

2015 No. 9

THE NATIONAL HEALTH SERVICE (WALES) ACT 2006

THE NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES – PREMISES COSTS) (WALES) DIRECTIONS 2015

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The Welsh Ministers, in exercise of the powers conferred upon them by sections 12(3), 45(1), 203(9) and 203(10) of the National Health Service (Wales) Act 2006(a), give the Directions set out in this instrument to Local Health Boards.

PART 1 GENERAL

Title, commencement and application

1. The title of these Directions is the National Health Service (General Medical Services – Premises Costs) (Wales) Directions 2015 and they come into force on 30 June 2015. These Directions apply in relation to Wales only and are given to Local Health Boards.

Interpretation

2. In these Directions—

“the 2004 Directions” means the National Health Service (General Medical Services – Premises Costs) (Wales) Directions 2004;

“the 2006 Act” means the National Health Service (Wales) Act 2006;

“appointed valuer” means a suitably qualified professional who is a member of the Royal Institution of Chartered Surveyors appointed by the Local Health Board to perform any property valuation or related specialist service for the purposes of these Directions;

“contractor”, unless the context otherwise requires, means a person entering into, or who has entered into, a General Medical Services contract with a Local Health Board;

“family member” means—

- (a) spouse (which includes husbands, wives, unmarried partners, partners of the same sex and former spouses)
- (b) lineal ancestors (which includes step-parents, adoptive parents and their ancestors) and lineal descendants (which includes step-children, adopted children and their descendants);
- (c) brothers, sisters, aunts, uncles, nephews, nieces and first cousins (which includes their step or adoptive equivalents); and
- (d) the spouse of any family member falling within sub-paragraph (b) or (c);

“GMS contract” means a general medical services contract under section 42 of the 2006 Act;

(a) 2006 c.42.

“Local Medical Committee” means a committee recognised under section 454 of the 2006 Act;

“LHB” means a Local Health Board, and “its LHB”, in relation to a contractor, means the Local Health Board with which the contractor has entered into or is entering into a GMS contract;

“practice premises” means premises specified in a GMS contract as premises at which services are to be provided under the contract;

“registered social landlord” means a person registered in a register of social landlords maintained under section 1 of the Housing Act 1996(a);

“VAT” means Value Added Tax.

Payments in relation to which these Directions apply

3. These Directions apply in relation to the payments made to contractors—
- (a) in respect of premises developments or improvements;
 - (b) in respect of professional fees and related costs, incurred in occupying new or significantly refurbished premises;
 - (c) relating to the relocation of, or remortgage by, the contractor; or
 - (d) in respect of recurring premises costs.

Payments in relation to which these Directions do not apply

4. However, these Directions do not apply in relation to payments made to contractors under a GMS contract in respect of a plan drawn up in accordance with regulation 18(3) of the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004(b).

General duties of LHBs under these Directions

5. Where pursuant to or as a consequence of these Directions a LHB may or must make a payment to a contractor in specified circumstances—

- (a) the LHB must only make the payment in the specified circumstances; and
- (b) if the payment is to be made, the LHB must ensure:—
 - (i) the payment is made under the contractor’s GMS contract; and
 - (ii) any conditions to which the payment is subject which are set out in these Directions are terms of the contract.

Financial assistance in circumstances not contemplated in these Directions

6. However, these Directions do not prevent LHBs from providing such financial assistance as they think fit in order to pay, or contribute towards, the premises costs of a contractor in circumstances that are not contemplated by the payment arrangements set out in these Directions, such as where:

- (a) the contractor is providing services under a temporary GMS contract;
- (b) an emergency need for financial assistance in respect of premises costs arises in circumstances that could not reasonably have been foreseen;
- (c) the contractor needs temporary accommodation (whether in the form of portable premises or an existing building) while new practice premises are being built or existing practice premises refurbished; or

(a) 1996 c.52
(b) S.I. 2004/478 (W.48).

- (d) the financial assistance relates to contractual arrangements for the provision of primary medical services under section 41 of the 2006 Act (primary medical services).

PART 2

PREMISES DEVELOPMENT AND IMPROVEMENT

Premises development and improvement proposals

7. Where a contractor has a proposal for—

- (a) the building of new premises to be used for providing primary medical services;
- (b) the purchase of premises to be used for providing primary medical services;
- (c) the development of premises which are used or are to be used for providing primary medical services (or for significant changes to existing development proposals);
- (d) utilising previously unused premises space for the provision of primary medical services;
- (e) the sale and lease back of premises used for primary medical services; or
- (f) premises improvements, which are to be the subject of a premises improvement grant application,

and it puts that proposal to its LHB as part of an application for financial assistance in respect of the proposal, the LHB must consider that application.

A LHB must not, however, agree to fund any proposal where a contract for works has been entered into, or work commenced, that has not been subject to prior agreement with the LHB (such agreement not to be unreasonably withheld or delayed).

Projects that may be funded with premises improvement grants

8. The types of premises improvement projects that may be the subject of a premises improvement grant include—

- (a) improvements to practice premises in the form of building an extension to the premises, bringing into use rooms not previously used to support delivery of primary medical services or the enlargement of existing rooms;
- (b) improving physical access to and within practice premises, and alterations or additions made necessary by the Equality Act 2010;
- (c) improving lighting, ventilation and heating installations (including replacement of other forms of heating by central heating) of practice premises;
- (d) the reasonable extension of telephone facilities within practice premises (but not the initial purchase or replacement of telephone systems);
- (e) the provision of car parking;
- (f) the provision of suitable accommodation at the practice premises to meet the needs of children and elderly or infirm people;
- (g) fabric improvements to practice premises such as double glazing, security systems and work required for fire precautions and other statutory building requirements;
- (h) refurbishment of a building not previously used for the provision of primary medical services but which is to be used as practice premises on a temporary basis;
- (i) improvements which are necessary in connection with emergency planning;
- (j) improvements which are necessary to meet infection control or decontamination requirements at practice premises, including the installation of specialist floor covering in all areas used for consultation and treatment; or
- (k) the installation of a water meter.

