

FOCUS ON PREMISES COSTS

INTRODUCTION

On 1 April 2004, the **National Health Service (General Medical Services – Premises Costs) (England) Directions 2004** replaced the sections of the Statement of Fees and Allowances (SFAs) relating to practice premises costs. This guidance note gives GPs, practice staff and Local Medical Committees (LMCs) an overview and explanation of these Directions. Readers are strongly advised also to refer to the Directions themselves when investigating specific issues, as this note does not replicate the Directions in full.

The Premises Costs Directions (England) are currently available at:

www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_4078585

Readers may note the repeated use of the phrase “PCTs must *consider* applications for financial assistance towards...”. This must be seen in the context of the new premises funding arrangements, whereby all new developments and projects are prioritised on the basis of need. The goal of Primary Care Trusts’ (PCTs) estate strategies is to deliver year on year improvements in the quality of primary care estates. This is an NHS plan obligation, and so funding will follow the projects considered most urgent. The funding for new projects and developments (in England) will be held at a lead PCT in each Strategic Health Authority (SHA) area.

The premises funding arrangements are explained in the joint DH/National Primary and Care Trusts Development Programme guidance *Future funding for Primary Care Premises*, which is available at

www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4078600

The corresponding **Scottish** directions are the **Primary Medical Services (Premises Development Grants, Improvement Grants and Premises Costs (Directions) 2004**, available at:

www.sehd.scot.nhs.uk/gpweb/7/index7_leg.html

The **Welsh** version of the Directions is available on the NHS Wales website:

www.wales.nhs.uk/sites3/Documents/480/prem%2Ddirections%2De.pdf

The **Northern Irish** version is available on the health department’s website:

[www.dhsspsni.gov.uk/the_health_and_personal_social_services_\(general_medical_services\)_premises_costs_directions_\(northern_ireland\)_2006.pdf](http://www.dhsspsni.gov.uk/the_health_and_personal_social_services_(general_medical_services)_premises_costs_directions_(northern_ireland)_2006.pdf)

Please note: The Premises Cost Directions 2004 are currently being reviewed by the DH and the GPC Secretariat will update this guidance when we have received further information about this.

1. STRUCTURE OF THE DIRECTIONS

The Directions simplify the SFA premises sections but retain most core concepts. Part 4 of the Directions incorporate the premises 'flexibilities', which were agreed between the GPC and the DH in 2002. This scheme gave PCOs discretion to provide a grant towards the cost to practitioners of any deficit arising following the sale of the old premises.

There are **six parts** to the Directions. **Part 1** is a general introduction. **Part 6** relates to transitional provisions. The remaining **parts 2 to 5** divide premises payments into four categories within which the flexibilities are subsumed.

- **Part 2 - Premises development and improvement**
- **Part 3 - Professional fees, and related costs, incurred in occupying new or significantly refurbished premises**
- **Part 4 – Grants relating to relocation of a contractor** (mortgage redemption or deficit grants, guaranteed minimum sale price, grants towards reconversion of former residential property, grants towards surrendering or assigning leases, stamp duty land tax)
- **Part 5 - Recurring premises costs** (leasehold rent, notional rent, borrowing costs (previously 'cost rent'), equipment lease costs, running costs, service charges)

There are also three **schedules relating to previous parts of the Directions**.

- **Schedule 1 – Minimum Standards for Practice Premises**
- **Schedule 2 – Current Market Rents and Notional Rent Abatements** (this schedule sets out some general District Valuer assumptions in assessing current market rents and additions and reductions to be made)
- **Schedule 3 – Notional Rent Abatements and Notional Rent Supplements** (this schedule explains how to calculate notional rent abatements where NHS funds have contributed to the cost of building or refurbishing and notional rent supplements)

There now follows a more detailed commentary on the four categories of premises payments.

2. PREMISES DEVELOPMENTS AND IMPROVEMENTS (PARAGRAPHS 7 – 12 OF THE DIRECTIONS)

2.1 Eligible and ineligible improvements (paras 8-9)

The Directions give eight examples of the types of improvements that may be funded by an improvement grant, including extensions, alterations to comply with the Disability Discrimination Act, car parking and accommodation to meet the needs of children, elderly or infirm people.

Improvements started without the prior agreement of the PCT will not be eligible for a grant. Nor will the acquisition of land, existing or new buildings, repairs, restoration work, any work on domestic quarters in residential accommodation or extensions not attached to the main building by a covered passageway at least.

