding queries or concerns, or if you would like to discuss your occupancy agreement further, please get in touch with your Property Manager, or our Customer Service team on <mailto:customer.service@property.nhs.uk> or 0800 085 3015.

Resources

- [DHSC and NHSE/I letter on signing formal occupancy agreements](#)
- [NHSPS Charging Policy](#)
- [Vacant Space Handback Scheme](#)
- [Help us keep your property data up to date: Occupancy Change Notice](#)

What do you mean when you say you are documenting occupations?

Many of the properties we inherited from Primary Care Trusts and Strategic Health Authorities had been occupied on a casual basis and the NHS had been paying for unused space and services. We will now ensure there are written agreements for the space occupied and associated rent charges for each occupier.

Why are you putting documentation in place? The primary care estate hasn't needed it before, has it?

It is not standard practice within the property industry for occupations to remain on a casual basis. Professional management of a national property estate relies on clear rights and responsibilities. Combining 161 landowners into one has given us a chance the NHS never had before to manage property in a consistent and efficient way, taking advantage of a concentration of professional expertise, increased buying power and economies of scale.

Occupancy Regularisation provides certainty for customers, and clarity about roles, responsibilities, and associated liabilities for all parties. We aim to ensure that an occupier is able to understand the total extent and duration of the cost they are taking on.

Will it make a difference to me if my occupation is documented?

With documented agreements in place, both tenant and landlord have a clear understanding of what space the tenant occupies, and which services are provided. By linking this information to our finance systems, we can give a fuller breakdown of costs in our invoices, so you know exactly what you are paying for.

Clear documentation also provides tenant and landlord with a platform for planning future needs, to manage space better and identify extra services that might be needed or delivered in a different way, and to align with the wider NHS strategy for healthcare services in an area.

Why am I being asked to sign a Rental Agreement Letter (RAL) or a Memorandum of Terms of Occupation (MOTO)?

Recent correspondence from the Department of Health and Social Care ('DHSC') sets out the expectations from NHS England and NHS Improvement ('NHS E&I') and DHSC in respect of occupancy and charges for the freehold and leasehold properties held by NHSPS and CHP.

Standardised documents have been approved by NHS E&I and the Department of Health and Social Care to assist with the regularisation of occupancy within the NHSPS estate and there is an expressed expectation that NHSPS agree either a standardised document or lease (where appropriate) with NHS entity occupiers and contract holders that are in occupation or intend on occupying NHSPS freehold or leasehold properties.

Are RALs and MOTOs legal documents?

The RAL is not a legally binding document, it is intended to be an interim measure to provide clarity on rent, the agreed payment terms and the premises you occupy while we continue to work with you to put in place a formal occupancy agreement agreeing facilities management and other services.

A MOTO is an inter-NHS document and any disputes that arise should be resolved by NHSPS, NHS E&I and the DHSC.

Why are NHSPS offering different documents?

Different documents are suitable in different circumstances and with different occupations. The RAL defines the fact of the occupancy and is an interim short-term measure to provide clarity to the customer in relation to estate costs whilst NHSPS work with you to agree a MOTO or a lease.

A MOTO is not intended to be legally enforceable but is intended to regularise your occupancy.

A lease is a legally binding agreement covering rent, landlord and tenant responsibilities and service charges. It is suitable in the following instances:

- to comply with superior lease;
- to provide security to both parties where capital funding is being made available

It is an expectation that non-NHS commercial occupiers enter into a lease.

The RAL is drafted for a period of 12 months, what happens if I want to vacate? Can a RAL be terminated during the initial 12 months?

A RAL can be terminated at any time if you would like to vacate the property you occupy you need to notify NHSPS by submitting an [occupancy change notice](#) giving 3 months prior notice.

I don't agree with my occupancy area shown on the plan attached to the RAL

If there is an error within the RAL you should contact your Senior Property Manager or Leasing Manager. If you wish to change your occupancy area you should notify NHSPS using an [occupancy change notice](#).

I don't agree with my Facilities Management and Service Charge costs

FM and SC costs are not included in the RAL. The purpose of the letter is solely to set out the basic facts of your occupation (premises, rent and agreed payment terms) to ensure our systems are accurate, and to aid commissioners in their management of estates costs.

We will work with you to agree FM and SC separately, these can be documented using FM SLA in relation to FM and a MOTO or a lease in relation to SC.

The MOTO only contains the service charge costs which are charged based on the area which you occupy. The services which are included/excluded within these costs are set out in the MOTO.