Projects that must not be funded with premises improvement grants

9. LHBs must not, however, agree to fund the following expenditure with a premises improvement grant—

- (a) any project where a contract for works has been entered into, or work commenced, that has not been subject to prior agreement with the LHB;
- (b) any cost elements in respect of which a tax allowance is being claimed;
- (c) the cost of acquiring land, existing buildings or constructing new buildings;
- (d) the repair or maintenance of premises (including work made necessary as a result of wear and tear);
- (e) the replacement, repair or maintenance of furniture, furnishings, equipment and floor covering, with the exception of the specialist floor covering referred to in direction 8(j);
- (f) the like for like replacement or repair of central heating systems, including the replacement or repair of boilers;
- (g) restoration work in respect of structural damage or deterioration;
- (h) any work in connection with the domestic quarters or the residential accommodation of practitioners, caretakers or practice staff, whether or not it is a direct consequence of work on surgery accommodation;
- (i) any extension not attached to the practice premises by at least a covered passage way;
- (j) improvements solely to reduce the environmental impact of the practice premises; or
- (k) projects which have a total cost of less than £3,000.

Initial consideration of premises development and improvement proposals

10. Before determining whether a proposal from a contractor of a type mentioned in directions 7 or 8 should be included in the implementation of the LHB's estates strategy for investment prioritisation, the LHB must—

- (a) satisfy itself that the contractor's application for financial assistance under these Directions is in the requisite form and is supported by all relevant documentation;
- (b) enquire of the contractor whether or not the practice premises is fully utilised and where it is not, explore with the contractor options for fully utilising the practice premises for the provision of primary care services;
- (c) enquire of the contractor whether the contractor is registered for VAT purposes and if so obtain the contractor's VAT registration number;
- (d) enquire of the contractor whether the contractor intends to claim a tax refund or allowance in respect of any element of the cost to which an application for financial assistance relates;
- (e) have regard to its budgetary targets;
- (f) seek professional advice on all matters for which it does not have the requisite level of expertise;
- (g) consult the Local Medical Committee (if any) for its area about the proposal;
- (h) satisfy itself that the proposal is required to support, and will support, the delivery of the services that the contractor has agreed to provide under its GMS contract;
- (i) satisfy itself, where appropriate in consultation with its professional advisors, that the proposal represents value for money;
- (j) ascertain if the premises are held on a lease or a licence and—
 - (i) satisfy itself that the contractor has adequate security of tenure (i.e. the unexpired portion of a lease must be at least as long as the period of guaranteed use (see direction 12(b)(iii) and (iv) below), and

- (ii) satisfy itself that a contractor intends to occupy the premises for at least as long as the period of guaranteed use (see direction 12(b)(iii) and (iv) below) and will enjoy protection under Part 2 of the Landlord & Tenant Act 1954(a) for that period;
- (k) have regard to the “General Medical Practice Premises Design and Specification Requirements” (“Requirements”) issued by or on behalf of the Welsh Ministers. If a contractor is proposing to depart from the Requirements the LHB must satisfy itself that—
 - (i) the departure is reasonable in the circumstances. LHBs are required to obtain approval in writing from the Welsh Ministers by submitting a letter which outlines why they are satisfied that any reduction of or enhancement to the Requirements is reasonable and represents value for money; and
 - (ii) the premises will nevertheless meet the Minimum Standards set out in Schedule 1 and thereby be suitable for the delivery of services and be sufficient to meet the reasonable needs of patients; and
- (l) have regard to the “NHS Wales Infrastructure Investment Guidance” issued by or on behalf of the Welsh Ministers.

Documentation required in respect of premises developments or improvements

11. The LHB must refuse an application for financial assistance in respect of a premises development or improvement proposal from a contractor unless—

- (a) where the nature of the work is such that, in the opinion of the LHB, it requires architect’s plans for the development or improvement to be drawn up, the contractor supplies the LHB with such plans;
- (b) where the nature of the work requires building work, the contractor—
 - (i) carries out a tendering process for a building contractor to undertake the work, resulting in at least three written quotes, and
 - (ii) agrees with the LHB which of those written quotes represents best value for money;
- (c) the contractor supplies to the LHB copies of any necessary planning and building regulations consents; and
- (d) where the premises development or improvement is to premises that are held on a lease or a licence, the contractor supplies the LHB with a copy of the written consent to the development or improvement of the landlord or licensor, as appropriate.

Priority funding projects and conditions attached to payments

12.—(1) If the LHB determines that a proposal from a contractor for premises development or improvement of a type mentioned in directions 7 and 8 is to be included in the implementation of the LHB’s estates strategy for investment prioritisation, and is to be one of its priority funding projects, the LHB must seek to finalise a project plan with the contractor.

(2) If the financial assistance is by way of a premises improvement grant, the LHB may agree a contribution which must not be less than 33% or more than 66% of the total cost of the premises improvement.

(3) The LHB must only agree to a finalised project plan under paragraph (1) with the contractor if it includes—

- (a) a payment schedule setting out the financial assistance to which the LHB has committed itself in respect of the project (the LHB must also ensure that this payment schedule is included in any payment schedule in the contractor’s GMS contract); and
- (b) the following conditions—

(a) 1954 c.56.

- (i) a condition which has the effect of making payments to the contractor under that payment schedule subject to a requirement that the contractor adheres both to the specifications for the project which are set out in the finalised project plan and to any standards to be met during the development or improvement work which are set out in the finalised project plan;
- (ii) a condition which has the effect of making payments to the contractor under that payment schedule subject to a requirement that the contractor, when carrying out the development or improvement work, does not depart significantly, from the version of the project in the finalised project plan (which may be varied with the consent of both parties);
- (iii) a condition (unless such a condition is unreasonable in the circumstances) that has the effect of making the payments to the contractor under that payment schedule subject to a requirement that the contractor guarantees that the premises will, once the development or improvement work has been completed, remain in use for the delivery of NHS services—
 - (a) for projects costing up to £100,000 plus VAT, for at least 6 years, and
 - (b) for projects costing between £100,000 and £250,000 plus VAT, for at least 9 years, and
 - (c) for projects costing over £250,000 plus VAT, of at least 15 years; and
- (iv) a condition (unless such a condition is unreasonable in the circumstances) that has the effect of committing the contractor to repaying a proportion of the grant (“the repayable amount”) should the premises cease to be used to provide NHS services before that 6, 9 or, as the case may be, 15 year period of guaranteed use has expired; and
- (v) The repayable amount referred to in subparagraph (iv) above is to be calculated by multiplying the amount the LHB has paid by the fraction produced by dividing the amount of time (expressed in whole and part years) left before the 6, 9 or 15 year period of guaranteed use has expired by 6, 9 or, as the case may be, 15 years.

PART 3

PROFESSIONAL FEES, AND RELATED COSTS, INCURRED IN OCCUPYING NEW OR SIGNIFICANTLY REFURBISHED PREMISES

Reimbursement of legal and other professional costs incurred in occupying new or significantly refurbished premises

13. Where—

- (a) a contractor has procured newly built practice premises or refurbished existing practice premises;
- (b) actual or notional rent payments are to be paid to the contractor in respect of those premises by the LHB pursuant to these Directions on completion of the building or refurbishment work; and
- (c) the contractor makes an application to its LHB for reimbursement in respect of the professional expenses referred to in direction 14,

the LHB must consider that application for financial assistance and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application.

