

GP Practices

19 February 2021

Update on NHS Property Services Legal Action

Dear GP Colleague,

I am writing to update you on progress relating to the ongoing legal case against NHS Property Services (NHSPS). As you may be aware, the BMA supported five GP practices to bring a legal challenge against NHSPS to clarify how service charges are calculated. The BMA now continues to support the same practices to defend legal proceedings brought against them by NHSPS in response to their claims.

Background

Since 2016 many practices have been receiving payment demands from NHSPS for non-reimbursable service charges which are significantly higher than those historically paid, while some have been billed for services that were not received. The BMA asked NHSPS to clarify the basis for the increased charges and to stop these inflated demands. However, NHSPS continued to pursue a 'full-cost recovery' approach to the charges, noting that their Consolidated Charging Policy ('Charging Policy') was a UK-wide policy which determines how practices are charged, without reference to the terms of practices' individual tenancies.

The BMA argued that NHSPS could not rely on the Charging Policy to increase charges to a practice without establishing whether the Charging Policy was incorporated into the practice's legal terms of occupation. NHSPS failed to provide the BMA with a satisfactory explanation for its blanket approach to increasing charges so the BMA supported five GP practices to bring legal challenges against NHSPS seeking declarations to clarify the basis on which NHSPS was calculating their charges. The five practices started court proceedings against NHSPS in January 2020 arguing that NHSPS cannot base charges on a policy which does not form part of the tenancy agreement.

The BMA supported the five practices to apply to the High Court to ask that it upholds their claims against NHSPS and issue declarations that the Charging Policy does not form part of their tenancies. NHSPS provided its defences to the five claims in June 2020. In those defences NHSPS admitted that the Charging Policy did not impliedly retrospectively vary the existing leases and the service charges claimed from the five GP practices were not due pursuant to the Charging Policy alone. Further they stated that they had not disputed the practices' position on the Charging Policy all along.

Case update and next steps

We consider the admission by NHSPS in all five claims to be a very significant victory. NHSPS had for years been informing practices they had to pay higher service charges in line with the Charging Policy without proper explanation. The claims have now finally established that NHSPS

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could not do this. They could not rely on the Charging Policy in isolation as a legal basis to increase charges, as the BMA had said all along. They would have to look at any service charge increases on a case-by-case basis, looking at each of the five practice's terms of occupation and explain how they say the Charging Policy applies, if at all. Through the legal action NHSPS had been forced to admit this. The practices proceeded to apply for declarations, but this was declined by the Court principally on the basis that the issue was no longer in dispute, so declarations were not required. NHSPS now needs to explain to each of the five practices the legal basis in the terms of tenancy or lease for any increased charges as well as providing an accurate detailed breakdown of all invoices and services allegedly provided.

The BMA recommends that GP practices facing similar demands to these five practices should insist that NHSPS provide a full explanation of the legal and factual basis on which their charges have been increased. If NHSPS is unable to provide a comprehensive explanation and accurate details justifying increases in charges, then it should withdraw its demands and restore the *status quo*. To assist practices, we have prepared a template letter for you to amend as appropriate and send to NHSPS.

Counterclaims

Sadly, as a response to the action taken by these five practices to try to get clarity on the legal basis for NHSPS' charges, NHSPS has chosen to issue its own claims against the practices. The practices, supported by the BMA, are disputing these claims on the basis that the practices are not liable to pay the increased sums under the terms of their occupational agreements, and in any event the sums claimed do not reflect the level of services provided by NHSPS. 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 owned by the Department of Health and Social Care.

If you have any queries or clarifications on this issue, please do not hesitate to send them to info.gpc@bma.org.uk

Yours sincerely



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