

Commissioning and Property Occupation Webinar

Your questions answered

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.

On the 1st October 2020, in partnership with the Department of Health and Social Care, we ran a customer webinar to discuss the next phase of work to align Commissioning with the NHS estate, and how our newly agreed set of occupancy documents have been collaboratively designed to benefit the wider NHS.

We were delighted to welcome so many customers, partners and colleagues to the session, and due to the level of engagement were unable to answer all the questions asked in our Q&A. We want to equip our customers with as much information as possible as we move into this next phase of occupancy agreements, and so have prepared responses to all questions asked throughout the session.

Resources

You can also watch a recording of the webinar, view the slides used, and access other supporting materials such as our main FAQs, brochure and templates of the occupancy agreements themselves. This can all be found on our [webinar summary page here](#).

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 customer.service@property.nhs.uk or 0800 085 3015.

Occupancy Agreement Documents

How were the MOTO and RAL created and by whom? Will tenants need legal representation to review?

The RAL and MOTO were created in collaboration between DHSC, NHSE/I and NHSPS with input from legal teams representing the parties. The terms of the RAL and MOTO have been pre-agreed and therefore minimal legal advice may be required to complete one of the standard occupancy documents.

We have agreed a number of RALS for NHSPS properties we occupy. Are MOTOs the next stage? Will you be making copies of your MOTOs available for review?

Yes MOTOs are the next stage up from a RAL, and you can find a generic copy of both a RAL and MOTO in our post webinar summary on our website here: <https://www.property.nhs.uk/news-insight/webinars/commissioning-and-property-occupation/>

What is the plan for rolling out the 3 forms of formal occupancy arrangements?

The standard occupation documents are now being rolled out in a phased approach starting with the NHS Family occupiers, followed by those occupiers outside the NHS Family.

Who do I contact to begin a discussion around putting MOTOs in place for our occupancies?

You would contact the Customer Service Team on Customer.service@property.nhs.uk or 0800 085 3015, or your property manager or the regional leasing manager.

Does the RAL and MOTO allow for flexibility for services to move? Leases are too long.

Yes, the RAL and MOTO allow for flexibility of services to move, this should be done in conjunction with an occupier change notice submitted to NHSPS <https://www.property.nhs.uk/occupier-hub/report-a-change-to-your-occupancy/>

If a RAL lasts 12 months, how long is a MOTO? Can it incorporate tenant breaks?

A MOTO can be agreed for a term length of greater than 12 months for as long as the occupier or commissioning group want the space for. A MOTO can incorporate tenant breaks to allow maximum flexibility these can be linked to service contract terms.

What support is there when only half (if not less) of the space is required, but the provider must pay for it all? It's an all or nothing service with providers fronting up a significant overhead.

You should initially speak to the CCG to confirm the amount of space required. The RAL and MOTO allow for flexibility of services to move, this should be done in conjunction with an occupier change notice submitted to NHSPS: <https://www.property.nhs.uk/occupier-hub/report-a-change-to-your-occupancy/>. The CCG are able to hand back space once this has been [declared vacant](#).

What if the tenant has a need to change its space through increased or decreased space? Is there an ability for flexibility to alter the space to meet the needs of the service and patients through your MOTO agreement?

Yes, RAL and MOTO allow for flexibility of services to move, this should be done in conjunction with an occupier change notice submitted to NHSPS. <https://www.property.nhs.uk/occupier-hub/report-a-change-to-your-occupancy/>

Regarding currently occupied NHSPS buildings where tenants currently do not have an up to date lease/agreement - will the building be fully repaired before a new lease is signed? Or is the tenant going to sign a lease for a property which isn't up to standards and be expected to fully repair it?

A building will not be fully repaired before a lease is signed, however, discussions can be had when agreeing terms of occupation to include some refurbishment and maintenance. Repairing liabilities can be reduced in either a lease or MOTO by including a schedule of condition.

What is TIR?

A TIR lease is a Tenant Internal Repairing lease and an FRI lease is a Full Insuring & Repairing lease.

Is it correct that RAL and MOTO is not FRI for the tenant? Which means interior and exterior repair is the responsibility of the landlord for these two types of agreements?