Types of professional expenses that may be reimbursed

14.—(1) In the case where—

- (a) notional rent payments are to be paid in respect of newly built or refurbished practice premises, the reimbursable professional expenses which will be reflected in the notional rent calculation are—
 - (i) reasonable surveyors', engineers' and architects' fees, up to a maximum reimbursable amount of 12% of the total reasonable contract sum relating to the construction or refurbishment work; and
 - (ii) reasonable legal costs in connection with the purchase of a site (where applicable) and the construction or refurbishment work; and
- (b) the practice premises are, or are to be, leasehold premises, the LHB may agree a contribution towards the professional expenses incurred including—
 - (i) reasonable costs of engaging a monitoring surveyor to oversee the interests of and give advice to the contractor, up to the maximum reimbursable amount of 1% of the total reasonable contract sum relating to the construction or refurbishment work; and
 - (ii) reasonable legal costs incurred by the contractor in connection with agreeing the lease or a contract for the lease.

Value Added Tax on professional expenses

15. Where—

- (a) a LHB decides to grant an application for reimbursement in respect of the professional expenses mentioned in direction 14; and (b) VAT has been properly charged in respect of the amount that the LHB has decided to reimburse,
- (b) the LHB must provide the contractor with financial assistance, under its GMS contract, to cover the cost to the contractor of that VAT.

PART 4

GRANTS RELATING TO RELOCATION OF, OR RE-MORTGAGING BY A CONTRACTOR

Repayment mortgage redemption/deficit grants

16.—(1) Where a contractor—

- (a) agrees to relocate to premises approved by its LHB and identified in its prioritised programme for investment; and
- (b) makes an application in writing to its LHB for a repayment mortgage redemption or deficit grant in respect of a repayment mortgage to cover all or a proportion of the following—
 - (i) a repayment mortgage deficit which arises, after owner-occupied practice premises are sold, because the actual sale price of the premises was not sufficient to clear the outstanding repayment mortgage on the property, or
 - (ii) repayment mortgage redemption fees that the contractor may incur as a result of the sale or re-mortgage of such premises; and
- (c) includes in that application all reasonable information required of it by the LHB to determine the application, including details of the amount of the outstanding repayment mortgage that was used to build or improve the property,

the LHB must consider that application for financial assistance and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set itself), grant that application.

(2) Where a contractor re-mortgages practice premises and—

- (a) the contractor is in receipt of financial assistance under direction 35 in respect of those premises;

- (b) the existing mortgage is a repayment mortgage at a fixed rate of interest;
- (c) the new mortgage is a repayment mortgage at a lower rate of interest than the existing repayment mortgage, and for no more than the amount outstanding under the existing repayment mortgage;
- (d) the contractor makes an application in writing to the LHB for a repayment mortgage redemption grant to cover all or a proportion of the redemption fees that the contractor may incur as a result of the re-mortgage; and
- (e) includes in that application all reasonable information required of it by the LHB to determine the application, including details of the existing repayment mortgage and the new repayment mortgage,

the LHB must consider that application for financial assistance and in appropriate cases (having regard to amongst other matters, to the budgetary targets it has set itself, and to the likely savings being made in the level of financial assistance given under direction 35 as a result of the re-mortgage) grant that application.

Costs that may not be funded with repayment mortgage redemption/deficit grants

17. LHBs must not agree to cover the following costs or liabilities of a contractor with a repayment mortgage redemption or deficit grant—

- (a) any proportion of a mortgage deficit that has arisen through—
 - (i) arrangements entered into by the contractor which result in mortgage repayments not being made for any period (“payment holidays”), or
 - (ii) reduced loan repayments not reflected in the borrowing costs reimbursement; and
- (b) any borrowings or redemption charges not connected with the original purchase of land, building works or subsequent improvements to the premises – for example, furnishings, fittings and equipment (including IT and telephone systems etc.).

Matters that must be considered before determining repayment mortgage redemption/deficit grant applications

18. Before determining an application for a repayment mortgage redemption/deficit grant from a contractor, a LHB must obtain professional advice and be satisfied that—

- (a) negotiations with the lender have limited the extent of any deficit or redemption charges;
- (b) options for change of use for the property have been considered and where appropriate, outline planning permission sought or obtained;
- (c) a proper process has been undertaken to identify a suitable developer and a site for the new premises;
- (d) the timing of the grant is appropriate to maximising the opportunity for a sale which will coincide with completion and occupation of the new premises; and
- (e) the sale of the premises has been adequately marketed and the best price obtained in all the circumstances.

Conditions attached to repayment mortgage redemption/ deficit grants

19. Although, for accounting purposes, a repayment mortgage redemption/deficit grant is to be treated as a payment to the contractor, the LHB must ensure that payment of the grant is made subject to the following conditions—

- (a) the contractor must consent to the LHB sending the grant directly to the lender;
- (b) the contractor must provide the LHB with sufficient details to enable it to do so; and
- (c) the contractor must not be in receipt of financial assistance under direction 20 in respect of the same mortgage.

Borrowing costs relating to repayment mortgage redemption/ deficit costs

20. Where a contractor, which is not in receipt of a repayment mortgage redemption/ deficit grant—

- (a) agrees to relocate to modern premises approved by its LHB and identified in its prioritised programme for investment;
 - (b) takes out a loan to cover—
 - (i) a repayment mortgage deficit which arises, after owner-occupied practice premises are sold, because the actual sale price of the premises was not sufficient to clear the outstanding repayment mortgage on the property, or
 - (ii) repayment mortgage redemption fees that the contractor may incur as a result of the sale or re-mortgage of such premises,
- or a third party takes out a loan to cover those costs or fees on its behalf and the contractor is obliged to meet the third party's liabilities in respect of the repayment of that loan; and
- (c) makes an application in writing to its LHB for financial assistance towards meeting its, or the third party's regular payments to repay the loan; and
 - (d) includes in that application all reasonable information required of it by the LHB to determine the application, including details of the amount of the outstanding repayment mortgage that was used to build or improve the property,

the LHB must consider that application for financial assistance and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set itself), grant that application.

