

## GP Practices

20 August 2020

### Update on NHS Property Services legal action

Dear GP colleague,

As you may know, the BMA is supporting five GP practices who have started court proceedings against NHS Property Services (“NHSPS”) to clarify the basis on which NHSPS calculates service charges. The purpose of this letter is to update you on the status of the ongoing case.

#### *Background*

Since 2016, many GP practices have received payment demands from NHSPS for non-reimbursable service charges for amounts significantly greater than those historically paid. The BMA raised the issue with NHSPS and sought an explanation for the increased charges, and a stop to these inflated demands. NHSPS’ explanation for the dramatic increases was rooted in a policy ambition to change to a ‘full-cost’ approach to the recovery of charges.

At a meeting in July 2018, NHSPS declared that their Consolidated Charging Policy (“Charging Policy”) was a UK-wide charging policy which “decides” how practices are charged, without reference to the terms of the individual tenancies. The BMA did not agree with this and continued to seek a proper explanation, but none was ever provided. The BMA presented NHSPS with evidence of unlawful charges made against individual GP practices and asked for an explanation, but NHSPS refused to accept that their Charging Policy did not form part of the individual tenancies.

As a result, the BMA is supporting five GP practices who have received demands from NHSPS to pay inflated service charges based on the Charging Policy to bring test cases. The five practices started court proceedings against NHSPS in January 2020, arguing that the Charging Policy does not form part of their tenancy and that NHSPS cannot therefore base their charges on it.

#### *Case update and next steps*

NHSPS provided its Defences to the five claims in June 2020, belatedly **conceding that the Charging Policy did not vary the existing leases and the service charges claimed were not due because of the Charging Policy**, and stating that they do not dispute what the GPC and the BMA have said about the Charging Policy all along.

Supported by the BMA, the five practices are now applying to the High Court to ask that it upholds their claims against NHSPS and issues declarations that the Charging Policy does not form part of their tenancies. The judgments sought would not automatically apply to any GP practices beyond the five test

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claimants; however, **they would be highly persuasive evidence that other GP practices in similar circumstances would be able to rely on to defend themselves against their landlord.**

The BMA has been clear throughout that GP practices should only make payments if they agree with the legal basis on which NHSPS have claimed the charges are due and agree they are accurate. **NHSPS has now agreed that the Charging Policy does not automatically form part of every tenancy and will not have any legal status without prior agreement by the GP practice in each case.** If NHSPS relies on the Charging Policy as part of the tenancy agreement it must explain the basis for this.

Despite the national scale of the problem, NHSPS has unfortunately decided to counterclaim against the five individual practices to recover what it claims are outstanding service charges and is asking the Court to rule on the terms of their tenancies. The practices, supported by the BMA, are disputing these claims and do not believe there is a legal basis for the increased and inaccurate charges. The BMA is deeply troubled by NHSPS' actions and considers that suing frontline doctors during a national health crisis is profoundly wrong, especially as NHSPS is a company wholly owned by the Department of Health and Social Care.

Now that NHSPS has conceded that the Charging Policy does not form part of the tenancies, the five GP practices will invite NHSPS to deal with the counterclaims outside of court through a suitable dispute resolution process. The BMA hopes that NHSPS will now cooperate to establish a suitable resolution process, which can be rolled out across the country to assist other practices facing similar demands.

In the meantime, I will continue to provide updates to you as the case develops.

Yours sincerely



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