2.2 Proposals for improvement grants: the PCTs' obligations (para 10)

- **Consult LMCs** on improvement or development proposals
- Be satisfied that proposals are necessary to **support the delivery of services under its GMS contract and represent value for money**
- **Have regard to the standards** set out in 'Primary and Social Care Premises – Planning and Design Guidance' (now the 'Health and social care buildings - planning and design guidance') which can be found at www.primarycarecontracting.nhs.uk/planning-and-design-guidance.php

2.3 Proposals for improvement grants: the contractor's obligations (para 11)

- Provide **architects' or surveyors' plans** (if appropriate)
- Provide **evidence of competitive tendering process** for building work, including **three written quotes**
- Provide **planning and building regulations consents**
- **If premises are leasehold**, provide copy of the **landlord's or licensor's written consent** to the development/improvement

2.4 Project plans and conditions for payment (para 12)

If a PCT decides that a proposal from a contractor is a priority project for inclusion in its estates strategy, it must aim to finalise a **project plan** with that contractor. The PCT may only pay an improvement grant of between 33% and 66% of the cost of the improvement.

The project plan must include **project specifications** and a **payment schedule**. The payment schedule must specify that payments are conditional on the project specifications included in the plan being met. If the improvement/development is for premises held on a lease or a licence, the payments must be conditional on the contractor guaranteeing that the premises will remain in use for

- at least five years for projects up to £100,000 plus VAT
- at least ten years for projects costing over £100,000 plus VAT

If those premises cease to be used for NHS services before the 5 or 10 year period is up, the contractor will have to repay the relevant proportion of the grant (paragraph 12. b. iv).

3. PROFESSIONAL FEES, AND RELATED COSTS, INCURRED IN OCCUPYING NEW OR SIGNIFICANTLY REFURBISHED PREMISES (PARAGRAPHS 13-15 OF THE DIRECTIONS)

Under the Directions PCTs must consider applications for financial assistance towards **legal and professional fees incurred in occupying new or significantly refurbished premises**.

Where **notional rent payments** are being made for **newly built or refurbished premises**, these costs may be reasonable surveyors' or architects' fees and legal costs arising from the purchase of the site and the construction or refurbishment work. In the case of **leasehold premises**, the costs may be any **reasonable** costs of engaging a project manager and reasonable legal costs incurred in agreeing the lease. Agreed payments by the PCT to the contractor to cover these costs must cover VAT.

4. GRANTS RELATING TO RELOCATION OF A CONTRACTOR (PART 4, PARAGRAPHS 16 – 30)

4.1 Mortgage redemption or deficit grants (paras 16-23)

Contractors may make a written application to the PCT for a grant to cover mortgage redemption or deficit grants in the following circumstances:

- if the practice agrees to relocate to modern leasehold, PCT-approved premises
- if the practice has a mortgage deficit due to the market value of the premises being too low to pay off the outstanding mortgage
- if the practice must pay mortgage redemption fees as a result of selling the premises
- if the practice includes all reasonable information that the PCT requires to decide on the application.

In order for a grant to be approved, the practice must be able to show that it has made every attempt to solve the problem by other means. This includes negotiating with the lender, exploring options for **alternative use** of the property, making a thorough attempt to identify a third party developer and site for the new leasehold premises and carrying out active marketing of the premises to achieve the **best sale price**.

If a grant is approved, the contractor must agree for it to be sent directly to the lender and must provide the PCT with enough details for it to do so. It must also provide enough detail for the PCT to establish whether there is any **endowment policy cover** linked to the mortgage and, if so its **surrender value**. This is because the PCT is required to deduct the surrender value from any grant it pays.

The same terms apply to contractors that have taken out a loan to cover mortgage deficits or redemption penalties (paragraphs 20-22).

4.2 Guaranteed minimum sale price payments (paras 24-25)

If a contractor has agreed **to move to PCT-approved modern leasehold premises** it can agree a **guaranteed minimum sale price** for the previous premises with the PCT. The PCT may then, on request, provide financial assistance towards the difference between that minimum price and the sale price for the previous premises. The following conditions, amongst others must be met:

- the PCT must be convinced that the relocation will improve the range and quality of services
- the previous premises must have been placed on the open market and every effort made to achieve a maximum sale price
- the PCT must receive professional advice on the market value of the property and be satisfied that this maximum is the highest achievable sale price
- the sale is not to one of the persons mentioned in paragraph 24 (f).