(2) Where a contractor re-mortgages practice premises and

- (a) the contractor is in receipt of financial assistance under direction 35 in respect of those premises;
- (b) the existing mortgage is a repayment mortgage at a fixed rate of interest;
- (c) the new mortgage is a repayment mortgage at a lower rate of interest than the existing repayment mortgage, and for no more than the amount outstanding under the existing repayment mortgage;
- (d) the contractor takes out a loan to cover repayment mortgage redemption fees that the contractor may incur as a result of the re-mortgage of the premises, or a third party takes out a loan to cover those fees on its behalf and the contractor is obliged to meet the third party's liabilities in respect of the repayment of that loan;
- (e) the contractor makes an application in writing to the LHB for financial assistance towards meeting its, or the third party's, regular payments to repay the loan; and
- (f) includes in that application all reasonable information required of it by the LHB to determine the application including details of the existing mortgage and the new mortgage,

the LHB must consider the application for financial assistance and in appropriate cases (having regard to amongst other matters, to the budgetary targets it has set itself and to the likely savings to be made in the level of financial assistance given under direction 35 as a result of the re-mortgage) grant that application.

Costs that must not be funded with repayment mortgage redemption/deficit loan repayment payments

21. A LHB must refuse an application of a type mentioned in direction 20 if the loan covers—

- (a) any proportion of a mortgage deficit that has arisen through—
 - (i) arrangements entered into by the contractor which result in mortgage repayments not being made for any period (“payment holidays”) or

- (ii) reduced loan repayments having been made which have not been reflected in the borrowing cost or cost rent reimbursement;
- (b) any borrowings or redemption charges not connected with the original purchase of land, building works or subsequent improvements to the premises (for example, furnishings, fittings, and equipment (including IT or telephone systems, etc.)).

Matters that must be considered before determining applications of the type mentioned in direction 20

22. Before determining an application of the type mentioned in direction 20, a LHB must obtain professional advice and be satisfied that—

- (a) negotiations with the lender have limited the extent of any deficit or redemption charges;
- (b) options for change of use for the property have been considered and where appropriate, outline planning permission sought or obtained;
- (c) a proper process has been undertaken to identify a suitable third party developer and a site for the new leasehold premises;
- (d) the timing of the loan—
 - is appropriate to maximising the opportunity for a sale which will coincide with completion and occupation of the new premises; and
- (e) the sale of the premises is adequately marketed and the best price obtained.

Conditions attached to repayment mortgage redemption/deficit loan repayment payments

23. Although, for accounting purposes, regular payments that a LHB makes on granting an application of the type mentioned in direction 20 are to be treated as a payment to the contractor, the LHB must ensure that the payments are made subject to the following conditions—

- (a) the contractor must consent to the LHB sending the payments directly to the lender;
- (b) the contractor must provide the LHB with sufficient details to enable it to do so; and
- (c) the contractor must not be in receipt of a mortgage redemption/deficit grant from its LHB in respect of the same mortgage.

Guaranteed minimum sale price payments

24. Where—

- (a) a contractor agrees with its LHB to relocate to premises approved by the LHB in its prioritised programme for investment;
- (b) the relocation will, in the opinion of the LHB, result in an improvement in the range and quality of services to be provided to patients by the contractor;
- (c) the LHB and the contractor have agreed a guaranteed minimum sale price for owner-occupied practice premises that are being sold (“the previous premises”);
- (d) the LHB is satisfied that the previous premises were placed on the open market with active marketing to sell them at the maximum price achievable on a date to coincide with the contractor’s move to new premises;
- (e) the LHB is satisfied, having taken professional advice, that an increased offer (i.e. an offer that was better than the one that was in fact accepted for the previous premises) could not reasonably have been achieved;
- (f) the LHB is satisfied that the previous premises have not been sold to—
 - (i) the contractor,
 - (ii) a family member of the contractor,
 - (iii) a present or former partner in, shareholder in or employee of the contractor,

- (iv) a family member of a present or former partner in, shareholder in or employee of the contractor, or
- (v) the employer of a family member of a present or former partner in or shareholder in or employee of the contractor; and
- (g) in appropriate circumstances (for example, where the future planning use of the property is unclear)—
 - (i) the agreement for sale of the previous premises includes a clawback arrangement, and
 - (ii) the contractor has agreed with the LHB an enforceable undertaking in the form of a condition in its GMS contract that it will use any clawback monies to repay all or a proportionate part (as is appropriate) of any payment from the LHB pursuant to this direction,

if the sale price for the previous premises is less than the agreed guaranteed minimum sale price for the premises, the LHB must provide to the contractor under its GMS contract financial assistance in the form of a payment equal to the difference between those two prices.

Agreement of a guaranteed minimum sale price

25. If a LHB is considering agreeing a guaranteed minimum sale price with a contractor, it must—

- (a) seek professional advice on the achievable sale price of the premises to be sold; and
- (b) only agree a guaranteed minimum sale price with the contractor—
 - (i) on the basis of the professional advice about the actual sale price of the property that it has received, and
 - (ii) having taken into account the options for change of use of the premises.

Grants relating to the cost of reconverting former residential property

26. Where a contractor has a proposal for reconverting practice premises which were previously the contractor's (or a partner in or a shareholder in the contractor's) owner-occupied residential property back to residential use, and—

- (a) the property is no longer suitable for the delivery of modern primary medical services; and
- (b) the contractor has agreed to—
 - (i) move to premises suitable for the delivery of modern primary care services; and
 - (ii) rent out the reconverted premises through arrangements made by the contractor directly or through a residential social landlord for a minimum period of time, which is to be set by its LHB and which its LHB must set for a period that is commensurate to the level of grant awarded pursuant to an application of the type mentioned in this direction; and
- (c) the contractor makes an application to its LHB for a residential property reversion grant towards the cost of the reversion,

the LHB must consider that application for financial assistance and in appropriate cases (having regard, to amongst matters, to the budgetary targets that it has set for itself), grant that application.

Circumstances where residential property reversion grants are not payable

27. LHBs must ensure that payments of a residential property reversion grant is made subject to conditions to the following effect—

- (a) for the minimum period of time set by the LHB in accordance with direction 26(b)(ii), any registered social landlord through whom the premises are or will be rented out, and any tenant to whom all or part of the premises are or will be rented out, must not be—

- (i) a present or former partner in, shareholder in or employee of the contractor,
 - (ii) a family member of a present or former partner in, shareholder in or employee of the contractor; or
 - (iii) the employer of a family member of a present or former partner in, shareholder in or employee of the contractor; and
- (b) the contractor must not occupy all or part of the premises during the minimum period of time that has been set by the LHB in accordance with direction 26(b)(ii).