A RAL does not imply any fresh terms of occupation or obligation in terms of repair. The MoTo is FRI with optionality as to the level of both the landlord's and tenant's repair responsibilities. The optionality referred above relates to the different options in the MoTo which can be agreed on a property by property basis as to be the required standard of repair e.g. keeping the property in no worse condition as it is in at the date of the MoTo or in no worse condition than Estate Code Condition B.

NHSE/ East finance team are instructing practices/their surveyors to change the FRI HoTs to TIR. How can that be resolved with the updated FRI lease?

As mentioned on the webinar by Ben Masterson, there is currently no further system funding from DHSC/NHSE to support the blanket adoption of TIR leases across the NHSPS portfolio. NHSPS are in ongoing discussion with DHSC, as our shareholder, to ensure back log and ongoing maintenance of our estate is funded at the appropriate level. NHSPS are keen to ensure that our buildings are maintained to the appropriate standard and that all customers are clear with regard to each parties repairing responsibilities.

I am not sure a CCG would recognise being funded for FRI leases to pass on to providers. This would normally have been funded via capital and not revenue, which is what it is doing. If the centre believes it is out there, then it would be easier to pull it back and give it to NHSPS to do the structure and plant repairs.

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So the lease being recommended is NOT FIR - is that correct? If so will NHSPS offer a non FIR lease?

The lease that has been agreed for use with the NHS Family is an FRI lease this has been agreed in collaboration with DHSC, NHSE/I and NHSPS. We will put a lease in place where we have a headlease that dictates we should or if investment is required so that it is correctly documented. However a MOTO is the preferred occupation document for NHS Family and will be suitable in most situations.

East Sussex Health Care NHS Trust are only funded from the CCG for NHSPS rents and running costs. We are not funded to invest money into NHSPS buildings to cover external / structural repair. TIR leases would be well received by ESHT.

TIR leases are not available to NHS Family occupiers as there is currently no funding available to cover the additional costs of the external maintenance required at present. The charging policy and the system communication to the NHS is clear on the present position.

The PCTs generally supported TIR terms for GPs to remove risk from the service providers. So NHSPS needs to be geared up to do the same. FRI on anything less than condition B buildings is just passing the liability to small scale providers. Is that what DHSC considers appropriate.

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Do you anticipate the District Valuers office will be involved in the process as currently happens?

The MOTO has been agreed for use within the NHS Family. Where there is a review of the occupation charge at a freehold property, this will be agreed between NHSPS and the occupier but determined by the DV, if required, as an independent expert. For a leasehold property the occupation charge shall be reviewed pursuant to the terms of the superior lease and passed through on an apportioned basis.

Why can't the District Valuers provide a RIR rent and an FRI rent and allow the tenant to choose?

The DV can provide this option, however, NHS Family are currently funded for FRI leases rent valuations.

Do the proposed new documents include the allowance for "True Up" costs to be charged? These don't provide clarity on costs to users or commissioners. Is NHSPS willing to take the risk to prevent overspends on estate costs?

The agreed MOTO and Lease contain provisions in relation to FM services and any service charge for common parts and there will be provision for "true-up" of such costs. The Rent Agreement Letter (RAL), only records the basic terms of space occupied, proportion of space and rent, so does not cover any service provision (although services may separately be provided and billed).

NHSPS is a not-for profit organisation. All the services we provide are for the benefit of the wider NHS and it is anticipated the relevant NHS entity will pay for such services at cost.

How will the proposed documentation fit in with IFRS 16?

This is the latest NHSI guidance on IFRS16: <https://improvement.nhs.uk/resources/ifrs-16/>

Occupancy Change Notifications

[Learn more about Occupancy Change Notifications and access the form.](#)

Does the Occupancy Change Notification need to be used from today onwards? Will a confirmation/acknowledgement be received when submitting this.

If you do not have an existing formal occupancy agreement with us, or if your occupancy has changed, please let us know by filling in the form on this webpage:

<https://www.property.nhs.uk/occupier-hub/report-a-change-to-your-occupancy/>, making sure you give us three months' notice. You will receive a confirmation email once the form is submitted, and one of our team will get in touch to discuss your occupancy requirements.

