

Do you and your Primary Care Network members have a lease in place where one is needed?

It's always essential for a GP practice to have its property 'housekeeping' in order, but as practices move forward with their Primary Care Networks it is particularly vital to ensure your PCN is in a strong position.

Here, Capsticks GP property specialists take you through the when and whys of GP lease arrangements and how we can help both your practice and PCN members.

WHEN IS A LEASE REQUIRED?

If you are in occupation of Primary Care Premises providing primary care services under a contract with NHS England/CCG and do not own the premises then a lease must be in place between the parties who are named on the contract with NHS England/CCG ("the Contract") and the owner of the premises

WHY IS A LEASE REQUIRED?

It is essential that a lease is in place for a number of reasons:

Ensuring premises costs are reimbursed under the Premises Costs Directions

Where all the parties to the Contract do not own the premises then there is no entitlement to either nominal rent or borrowing cost rent under the Premises Costs Directions and NHS E/CCG are entitled to stop reimbursement. The correct entitlement is to lease cost rent reimbursement and for this to be made available a lease approved by the District Valuer must be in place. If there is no lease in place then the practice runs the risk of reimbursement ceasing and any premises costs will then need to be met out of practice income.

Provision of clarity for obligations of the occupier and owner and management of risk

Where an occupier does not have a lease in place there are very few rights and obligations implied into the relationship between the occupier and the owner. This is a key risk as it means neither party can be certain who is responsible for a number of essential issues which relate to the safety and quality of patient care and management of practice costs for example insurance, repair, statutory compliance, utility costs, service charge and payment of rates. This also gives rise to uncertainty where disputes arise or third parties visiting the premises suffer damage or injury due to a problem with the premises.

This can lead to significant claims being made against either the owner or occupier which could have significant consequences for the continuing viability of the practice.

CQC inspections and rating

The CQC now focuses on premises issues and often requires sight of documents confirming the proper arrangements are in place. Without these the practice runs the risk of poor ratings and all that entails or in a worst case scenario special measures or closure of the practice where non-compliance with key premises requirements are shown.

Succession and new recruits

General Practice is experiencing challenges recruiting new GPs and where a lease is not in place where it should be this can create issues for new joiners who will not want to join a practice where the property liabilities are not clear. Having a leasehold arrangement can improve recruitment options as leases offer more flexibility for young GPs than capital owning arrangements but a lease should be in place to ensure the benefits of this more flexible arrangement and maximise succession opportunities.

Primary Care Networks

Due diligence on property arrangements will be a key factor when deciding who you will want to join with as part of your network, the strength of position in the network and opportunities to move forward as this model develops. Practices with robust property leases in place where required will fare better in networks than others because they will be managing risk and have more certainty of their rights and costs.

Third party occupiers

Practices commonly have third party occupiers using their premises to provide additional services to patients. It is essential to grant to these occupiers the correct legal arrangement and to recover from them the costs of occupation, particularly where the premises costs reimbursed are abated because of such occupation. Without a lease in place from the owner a practice will have no ability to grant the proper arrangements to these occupiers which can lead to greater risks and an inability to use the space effectively to enhance patient services.

HOW CAN WE HELP?

The primary care team at Capsticks has extensive experience of advising GP practices on specialist primary care leases including:

- Help with negotiating heads of terms to include clauses of benefit to a tenant
- Negotiating the form of lease with the landlord
- Advising on the approval process with NHS England
- Legal advice on arrangements with occupiers

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