Grants towards the cost of surrendering or assigning leases or to meet vacated leasehold premises costs and conditions to be attached

28. Where a contractor which is moving or has moved to premises that are suitable for the delivery of primary medical services makes an application to its LHB for a grant towards—

- (a) the costs reasonably incurred (including reasonable legal costs) that relate to—
 - (i) surrendering a lease or
 - (ii) assigning a lease where surrender of the lease was not realistically possible,
 of leasehold premises that are or were practice premises but are not suitable for the delivery of modern primary medical services; or
- (b) vacated leasehold premises costs, for the 12 month period immediately following the contractor's vacation of the premises that relate to the contractor's ongoing liabilities (or a partner in or shareholder in the contractor's ongoing liabilities) in respect of practice premises that are being or have been vacated because they are not suitable for the delivery of modern primary medical services,

the LHB must consider that application for financial assistance and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set itself), grant that application and ensure that payment of the grant is made subject to the condition that the contractor must continue to take all reasonable steps to surrender or assign the lease to a third party on reasonable terms.

Circumstances where an application of the type mentioned in direction 28 must be refused

29. The LHB must refuse an application of the type mentioned in direction 28 where—

- (a) the costs to which the application relates were incurred without the prior approval of the LHB;
- (b) the leasehold premises are wholly or partly owned by, or are leased from—
 - (i) the contractor;
 - (ii) a family member of the contractor;
 - (iii) a present or former partner in, shareholder in or employee of the contractor,
 - (iv) a family member of a present or former partner in, shareholder in or employee of the contractor, or
 - (v) the employer of a family member of a present or former partner in, shareholder in or employee of the contractor;
- (c) in the case of costs of assigning a lease, surrender could be agreed with the landlord, unless professional advice has been obtained and the conclusion of that advice is that surrender or assignment is not cost effective;
- (d) in the case of vacated leasehold premises costs—
 - (i) surrender could be agreed with the landlord, or
 - (ii) assignment to a third party could be agreed with the landlord and is realistically possible,
 unless professional advice has been obtained and the conclusion of that advice is that surrender or assignment is not cost effective; or

- (e) in the case of vacated leasehold premises—
 - (i) the costs relating to liabilities in respect of the vacated leasehold premises have not been agreed with the landlord, or
 - (ii) the financial assistance is not subject to a condition to the effect that the contractor will continue to take all reasonable steps to surrender or assign the lease to a third party on reasonable terms.

Stamp Duty Land Tax payable on agreeing a new lease

30. Where—

- (a) the contractor agrees with the LHB to relocate to or additionally occupy leasehold practice premises approved by the LHB in the implementation of the LHB’s prioritised programme of investment;
- (b) the relocation or additional premises will, in the opinion of the LHB, result in an improvement in the range and quality of services to be provided to patients by the contractor; and
- (c) the contractor makes an application to its LHB for financial assistance to cover the cost of any Stamp Duty Land Tax incurred by the contractor as a consequence of signing a lease to occupy the GMS element of the premises,

the LHB must consider that application for financial assistance and, in appropriate circumstances (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application.

PART 5

RECURRING PREMISES COSTS

Leasehold premises’ rental costs

31. Subject to the following provisions of this Part, where—

- (a) a contractor which rents its practice premises makes an application to its LHB for financial assistance towards its rental costs; and
- (b) the LHB is satisfied (before the lease is agreed or varied), where appropriate in consultation with the appointed valuer or its professional advisors, that—
 - (i) the terms on which the new or varied lease is to take effect represent value for money; and
 - (ii) the terms on which the new or varied lease is to take effect do not place obligations upon the contractor in relation to the maintenance or repair of the external structure of the premises,

the LHB must consider that application and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application.

Amount of leasehold premises’ rental costs payable

32.—(1) If a LHB does grant the application, subject to the following provisions of this Part, the amount that it must pay in respect of a contractor’s rental costs for its practice premises is—

- (a) the current market rent for the premises, plus any VAT, of which the contractor is not able to claim a refund, payable by the contractor if this is properly charged to the contractor by the landlord; or
- (b) the actual lease rent for the premises, plus any VAT, of which the contractor is not able to claim a refund, payable by the contractor if this is properly charged to the contractor by the landlord,

whichever is the lower amount.

(2) In circumstances where the local resolution procedure is applied and a third party, who is agreed by all parties, is engaged to determine the current market rent for the contractor's premises, the current market rent is as determined by that third party.

Current market rents

33.—(1) The amount of the current market rent of leasehold premises is to be determined in accordance with Parts 1 & 2 of Schedule 2. However, having regard to the fact that current market rent levels in some areas of deprivation may be too low to provide—

- (a) sufficient returns to support new capital investment in practice premises; or
- (b) sufficient support for existing premises that meet the minimum standards set out in Schedule 1,

LHBs may in such circumstances, having taken advice from its professional advisors, increase the amount it would otherwise pay as the current market rent of the practice premises by adding a supplement so that it does provide both a sufficient return to support new capital investment and sufficient support for existing premises that meet the minimum standards.

(2) Where a contractor has entered into an agreement to sell and lease back its practice premises and has received financial assistance in respect of that arrangement under direction 7, the amount of the current market rent of that leasehold practice premises is to be determined in accordance with Parts 1 & 2 of Schedule 2. However, the amount which the LHB must pay as the current market rent of the practice premises is—

- (a) the current market rent for the premises;
- (b) the actual lease rent for the premises, plus any VAT, of which the contractor is not able to claim a refund, payable by the contractor if this is properly charged to the contractor by the landlord; or
- (c) the amount paid by the LHB in respect of the contractors' notional rent payments for its practice premises immediately prior to the sale and lease back;

whichever is the lower amount.

Premiums affecting the lower rent rate

34.—(1) If the actual lease rent for practice premises, plus any properly chargeable VAT, is only lower than the current market rent for those premises because, in the calculation of the current market rent for the premises, the LHB includes the value of a premium paid by the tenant, the amount to be paid by the LHB pursuant to direction 32 is the current market rent for the premises rather than the actual lease rent.

(2) Actual lease rent for the purpose of paragraph (1) should not include any element of rent which would not be included in an assessment of current market rent, and must not include any properly chargeable VAT for which the contractor can claim a refund.

Borrowing costs

35. Subject to the following provisions of this Part, where a contractor—

- (a) incurs borrowing costs as a result of purchasing, building or significantly refurbishing its practice premises; and
- (b) makes an application to its LHB for financial assistance towards meeting those costs,

the LHB must consider that application and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application.

