

The Future for GP Surgeries

For many GPs, the landlord of their surgery is their local PCT. When PCTs cease to exist in April 2013 - little over a year's time - where will that leave the GPs? Details are emerging from the Department of Health about what will happen to premises currently owned or leased by PCTs. NHS Trusts, Foundations Trusts and Community Foundation Trusts will have the opportunity to acquire PCT owned "service critical clinical infrastructure"; that is hospitals and other premises integral to the provision of services by those Trusts. The Trusts will not be able to acquire the PCTs' interests in operational primary care properties, including GP surgeries, dental surgeries, pharmacies and ophthalmic surgeries. LIFT schemes, Private Finance Initiative/Public Private Partnership properties and third party developments are also excluded from this process.

Those properties not transferring to Trusts will be transferred to NHS Property Services Limited, a new company which will be owned by the Department of Health. Amongst the stated objectives of NHS Property Services are:

1. to deliver value for money;
2. to cut administrative costs by consolidating the management of the properties; and
3. to deliver cost effective property solutions for community health services.

A clear theme here is value for money and the drive for great efficiency. The Department of Health says that savings will be used to invest in other frontline services. Fitness for purpose and protecting the availability of premises for the provision of services are also key considerations for the Department of Health.

PCTs are being encouraged in advance of transferring their properties to put in place proper documentation for occupiers of those properties. Where properties are being transferred to Trusts, it is not anticipated that there will be model documents for occupational arrangements. If this principle is adopted for NHS Property Services' properties then where arrangements with occupational primary care providers are currently undocumented, NHS Property Services will be free to agree documentation that is tailored to the circumstances specific to any terms that are agreed and to the given premises. Where NHS Property Services does not own the freehold itself, its freedom will be limited by the confines of its contractual position with its own landlord, being the primary care provider's superior landlord at those premises.

It is anticipated that maintenance and management staff currently employed by PCTs will transfer across to Trusts that are taking over PCT premises. It is not clear yet if the same will apply to NHS Property Services properties. As to the wider management of these premises, the umbrella group the LIFT Council has been reported as saying that LIFT companies see a role for themselves in relation to management of the NHS estate and are hoping to become involved in strategic planning for the creation of efficiencies.

GPs who own their own surgeries will not be directly affected by the transfer of PCT primary care premises to NHS Property Services. Similarly, GPs whose landlord is not a PCT will only be affected if a PCT is a superior landlord of their premises (that is, a landlord to the GPs' own landlord or "higher up the tree"). For

GPs in this category or whose direct landlord is a PCT, GPs should make sure that they understand the terms on which they hold their premises and that those terms are clear and unambiguous.

There are a number of statutory obligations that are placed on occupiers of premises and with which the documentation for the lease of the surgery should deal. In so far as GPs may not have complied with such obligations yet, CQC inspections may prompt compliance. An example is compliance with disability discrimination legislation to ensure that disabled patients have proper access to patient services at the surgery. Another example is carrying out an asbestos survey and dealing with the safe removal and/or ongoing management of asbestos at the surgery. Is the PCT responsible for the cost of this or are the GPs? Will this remain the case when NHS Property Services takes over?

The state of repair of the surgery and, if it is part of larger premises, the premises of which it forms part is another key issue. Which repair is the responsibility of the GPs? To what standard of repair must the GPs keep the surgery premises, particularly if the premises were in poor repair when the GPs took up occupation? If the PCT provides services of repair, maintenance or common areas, is it clear the basis on which they collect a contribution from the GPs for those the repairs?

Other key terms that GPs should ensure are clearly and formally documented include:

1. how long your agreement runs for. When this period expires, you will need to renegotiate the key terms with your landlord;
2. the rent and other sums you must pay;
3. when the rent will be reviewed and on what basis;
4. what alterations you are permitted to carry out to your premises;
5. what limitations there are on your ability to transfer your premises to others, for example new GP partners; and
6. what ongoing personal liability there will be on outgoing partners.

Practical steps that GPs should be taking now to ensure that they understand their liabilities and plan for them appropriately are:

1. Find out who owns what interest in your surgery premises;
2. If your landlord is not your PCT, check if your PCT has a superior lease of or the freehold interest in the premises.
3. Check that you have a clear, formal written agreement for your premises, setting out fully your and your PCT's rights and obligations including the matters listed above.
4. If you do have a written agreement, make sure that you understand what it means. Your solicitor will be able to help you with this. In particular, it may not be clear from the face of the document the extent of the personal liability of the GPs – the words in the document often do not specify the actual position because of the impact of other legal principles that apply. Also, there might be provisions in the document such as the payment of monies for building insurance or services provided by your PCT that

your PCT has not enforced to date but that NHS Property Services, with its focus on cost savings, will enforce. Make sure you budget for this.

5. If you do not have a written agreement or if some of the terms that you thought were agreed are undocumented, work now with your PCT to put formal documentation in place. You should seek legal advice and, if appropriate, surveyors advice regarding this.
6. On a practical day to day level, the management of your surgery premises is likely to be centralised when NHS Property Services takes over the PCTs' primary care property portfolio. It is anticipated that NHS Property Services will be primarily run from administrative offices in Leeds, with three additional main centres across the country. The individuals at the PCT with whom you currently have a relationship and who have knowledge and experience of your premises and your individual circumstances may not be the people who will work with you in the future. If you have any ongoing issues, you will need to build a relationship with your new contacts at NHS Property Services and make sure that they are aware of your key concerns.

Bear in mind that all this will take time. April 2013 is approaching fast.

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Ingrid deals with a broad range of commercial property matters with particular expertise in landlord and tenant and brings a commercial and pragmatic approach to the deals that she works on. Ingrid has specialist expertise in dealing with the property aspects of corporate sales, acquisitions and mergers.

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