How will occupancy change notices be checked with commissioners, where funding may be including in contracts for those sites and then come back to the CCG as a void cost? Providers should not be allowed to make changes at will without engagement and agreement with the commissioner and funder.

Where there is a request by an occupier to make a material change to occupancy (most of these type of changes are relatively small), we will certainly seek to discuss with the CCG and ensure all are aligned and in agreement to proposals.

For NHSPS staff, if during ACS meetings sites want to pass space back - can the NHSPS customer engagement team fill in this form or do they have to notify the property lead?

The Occupancy Change Notice is available on the external website for customers to complete: <https://www.property.nhs.uk/occupier-hub/report-a-change-to-your-occupancy/>. This is then routed to the relevant Property Management inbox for review. To short cut the process, it would be best if any occupancy queries to Customer Support Centre were directed to the relevant Senior Property Manager for any property as detailed in the Property Dashboard.

Vacant Space Handback Scheme

[Learn more about the Vacant Space Handback Scheme and access the form.](#)

Who do the monthly reports go to on vacant space and are you liaising with CCGs to identify all vacant space in the first place?

Monthly reports are produced by the NHS Open Space team and provided to CCGs. NHSPS have been undertaking a project since 01/06/2020 to review and agree all vacant and sessional space with Commissioners. As part of the project floor plans have been shared with CCGs in order to provide transparency and 100% accuracy.

As a CCG we have struggled to understand the vacant and sessional space we are charged for as we are not occupying that space or any of the buildings in which it sits. In conversation with NHSPS colleagues, they themselves sometimes struggle to understand which parts of properties the lease references we have relate to. As part of agreeing vacant and sessional space with commissioners would it be possible to have premises floor plans which identify vacant/sessional space clearly and identify the lease references that the space relates to?

NHSPS have been undertaking a project since 01/06/2020 to review and agree all vacant and sessional space with Commissioners. As part of the project floor plans have been shared with CCGs in order to provide transparency and 100% accuracy.

We have previously received charges for new Vacant space without any prior discussion with the commissioner. Please can we ensure that all new Vacant space is agreed with the commissioner so that we are sighted on additional costs and understand why it has arisen? This will ensure that invoices are more likely to be paid if prior agreement has taken place.

NHSPS are undertaking a full review of all vacant and sessional space currently billed to CCGs to ensure this is aligned and where possible any surplus space can be handed back to NHSPS in accordance with the [Vacant Space hand back scheme](#). We would also recommend that all occupiers notify the commissioner when changing or vacating space to ensure that this is correctly captured with NHSPS so that invoicing is correctly raised.

NHS Open Space

[Learn more about NHS Open Space and explore our spaces.](#)

Is there a plan to have a mechanism put in place for NHSPS to be able to charge Providers for sessional space rather than this just being picked up via the CCG 'void' costs where no agreement needs to be in place?

Yes, in 2017 NHSPS launched NHS Open Space, an innovative new bookable NHS scheme centred on flexibility and getting the most value out of the NHS properties. NHS Open Space has been designed and developed collaboratively with our users and the experiences attained over a two-year pilot at 60 properties.

The new offering will provide approved users with a new bespoke, user-focused system and access to a greater choice of clinical and non-clinical rooms. NHSPS aim to replace sessional space with NHS Open Space. This is why NHSPS are keen to agree all Sessional space data with CCGs so that it can be shared with the Open Space team.

CSUs use a 3rd party for booking external venues. Can we still use NHS Open Space - we don't have any means of "paying as you go".

We would be delighted for you to start using NHS Open Space and would be happy to discuss how you can access and pay for your space. Please contact me on chris.king@property.nhs.uk to discuss.

Could NHS Open Space be used as a room booking software system for CCG offices. i.e. where CCG has exclusive use of the space to allocate desks to staff adopting agile ways of working?

Our intention is for NHS Open Space to be made available for the whole NHS to assist you in the management of your space. We would like to test the model further at a larger scale before being made available to the wider NHS. We hope to be able to do this in the near future.

I don't think NHS Open Space is in the Southwest, what is the timescale for bookable open space to be available in all areas of the country?