4.3 Grants towards reconversion of former residential property (paras 26-27)

PCTs must consider applications for financial assistance towards reconverting former residential property back to residential use if:

- the contractor has agreed to move from premises no longer thought suitable for providing GP services to more suitable premises
- the contractor has agreed to rent out the reconverted premises, through a registered social landlord or through its own arrangements, for a minimum period of time to be set by the PCT

- the tenant or social landlord is not one of the persons mentioned in paragraph 27 (a).

4.4 Grants towards the cost of surrendering or assigning leases¹ or to meet vacated leasehold premises costs (paras 28-29)

PCTs must consider applications for financial assistance towards these costs if the contractor is moving to more suitable premises from leasehold premises no longer considered suitable for providing GP services. Meeting the costs of assigning a lease is only possible where surrender is not an option.

These grants are not payable if the previous leasehold premises are owned by or leased from an NHS body, or are wholly or partly owned by or leased from the contractor or any of the persons set out in paragraph 29 (c).

4.5 Stamp duty land tax (para 30)

PCTs must consider applications for financial assistance towards the payment of stamp duty land tax where the contractor has agreed to move to **modern leasehold practice premises approved by the PCT**.

The obligation of a contractor to pay stamp duty land tax is not conditional on whether or not the contractor is an NHS body.

5. RECURRING PREMISES COSTS (PARAGRAPHS 31 – 49)

This section of the Directions allows for the payment of what was previously known as **cost rent (before 2004) – here referred to as owner-occupier borrowing costs – actual leasehold rent, current market rents and notional rents, notional rent supplements, abated notional rent, running costs and equipment lease costs**.

5.1 Leasehold rent (paras 31-34)

PCTs must *consider* applications for financial assistance towards a contractor's rental costs. If it grants the application, the amount it must pay is the current market rent or the actual lease rent plus VAT, whichever is the lowest.

In some areas of deprivation, where prevailing rents are too low to provide sufficient returns on new capital investment or to meet the minimum standards set out in Schedule 1 of the Directions, PCTs may supplement the current market rent payable. The uplift factor will be provided by the Valuation Office Agency.

5.2 Equipment lease costs in modern leasehold premises (para 35)

The PCT must consider, and if appropriate grant, an application for financial assistance towards equipment lease costs if the costs were agreed with the PCT before the equipment lease agreement was made.

5.3 Owner-occupier borrowing costs ('cost rent') (paras 36-40)

PCTs must *consider* applications for financial assistance from owner-occupiers who have incurred borrowing costs from purchasing, building or significantly refurbishing its premises. Contractors who have financed the project with their own resources may also make such applications.

¹ Surrender of a lease is where a lessee (tenant) gives up the lease altogether. Assignment of a lease is where the lessor (landlord) or lessee (tenant) assigns their interest in the lease to another person, subject to the terms of the lease.

The contractor must have obtained **three written quotes** for the building work and must agree with the PCT which one represents best value for money. Applications may cover the following cost elements:

- site purchase and reasonable associated legal costs
- building works
- reasonable surveyors' and architects' fees
- rolled-up interest incurred on loans taken out to purchase the premises
- local authority and planning application fees
- costs to adequately fit-out and equip the new premises
- VAT and stamp duty land tax

When calculating the amount applied for, a **prescribed percentage** must be applied to the necessary level of loan taken out to cover these costs. PCTs will calculate the percentages themselves instead of NHS Estates who used to be responsible for this.

The prescribed percentages will be:

- for **fixed rate loans**, the 20 high yield gilt rate issued by the Bank of England, plus 1.5%
- for **variable rate loans**, the Bank of England Interest Rate plus 1%
- for **projects financed wholly or mainly by the contractor**, the percentage which the PCT considers best value for money.

If an application is granted, the PCT will pay the contractor monthly payments, based on an agreed annual amount, to cover the agreed borrowing costs. These will be payable on the last day of the month. They will end if the loan is paid off or if the contractor opts to switch to notional rent payments.

If a contractor changes lender or renegotiates lower loan costs, will recalculate the payments using the prevailing prescribed percentage (i.e. that in force at the time the loan or lender was changed).