I have requested an FM SLA from NHSPS but am yet to receive this

NHSPS are working to issue FM SLA's. In the interim, the RAL is intended to solely to set out the basic facts of your occupation (premises rent and agreed payment terms), to ensure our systems are accurate, and to aid commissioners in their management of estates costs.

The RAL is only valid for 12 months (unless extended). What formal occupancy will I then be expected to sign?

The RAL has a timeframe of 12 months, it is put in place as an interim measure until we agree a formal occupancy agreement with you, MOTO or Lease as appropriate.

I would like a schedule of condition to be appended to the MOTO

NHSPS are agreeable to a schedule of condition being appended to the MOTO.

Is this a voluntary process for occupiers of your buildings?

No, it is essential that all our occupiers and customers have consistent documentation in place in line with the recent mandate from NHSE/I and DHSC that all occupiers should have regularised Occupancy Agreements.

We understand that this formal approach is very different from what many of our occupiers have known in the past. It is important they understand that in the first instance we are only documenting the space they currently occupy and the services they currently receive, and that any changes will only be made with their involvement and agreement.

NHSPS wish to work with our customers for the benefit of the whole NHS estate.

What are the consequences of not signing a RAL/MOTO?

The RAL is a standard document pre-negotiated and agreed in collaboration with NHS E&I and DHSC for use between NHSPS and the NHS family. It provides certainty for both parties in relation to the premises and the rent which minimises any disputes arising. It is not legally binding and there is no reason why the contents cannot be agreed.

The MOTO is not intended to be legally enforceable; it is a standard document pre-negotiated and agreed in collaboration with NHS E&I and DHSC for use between NHSPS and the NHS family it sets out the expectation of DHSC and your commissioner and there is no reason why you should not enter into it.

I intend to review this RAL/MOTO with legal advisors

Whilst you may take legal advice, the documents are in a prescribed form approved by NHSE&I the documents have already been negotiated between NHSE&I and their legal advisors for use by the NHS family. NHSE&I's legal advisors negotiated the documents prior to NHSE&I approval so that it is suitable and acceptable for use by the NHS family e.g. clinical providers and ALBs.

If we agree a RAL/MOTO and changes to the shared areas take place at a later date, will we be able to update, terminate or renew RAL/MOTO occupancies with revised floor areas, rents and occupancy percentages, or will we end up with discrepancies between RAL/MOTO areas/occupancies and OUS?

Yes, in the interest of ensuring transparency and accuracy of data we can update and agree revised RALs/MOTOs with Customers.

What would be required to do this where a MOTO is already in place?

Following any increase/decrease in area or change of premises an addendum to the MOTO can be agreed to document these changes. In some cases, it may be more appropriate for a further MOTO on the same terms can be put in place.

Will patients notice any difference?

Documentation will make transparent for the first time the actual cost of running the estate of around 7,000 occupancies. We will aim to secure savings – without any detriment to patient care – and we will be able to make more informed decisions about effective and efficient ways to provide buildings delivering patient care. Patients will benefit as more money may be freed up within the system.

Do I need to do anything to set this in motion?

No, you will be contacted by one of our regional teams outlining the process. You will then be liaising with a local asset manager to agree the space you use and the basic terms. Alternatively you can email Occupation Regularisation Programme inbox ORP@property.nhs.uk

Who will help me in agreeing the occupation agreement?

Each occupier will be supported through this process by an NHS Property Services nominated surveyor.

How will this affect what I am currently paying NHS Property Services?

NHSPS will charge a market rent for its freehold space, and its leasehold space will be charged out at a largely pass-through cost. For more information, please refer to our full charging policy document, found on our website.

When will I know what I am being asked to pay?

The annual charging schedule is issued to all customers at the start of each financial year to confirm costs. If you have any queries on this, please contact your Property Manager or our Customer Services team.

Are you liaising with Commissioners so they understand what I am being asked to pay?

We have worked with NHSE/I to agree a Commissioning Pack designed to support CCGs in identifying the best NHSPS buildings to be used when Commissioning a service, with all the details needed to provide clarity to bidders on building costs and occupancy. For more information on this pack please contact your local Property Manager or our Customer Support Centre.

Who else have you consulted on the approach you are taking?

This process was initiated and shaped by the DHSC and NHSE/I.

Is VAT charged on rent and service charges?

The vast majority of the properties we own are not elected to VAT and our current policy is to maintain this status. For these properties, VAT is not chargeable on rent. However, service charges will be inclusive of irrecoverable VAT.

Where we hold a leased property and our landlord has elected the property for VAT, we will need to pass the cost of irrecoverable VAT on rent through to tenants. However, in this instance, there should be no irrecoverable VAT within the landlord's service charge.