Conditions to be met if applications for financial assistance in respect of borrowing costs are to be granted

36. If the contractor's borrowing costs relate to the building of practice premises or the significant refurbishment of practice premises, a LHB must only grant an application of the type mentioned in direction 35 if—

- (a) in respect of the building/refurbishment work, the contractor—
 - (i) carries out or carried out a tendering process for a firm to undertake the work, resulting in at least three written quotes;
 - (ii) agrees or agreed with the LHB which of those written quotes represents or represented best value for money;
- (b) the amount of financial assistance applied for has been calculated by applying the prescribed percentage to the necessary level of loan incurred (and agreed with the LHB, to meet the aggregated cost elements to build and fit-out the premises. For these purposes, the cost elements that may be aggregated include—
 - (i) site purchase;
 - (ii) building works;
 - (iii) reasonable surveyors', engineers' and architects' fees, and reasonable legal fees arising out of the purchase of the site (where applicable) and the building or refurbishment;
 - (iv) the reasonable cost of engaging a project manager to oversee the interests of and give advice to the contractor;
 - (v) any rolled-up interest incurred on loans taken out to procure the premises;
 - (vi) local authority and planning application fees necessarily incurred;
 - (vii) purchase or lease costs of adequately fitting-out the new premises; and
 - (viii) VAT and Stamp Duty Land Tax, where properly charged in relation to the above; and
- (c) the loan (i.e. any loan actually taken out by the contractor) is secured by the contractor and is for a term of no more than 20 years.

The prescribed percentage

37. For the purposes of direction 36(b), the prescribed percentage is—

- (a) if the loan is a fixed interest rate loan (for the duration of the loan period), the 20 high year gilt rate issued by the Bank of England plus 1.5%; or
- (b) if the loan is not a fixed interest rate loan (for the duration of the loan period), the Bank of England Base Interest Rate plus 1%.

Amounts payable in respect of borrowing costs

38. Once the LHB has decided to grant an application from a contractor for financial assistance in respect of borrowing costs pursuant to direction 35, and the LHB has determined an annual amount to pay in respect of the contractor's borrowing costs in accordance with directions 36 and 37, the LHB must each month provide financial assistance to the contractor in respect of those borrowing costs, based on one twelfth that annual amount, until—

- (a) the loan is paid off;
- (b) in the case of a loan that is not a fixed interest rate loan (for the duration of the loan period) twelve months have elapsed since the annual amount was last established, at which point a new annual amount is to be established for the next twelve months, based on a predetermined prescribed percentage, which is the Bank of England Base Interest Rate at the time the annual amount is recalculated plus 1%, being applied to the agreed level of borrowing; or

- (c) alternative borrowing arrangements are entered into by the contractor. Where a contractor changes lender or re-negotiates lower loan costs, the amount payable by the LHB shall be recalculated using the appropriate prescribed percentage in force at the time that the changed loan arrangements come into effect; or
- (d) the contractor elects not to receive any further payments under these arrangements (for example, in order to receive notional rent payments)

and the monthly amount is to be paid on the last working day of the month, unless alternative payment arrangements are agreed between the LHB and the contractor.

Condition attached to payments in respect of borrowing costs based on a fixed interest rate loan

39.—(1) If a contractor is to receive payments in respect of borrowing costs under this Part, and those borrowing costs arise as a result of a fixed interest rate loan, the LHB must ensure that the making of the payments is subject to a condition to the effect that the contractor must advise the LHB of any change of lender or any reduction in the level of interest charged to its loan.

(2) If a contractor is to receive payments in respect of borrowing costs under this Part the LHB must ensure that the making of the payments is subject to a condition to the effect that the contractor must advise the LHB when the loan has been repaid.

Notional rent payments

40. Subject to the following provisions of this Part, where a contractor that is an owner-occupier of its practice premises—

- (a) either—
 - (i) has repaid the loans secured on its practice premises, or otherwise owns those premises without the benefit of public funding; or
 - (ii) incurs borrowing costs as a result of purchasing, building or significantly refurbishing practice premises (or would have incurred such costs had the contractor not funded the project with its, or its partners' or shareholders', own resources) but elects not to receive any payments from its LHB in respect of those borrowing costs; and
- (b) makes an application to its LHB for notional rent payments,

the LHB must consider that application and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application. If a contractor has been in receipt of payments in respect of its borrowing costs pursuant to direction 38, elects not to receive further payments pursuant to that direction and makes an application in accordance with this direction, its LHB must grant that application and make notional rent payments to the contractor under its GMS contract at an appropriate level and frequency.

Amount of notional rent payments

41. Where a LHB grants an application of the type mentioned in direction 40, subject to the following provisions of this Part, the amount that it must pay to a contractor in respect of notional rent is the current market rental value of its practice premises, as determined in accordance with Parts 1 and 3 of Schedule 2. The LHB must review this amount as part of a three yearly review assessment of the contractor's notional rent, although this assessment may be brought forward if—

- (i) there is a change to the purposes for which the premises are used; or
- (ii) there is further capital investment in the premises, which has been agreed by the LHB, and payments are to be made by the LHB to the contractor in respect of that investment under its GMS contract.

Abatement of notional rent payments

42.—(1) Where—

- (a) capital has contributed to the cost of building or refurbishment work done in respect of the practice premises of a contractor; and
- (b) that capital contribution was not borrowed or otherwise provided by the contractor,

on completion of the building or refurbishment work, the amount of the notional rent payable by a LHB must be the abated notional rent for those premises, calculated in accordance with Part 1 of Schedule 3, rather than the full notional rent, determined in accordance with direction 40. However after the abatement period set out in (2) the full notional rent again becomes payable.

(2) The abatement period in paragraph (1) is—

- (a) where the cost of the building or refurbishment work is up to £100,000 plus VAT, a period of 6 years;
- (b) where the cost of the building or refurbishment work is between £100,000 and £250,000 plus VAT, a period of 9 years;
- (c) where the cost of the building or refurbishment work is more than £250,000 plus VAT, a period of 15 years.

Notional rent supplements

43. If a contractor—

- (a) is an owner-occupier of its practice premises and is in receipt of payments in respect of its borrowing costs which are paid by a LHB pursuant to direction 38, and—
 - (i) the contractor makes further capital investment in the practice premises and that investment (including the details of the finalised project plan) had the prior approval of its LHB, but
 - (ii) the current market rent (and so the notional rent) for the practice premises remains lower than the repayments in respect of borrowing costs being made; or
- (b) rents its practice premises and is in receipt of payments in respect of its actual lease rent which are paid by a LHB pursuant to direction 32, and—
 - (i) the contractor makes further capital investment in its practice premises, and
 - (ii) that investment (including the details of the finalised project plan) had the prior approval of its LHB; or
- (c) is an owner-occupier of its practice premises and the current market rent (and so the notional rent) for the practice premises is lower than the borrowing costs payment received pursuant to direction 38 immediately prior to the loan being repaid.

and the contractor makes an application to its LHB for a notional rent supplement, the LHB must grant that application and make notional rent supplement payments to the contractor under its GMS contract.