If a contractor has a variable rate loan, the annual amounts from which the monthly payments are calculated will, at the end of every twelve months since the previous calculation, be recalculated using the prevailing Bank of England Base Interest Rate plus 1%.

Note that paragraph 38 of the Directions is in need of revision due to the current changes in bank rates (2009-2010). In the present market conditions, it is no longer possible for contractors to borrow from the High Street Banks or other specialist lenders at a rate of 1% over the Bank of England base rate and banks are now looking to charge a margin of between 2.5% and 3.5% over bank base rate.

The effect of this is that any contractor who incurs borrowing costs as a result of purchasing, building or refurbishing its practice premises will no longer be able to recover the interest costs in full. We have written to the DH to urge them to take this into consideration when they revise the Directions, with the aim of increasing the prescribed percentage that PCTs will reimburse to reflect the changes in bank rates.

The DH responded that 'Given that this is a circumstance not contemplated in the Directions and that any revisions will take time, PCTs may have regard to Direction 6 which would allow an uplift factor to be used to commensurate with that being reasonably applied to lenders'.

If a contractor is receiving borrowing cost payments resulting from a fixed interest loan, it **must inform the PCT of any change of lender or reduction in the level of interest** it is being charged (para 40).

5.4 Notional rent (paras 41-42)

A contractor may have repaid its loans or may prefer to receive a notional rent instead of borrowing costs payments. In such cases the contractor may apply to the PCT for notional rent payments. PCTs **must** grant the application if the contractor chooses to switch from borrowing cost payments to notional rent.

The amount **must be reviewed every three years**. The review will be brought forward if there is a change to the purpose for which the premises are used or if there is further capital investment in the premises which will be reflected in the payments the contractor is receiving under its contract.

Although the Premises Cost Directions ([Schedule 2, Part 3, Paragraph 5a](#))¹ state that the ‘...notional lease... is to be for a term of 15 years, with upward only rent reviews every three years’, notional rent can be reduced on review.

GPC has sought legal advice from Counsel on clause 5a in the Directions. Counsel confirmed that the wording in the Directions does allow for valuations to be increased or decreased. This can be based on a number of factors, including current market rental (CMR) value and the provision within the Directions ([Schedule 2, Part 1, Paragraph 2](#)) for valuers to make various assumptions when valuing premises.

5.5 Notional rent abatement and supplements (paras 43-45)

Notional rent payments will be **abated** (i.e. reduced) where improvements have been made to the premises and NHS capital has contributed to the cost of the building or refurbishment work (after 18 September 2003). The formula given in Part 1 of Schedule 3 of the Directions will be used to calculate the abatement.

Notional rent supplements are designed to ensure that contractors may **benefit financially** from enhancements to the value of the premises resulting from improvements that they themselves fund.

PCTs **must** grant applications for notional rent supplements if:

a) a contractor receiving actual lease rent payments makes further capital investments in its premises that had the prior approval of the PCT

or b) an owner-occupying contractor receiving borrowing costs makes further capital investment in the premises that had the prior approval of the PCT but which does not raise the current market rent above the level of borrowing cost payments.

The value of the supplement is calculated in accordance with Part 2 of Schedule 3 of the Directions.

5.6 Running costs (paras 46-47)

If contractors are receiving payments from the PCT for lease rental costs, notional rent or borrowing costs it **must consider** applications for financial assistance towards the following, provided they are not already receiving payments for these costs under other Directions:

- business rates
- water and sewage charges or
- in the case of modern practice premises, a **service charge** if this covers
 - fuel and electricity charges
 - insurance costs
 - costs of internal or external repairs
 - building and grounds maintenance.

There may be circumstances where service charges are already rolled up in the lease or other payments, and so the PCT is already providing financial assistance towards service charges. To avoid double payment when payments are made under this Direction, the PCT must deduct from the other, possibly hidden, service charge payment either

- an average amount that the contractor paid for the four service charge items listed above (the average amount must be calculated from the previous year’s costs) or
- 40% of the amount otherwise payable.

5.7 Abatements for private income and commercial contracts (paras 49-50)

¹ NHS (General Medical Services - Premises Costs) (England) Directions 2004
http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4078579.pdf

Any recurring notional rent or borrowing cost payments may be reduced by an abatement percentage (see table in para 49) if any part of the premises are used for or associated with the provision of medical services to private patients or under arrangements with any personal who is not a public authority. The value of any payments in kind will be taken into account in the calculation of private income percentages.

