

13 December 2019

Dear Colleagues,

BMA Legal action against NHS Property Services – Service and Facilities Management Charges

As you know, over the last three years many practices have seen significant increases in service charges and facilities management costs without prior agreement while some report being billed for services they are not receiving. This situation is placing unsustainable pressure on practices and is essentially diverting precious resources away from patient care. Furthermore, we know that this is destabilising the future of practices as many young doctors are discouraged from becoming GP partners where this issue remains unresolved. The overall impact of this ongoing dispute is having a devastating effect on the profession.

The BMA has repeatedly pressed NHSPS to cease its inflated demands and to provide a proper explanation for the charges. Unfortunately, discussions and negotiations have reached a standstill.

Consequently, the BMA wrote to NHSPS earlier this year, setting out why it believes NHSPS is acting unlawfully but received no acceptable response. Therefore, as announced at the Annual Representative Meeting in Belfast in June this year, the BMA is now taking NHSPS to court.

Background

NHS Property Services ('NHSPS') is a company wholly owned by the Secretary of State for Health and Social Care. NHSPS was established as part of reforms to the health system to manage, maintain and improve NHS properties in England and facilities previously owned by strategic health authorities and primary care trusts. It began activity in April 2013. As at 2017, 822 GP surgeries in England leased their premises from NHSPS.

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 their demands. NHSPS' explanation for the dramatic increases was rooted in their policy ambition to change to a 'full-cost recovery' approach to the charges.

In meetings over the last few years, the BMA pressed NHSPS to cease its inflated demands and to provide a proper explanation for the charges. Unfortunately, discussions and negotiations have reached an impasse.

Legal Action

The BMA instructed lawyers to request that NHSPS stops its unlawful demands and provides a proper explanation for the basis of the inflated charges.

NHSPS' explanation for the inflated charges was unsatisfactory and, in our assessment, had no sound legal basis. NHSPS argued it was entitled to charge service charges based on its Consolidated Charging Policy ('the Policy'). However, in our view, it could not adequately explain how the Policy became part of practices' tenancy agreements. If the Policy is not part of the tenancy agreement it cannot be relied on by

Chief executive officer: Tom Grinyer



NHSPS to calculate and demand charges; charges can only be calculated and demanded on terms agreed between the practice and NHSPS.

The BMA is supporting 5 test claimant GP practices who have received demands from NHSPS to pay inflated service charges based on the Policy. The test claimants intend to bring court proceedings against NHSPS for a declaration that the Policy does not form part of their tenancy and NHSPS cannot therefore base their charges on it. The BMA engaged with NHSPS in discussions to try and resolve matters without the need for court proceedings but has faced similar obstacles to those it faced in previous discussions.

NHSPS repeatedly refused to provide a satisfactory explanation of the legal basis for the charges made against the test claimants. In our view this shows the same “*lack of transparency*” which was found by the Public Accounts Committee in its report about NHSPS dated 4 November 2019.

The BMA and the test claimants have now notified NHSPS that they will start court proceedings without further notice.

Other work

The BMA have also been pursuing other avenues to address this issue. Earlier this year we submitted written evidence to the Public Accounts Committee as part of their investigation into NHSPS. We highlighted the impact that this situation is having on General Practice. The committee- which scrutinises public spending- took evidence from senior officials at NHSPS, NHSE and the DHSC. Their report concluded that NHSPS ‘was set up to fail’.

Guidance for practices

NHSPS aim to complete their lease regularisation programme by April 2020, so we are expecting to see increased activity to influence practices to sign leases. We are hearing from practices that are coming under pressure to sign up to other forms of agreements like 'rental agreement letters' (RAL).

Our advice to practices has been clear and consistent. Practices cannot be forced into any agreement which places the viability of the practice at risk and solutions must be sustainable. Practices should be mindful that as the BMA are proceeding with legal action, they must ensure that any agreement reached independently of this should not put themselves at risk of any future liability or compromise their future position

Practices should not accept invoices that they disagree with. In the absence of agreement by the practice (whether in a written lease or otherwise), unilateral changes to service charges cannot be made or enforced.

If you have any queries or concerns, please raise these with your LMC in the first instance who can escalate this to the BMA GPC team for further clarifications.

Yours sincerely



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