Amount of notional rent supplements

44. Where a LHB grants an application of the type mentioned in direction 43 (a) and (b), the amount that it must pay to the contractor as a notional rent supplement is the value of the enhancement of the current market rent for the premises arising from the further capital investment, which is to be determined (or abated) in accordance with Schedules 2 and 3. Where a LHB grants an application of the type mentioned in direction 43(c), the amount that it must pay to the contractor is the difference between the current market rent (and so the notional rent) and the amount paid pursuant to direction 38 immediately prior to the loan being repaid.

Payments in respect of running costs

45. Where—

- (a) a contractor is in receipt of payments pursuant to this Part in respect of leasehold rental costs or borrowing costs, or by way of notional rent payments;
- (b) the contractor actually and properly incurs the costs which are or relate to—
 - (i) business rates,
 - (ii) water and sewage charges, or
 - (iii) charges in respect of the collection and disposal of clinical and trade waste;
- (c) these costs are not covered in the other payments that the contractor is receiving pursuant to these Directions; and
- (d) the contractor makes an application to its LHB for financial assistance towards meeting any or all of these costs,

the LHB must consider that application and, in appropriate cases (having regard, amongst other matters, to the budgetary targets it has set for itself), grant that application.

Abatements in respect of contributions towards recurring premises costs from third parties

46.—(1) Where any part of a contractor's practice premises is used exclusively on a full time basis by a third party who is not a provider of primary care services under Parts 4 to 7 of the 2006 Act, the LHB must exclude that part of the premises from its calculation of any payment to be made to the contractor pursuant to this Part.

(2) Where any part of a contractor's practice premises is used exclusively on a part time basis by a third party who is not a provider of primary care services under Parts 4 to 7 of the 2006 Act, the LHB must reduce that amount of any payment to be made to the contractor pursuant to this Part by a proportionate amount.

(3) Where during any period, any part of the contractor's premises, including common reception or waiting areas, is shared with a third party who is not a provider of primary care services under Parts 4 to 7 of the 2006 Act or is used by the contractor for commercial purposes other than under the GMS contract, the LHB must, in respect of that period, reduce the amount of any payment that it makes to a contractor pursuant to this Part by a proportionate amount.

Payments in kind

47. If a payment that is to be made pursuant to this Part would be abated, or abated by a greater amount, if instead of receiving money or obtaining a pecuniary advantage a contractor, or a member or employee of a contractor, receives a payment in kind, the LHB must take into account the value of the payment in kind in determining the amount of the payment to be made pursuant to this Part. The LHB is to take all reasonable steps to agree with the contractor the value of the payment in kind and must justify the value it does determine.

Minimum standards condition attached to all payments under this Part

48. If a payment is to be made by a LHB pursuant to this Part, the LHB must ensure that the making of the payment is subject to a condition to the effect that the practice premises in respect of which the payment is made meets the minimum standards set out in Schedule 1. If this condition is breached but the breach is capable of remedy by refurbishment of the premises—

- (a) a remedial notice should not be served in respect of the breach if, pursuant to a plan drawn up in accordance with regulation 18(3) of the National Health Service (General Medical Services Contracts)(Wales) Regulations 2004 (services generally), action is already due to be taken which will remedy that breach and the timescale for taking that action under that plan has not yet elapsed;
- (b) before serving a remedial notice in respect of the breach, the LHB must consult the Local Medical Committee (if any) for the area concerned; and

- (c) if a remedial notice is served, the notice period must usually be no more than three months. However, there may be rare occasions when a LHB recognises that the requisite remedial work will take longer than three months to complete and in such circumstances the LHB may agree a longer notice period.

Accurate information condition attached to all payments under this Part

49. Where a LHB grants an application under this Part, it must ensure that the payment is made subject to conditions to the following effect—

- (a) the contractor must make available to the LHB any information which the LHB does not have but needs, and the contractor either has or could reasonably be expected to obtain, in order for the LHB to calculate the appropriate amount of financial assistance to be provided; and
- (b) all information supplied by a contractor to its LHB pursuant to or in accordance with the condition set out in subparagraph (a) must be accurate.

PART 6

MISCELLANEOUS PROVISIONS

Direct payments to third parties

50. Where a contractor and its LHB agree, the LHB must pay any amount that is due to the contractor as financial assistance under these Directions to a third party instead of the contractor, subject to a condition that the contractor ensures that it treats the payment for accounting purposes as a payment to it. If—

- (a) the payment from the LHB to the third party is less than the amount that is due from the contractor to the third party; and
- (b) the contractor is due other payments from the LHB as financial assistance under these Directions which are greater than or equal to the amount of the shortfall,

where the contractor and the LHB agree, the LHB must pay all or part of those other payments to the third party instead of to the contractor, subject to a condition that the contractor ensures that it treats the payment for accounting purposes as a payment to it.

Time limit for making applications

51. LHB's must only consider or grant an application made under these Directions if the application is made within two years of the premises costs to which the application relates rising.

PART 7

TRANSITIONAL AND REVOCATION PROVISIONS

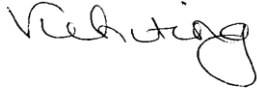
Transitional provision in respect of payments

52. Where a contractor has made an application for financial assistance under the 2004 Directions before 30 June 2015 but that application has not been determined by the LHB—

- (a) where costs, or any part of them, to which the application relates were incurred before 30 June 2015, the LHB must determine the application and make any payments as if the 2004 Directions, as in force immediately before 30 June 2015 continued to apply;
- (b) where the costs to which the application relates were all incurred on or after 30 June 2015 the LHB must determine the application and make any payments in accordance with these directions.

Revocation

53. Subject to the preceding directions in this Part, the 2004 Directions are revoked.

A handwritten signature in black ink, appearing to read 'Val Whiting', with a stylized, cursive script.

Val Whiting

Dirprwy Gyfarwyddwr Cyfalaf, Ystadau a Cyfleusterau
Deputy Director, Capital, Estates & Facilities

Signed on behalf of the Welsh Ministers

Date 22nd July 2015

SCHEDULE 1

MINIMUM STANDARDS FOR PRACTICE PREMISES

PART 1

STATUTORY REQUIREMENTS

The contractor is responsible for familiarising itself with all current relevant statutory requirements and ensuring its compliance with the same.