There is a threshold of 10% private income below which no abatement will be made.

5.8 Minimum standards (para 52)

All the payments under **part 5** of the Directions – those listed in this section – are subject to the **minimum standards** set out in Schedule 1 of the Directions, which is replicated in full at Appendix 1A to this guidance note.

If the minimum standards are breached, but capable of remedy by refurbishing the premises, the PCT and contractor should revert to a plan as described in paragraph 18(3) of the GMS regulations below.

(3) Where, on the date on which the contract is signed, the Primary Care Trust is not satisfied that all or any of the premises specified in accordance with paragraph (1)(b) meet the requirements set out in paragraph 1 of Schedule 6, the contract must include a plan, drawn up jointly by the Primary Care Trust and the contractor, which specifies -

(a) the steps to be taken by the contractor to bring the premises up to the relevant standard;

(b) any financial support that may be available from the Primary Care Trust; and

(c) the timescale on which the steps referred to in sub-paragraph (a) will be taken.

If the timescale mentioned in (c) has not yet elapsed, the PCT should not issue a remedial notice. If it has elapsed and the PCT wish to issue a remedial notice, it must **consult the LMC** first.

6. TRANSITIONAL ARRANGEMENTS (PARAGRAPHS 54 – 59)

The PCT must continue to provide financial assistance if it was making payments to practitioners under the SFA immediately prior to 1 April 2004 for any of the recurring costs mentioned in section 5 of this guidance note (Part 5 of the Directions). Those practitioners must either be a contractor, partner or shareholder in a contract and must own or be part owner of the leasehold or freehold interest in practice premises.

From 1 April 2004, the payments must be made to the contractor rather than the practitioner, unless the practitioner is a contractor. The PCT may simply continue with the existing payment levels without considering a new application, subject to any relevant conditions set out under Part 5 of the Directions.

APPENDIX A

SCHEDULE 1 OF THE PREMISES COSTS (ENGLAND) DIRECTIONS 2004 - MINIMUM STANDARDS FOR PRACTICE PREMISES

1. As regards the design or construction of the premises, or of the approach or access to the premises, to which the payments relate, the contractor must comply with any obligations it has to its own members (where applicable), staff, contractors and to persons to whom it provides primary medical services under the Health and Safety at Work Act 1974 (and legislation under that Act) and the Disability Discrimination Act 1995. The requirements of the 1995 Act include taking such steps as are reasonable to—
 - (a) provide for ease of access to the premises and ease of movement within the premises for all users of the premises (including wheelchair users);
 - (b) provide adequate sound and visual systems for the hearing and visually impaired; and
 - (c) remove barriers to the employment of disabled people.
2. Adequate facilities should also be provided for the elderly and young children, including nappy-changing and feeding facilities. There should also be adequate lavatory and hand washing facilities which meet current infection control standards.
3. If the premises has a treatment room, this should be properly equipped (an additional treatment room may be required where enhanced minor injury services are provided).
4. The premises should have a properly equipped consulting room for use by the practitioners with adequate arrangements to ensure the privacy of consultations and the right of patients to personal privacy when dressing or undressing, either in a separate examination room or in a screened-off area around an examination couch within the treatment room or the consulting room. However, in the case of branch surgeries, this standard need not be fully met if the contractor provides outlying consultation facilities using premises usually used for other purposes, and these meet with the approval of the PCT,
5. The access arrangements for the building should be convenient for all users.
6. There should be washbasins connected to running hot and cold water (possibly distributed through mixer taps) in consulting rooms and treatment areas or, if this is not possible, then in an immediately adjacent room.
7. There should be adequate internal waiting areas with—
 - (a) enough seating to meet all normal requirements, either in the reception area or elsewhere; and
 - (b) the facility for patients to communicate confidentially with reception staff, including by telephone.
8. There should be with adequate standards of lighting, heating and ventilation.
9. The premises, fittings and furniture should be in good repair and (when being used for the provision of primary medical services) clean.
10. There should be adequate arrangements for the storage and disposal of clinical waste.
11. There should be adequate fire precautions, including provision for safe exit from the premises, designed in accordance with the Building Regulations agreed with the local fire authority.
12. There should be adequate security for drugs, records, prescription pads and pads of doctors' statements.
13. If the premises are to be used for minor surgery or the treatment of minor injuries, there should be a room suitably equipped for the procedures to be carried out.