

Navigating GP Premises Service Charges: Key Insights

In 2022, the cases of *Valley View & Others v NHS Property Services* ([which were supported by the BMA](#)) considered five different scenarios where service charges (charged by the landlord, NHS Property Services) were disputed.

Service charges usually arise where the GP practice doesn't own the premises and the landlord provides repair and maintenance at the property. In these cases, NHS Property Service's default position was to charge for services pursuant to its Charging Policy.

However, the Court concluded that the Charging Policy doesn't override the terms of the tenancy agreement that is in place. While these cases don't set a universal precedent, there are useful points that may assist GP practices in resolving disputes or querying the service charges raised.

Written Lease v Unwritten Lease

Under a written lease, the terms of the tenancy will govern what service charges (if any) a landlord can charge. Those terms cannot be unilaterally varied.

The starting point will of course be what the lease documentation says regarding what services the landlord should/must provide, what they can charge for and the mechanism for charging.

If a practice believes that the charges raised do not match the terms of the tenancy, then it should set out its position and ask their landlord to change the invoices.

It's trickier to determine what services can be charged for without a written tenancy agreement. In that scenario, terms will be implied by conduct, as well as by reference to any documents that may assist in evidencing the parties' intentions at the time the tenancy was agreed and then subsequently in relation to any changes.

In the recent cases supported by the BMA, the Judge expressed that where there is no written lease, evidence of what was agreed regarding service charges will be important (especially if the practice has historically paid little or no service charges). Whilst in these cases the Judge found on the evidence available that the practices had to pay the reasonable costs of services reasonably provided, that is not the default position for all practices and each case will turn on its own facts. Practices should review what they have paid historically and compile any evidence to show what the parties intended the terms of the tenancy to be.

Whether the occupation is unwritten or written, practices should ask their landlord to confirm that the charges raised are based on the terms of the tenancy. In the recent cases, it was clear that NHS Property Services' default position was to charge practices pursuant to its Charging Policy. Practices should set out to NHS Property Services what they say the terms of their tenancy are - whether written or unwritten.

Even if there is a liability to pay service charges, that does not mean that a practice must pay every penny demanded. In all cases, the landlord should provide information regarding the services provided, and the charges raised. If the practice is unsure what services have been provided or has concerns that charges have been raised and no corresponding service provided, then they should raise this with their landlord.

Indeed, the sums initially demanded by NHSPS in the cases of *Valley View & Others* were significantly higher than what was ultimately paid by the practices. The BMA successfully assisted the five practices

in the cases to significantly reduce service charge claims, with one practice agreeing a reduction of more than 80%.

We invite you to our webinar to learn more.

Webinar Invitation:

Subject: **Service Charges in GP Premises**

Date: **Wednesday, 15 November, 2023**

Time: **1pm – 2pm**

Link to register: <https://register.gotowebinar.com/register/4979506078061508955>

Why BMA Law?

Our team consists of legal professionals specialising in healthcare related law and their focus will always be on your specific need.

Clare Good, Senior Associate, regularly advises clients on all aspects of property disputes. Clare was instructed on behalf of each of the 5 practices in Valley View & Others v NHS Property Services and continues to advise GP practices in respect of service charge issues.

Get in touch

To discuss NHSPS service charges and other related matters please contact us on 0300 123 2014 or email info@bmalaw.co.uk

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