Our aim is to rollout NHS Open Space to 250 NHSPS properties within the next 18 months. 40 properties will be rolled out every 5 months, with the next launch scheduled in March 2021.

Is NHS Open Space charged to CCGs also if it is not booked?

Open Space follows the current sessional space charging model, in that the running costs are charged to the CCG, quarterly in advance. NHSPS will charge users of the space and reimburse the CCG quarterly in arrears, up to the amount charged to the CCG for covering the running costs of the space. The intention is for NHSPS to increase utilisation of the space through attracting new NHS and other health and well-being providers. Any surplus revenues generated from this will be split between the CCG and NHSPS.

If a commissioner releases space for NHS Open Space, how easy is it to reclaim that space again? If at all?

Our properties by their nature are fluid and need to be flexible with the needs of the patients and the local health economy. This is one of the reasons Open Space was developed - to provide an alternative option to demised space.

Potential Open Space undergoes an onboarding process to ascertain its viability for inclusion. This is to ensure the cost of its implementation proves value for money. If the removal of space is requested, this will undergo an offloading process. This includes a review of all Open Space / vacant space to ensure the right space is provided that satisfies the requirement, while minimising the impact on current users/tenants and their patients.

‘Pay as you go’ sounds great but it will be difficult for providers’ payment systems as ad-hoc payments are a huge burden on finance team resources. Is a quarterly payment option still available?

The decision to implement upfront payment and not quarterly payments was due to the issues that arose, and lessons learnt following a two-year period. While there was concern regarding the ability of users to adapt to upfront payment, all users from our current 20 Live properties are using these payment methods.

Furthermore, we have implemented additional payment methods such as direct debit based on user feedback and will be implementing further upfront methods as required by our users.

As a CCG we have a large amount of sessional space charges outstanding since the transfer of multiple community properties to NHSPS. The CCG itself does not occupy these properties and has no mechanism for either recording or charging for any sessional space usage in these properties. How can you help us to deal with this space and the large outstanding debt for which we have no hope of recovery from those that may or may not have used it?

NHSPS have been working with all CCGs to agree vacant and sessional space data. This enables the CCGs to consider handing back vacant space through the Vacant Space Handback scheme where eligible.

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The new offering will provide approved users with a new bespoke, user-focused system and access to a greater choice of clinical and non-clinical rooms. NHSPS aim to replace sessional space with NHS Open Space. This is why NHSPS are keen to agree all Sessional space data with CCGs so that it can be shared with the Open Space team.

Billing and service charges

[Access billing support materials.](#)

How and when will NHSPS be in a position to provide KPI information in detail on all building services provided?

NHSPS is currently working towards reporting performance against FMSLA KPIs, this work is ongoing and as KPI reporting becomes available for our services, we will begin to share this information with our customers. In the meantime, any questions or concerns related to FM service performance should be discussed directly with your local Facilities Service Manager who will be able to help, or alternatively please contact our Customer Service Centre on Customer.service@property.nhs.uk or 0800 085 3015.

There continues to be huge discrepancy between FM charges of existing tenants and the level of service they feel they are getting and a real lack of clarity in billing? How is this being resolved?

This is being resolved by engaging with our customers and agreeing their Annual Charging Schedules with them each year as well as putting in place one of the standard occupancy documents to better define services for your occupation.

Most tenants' concerns are about transparency of billing/costs. What is NHSPS doing to improve this?

We're working to bring more transparency to our bills and the way that costs are calculated. More information can be found in the Customer Guide to Charges which you can find on our website (<https://www.property.nhs.uk/billing>). There is also the option to use a financial dispute resolution to find a solution. By signing an occupancy document it will help give clarity to the demise being occupied and provide better transparency to the occupiers billing and occupation costs in future.

How are the new plans outlined here going to fit with the Premises Cost Directions, bearing in mind the current ones are dated 2013 and somewhat behind the current agenda for integrated working? Are new directions coming?

NHSE&I are well on the way to revising and updating the Premises Cost Directions. We have looked at and gone through the 1st and 2nd drafts already and a committee meet monthly to review the document. We will concentrate on the NHS Family revisions first and follow this up with the GPs sections.