PART 2

GENERAL MINIMUM STANDARDS

The contractor's practice premises must have:

- (a) adequate heating lighting and ventilation;
- (b) adequate facilities for older people and young children, including nappy-changing and feeding facilities;
- (c) adequate lavatory and hand hygiene facilities which meet current infection control;
- (d) internal waiting areas, with sufficient and appropriate seating to meet normal requirements;
- (e) adequate facilities for patients to communicate confidentially with staff including in person and by telephone;
- (f) fixtures and fittings in good repair;
- (g) adequate secure storage of drugs, records, prescriptions and statement pads;
- (h) adequate security arrangements, including arrangements for the security of the premises and security of the person;
- (i) adequate arrangement in consultation or treatment rooms (including rooms for the carrying out of minor surgery or the treatment of injuries) to support safe and secure provision of primary medical services, including privacy for consultations and the personal privacy of patients when dressing or undressing; and
- (j) adequate procedures for ensuring the continuing safety of the practice premises and the suitability of those premises for delivering primary medical services, including, where necessary, the carrying out of risk assessments of the safety and security of practice premises and the development of business continuity plans to address any significant disruption to the delivery of primary medical services at the practice premises.

Decontamination and infection control

The contractor must have regard to the Health and Social Care Act 2008, Code of Practice for the prevention and control of infections and related guidance, and its practice premises must have:—

- (a) clinical wash hand basins connected to running hot and cold water;
- (b) the premises, fixtures and fittings should be maintained in a clean and hygienic condition; adequate lavatory and hand hygiene facilities; and
- (c) arrangements for the safe management of healthcare waste.

SCHEDULE 2
CURRENT MARKET RENTS AND NOTIONAL RENT
ABATEMENTS

PART 1
FACTORS COMMON TO ALL CURRENT MARKET RENT
CALCULATIONS

1. Current market rent calculations for notional rent purposes differ from current market rent calculations for actual leasehold premises pursuant to direction 33.

2. However, in both cases, the appointed valuer must consider what might reasonably be expected to be paid by a tenant for the premises at the valuation date. The aim will be to arrive at a rent which can be agreed between the contractor (or his or her representative) and a third party in willing negotiation. For these purposes, it must be assumed that neither party is seeking to take advantage of the fact that—

- (a) the contractor's remuneration is so arranged that this rent and any VAT payable is reimbursed separately; and
- (b) at any one time only one contractor is permitted to be in the market to use the premises for practice purposes.

3. In determining a figure for any current market rent, the following will also apply—

- (a) where the practice accommodation forms part of an owner-occupied residence but does not include areas which are used regularly but not exclusively for practice purposes, the current market rent will be assessed for the practice accommodation only, but as part of the whole premises and not increased or reduced to reflect any advantage or disadvantage there may be in the fact that the practice accommodation is not in separate premises.
- (b) where the practice accommodation forms part of a residence owned or rented by a person not connected with the contractor, the current market rent will be assessed in respect of the practice accommodation only and is to reflect any advantage or disadvantage there may be in the fact that it is not in separate premises.
- (c) where the practice accommodation forms part of an owner-occupied residence and includes areas which are used regularly but not exclusively for practice purposes, the Current Market Rent will be assessed as at (a) above but with an agreed percentage added of the current market rental value of any area used regularly but not exclusively for practice purposes having regard to the extent and frequency of such use and any modifications made to facilitate that use.
- (d) where the practice premises has its own car parking facility, the number of car parking spaces which are to be taken into account for the purpose of assessing the current market rent will be the number determined by the LHB on the basis of a visual inspection by, and the advice of its professional advisers.
- (e) where improvements have been made to the practice accommodation and those improvements are designed solely to reduce the environmental impact of the premises, those improvements must be disregarded for the purposes of assessing the current market rent.

PART 2

FACTORS WHICH ONLY APPLY IN RELATION TO LEASEHOLD PREMISES

4. The appointed valuer must first have regard to the actual terms of the lease. In the case of the payment provisions—

- (a) the amounts payable must be adjusted to take account of appropriate deductions in respect of the following—
 - (i) any amount referable to residential accommodation, except where this is to be taken into account in accordance with paragraph 3,
 - (ii) other non-practice accommodation, (unless the LHB has specifically agreed that no deduction is to be made in respect of it),
 - (iii) furniture or moveable equipment included in the rent costs,
 - (iv) services or other facilities included in the rent costs,
 - (v) the value of any responsibility of the landlord in respect of internal repairs or decoration, and
 - (vi) any amount referable to water rates, where the tenant is responsible for paying the landlord's share and recovers that share from the landlord;
- (b) the amounts payable must be adjusted to take account of appropriate additions in respect of the following—
 - (i) the value of any responsibility of the tenant in respect of external repairs and maintenance, or for insurance of the building,
 - (ii) any premium paid by the tenant, and
 - (iii) any VAT paid by the tenant where properly charged to the tenant by the landlord (but excluding any part of that VAT for which the contractor may claim a refund) and approved by the LHB prior to payment by the tenant;
- (c) relating to reviewing rental payments, the LHB must—
 - (i) review its assessment of the current market rent for the property when the landlord undertakes a rent review provided for in the lease, unless the landlord's review does not result in a change to the level of rent charged (an assessment on the basis of vacant possession will not be appropriate on a rent review, unless the terms of the lease so provide or the property market can be shown not to distinguish between vacant and tenanted premises);
 - (ii) review its assessment of the current market rent for the property when the terms and conditions of the lease are varied, even if the variation does not result in any change to the level of the rent charged, or at the end of the lease term (whether or not a Section 25 or Section 26 notice is served); and
 - (iii) if the rent review is linked to an index (for example, the Retail Price Index), adjust the amount it pays in accordance with that index, provided it received a copy of the lease on offer before it was agreed and it agreed to the indexing arrangement, having taken professional advice as to its appropriateness; and
- (d) if the lease rent is inclusive of rates (including water rates), the current market rent must also be inclusive of the rates so included.

PART 3

FACTORS WHICH ONLY APPLY IN RELATION TO NOTIONAL RENT CASES

5. If the premises are owner-occupied premises, the following assumptions are to be made by the appointed valuer about the nature of the notional lease upon which the notional rent payments are to be based. The notional lease—

- (a)
 - (i) is to be a new lease for a term of 15 years, with rent reviews every 3 years when the rent may rise or fall, and
 - (ii) is reflective of market conditions at the review date;
- (b) includes a covenant that the tenant undertakes to bear the cost of internal repairs and decoration and the landlord undertakes to bear the cost of insuring the building and of carrying out external repairs and maintenance;
- (c) does not include a service charge, or like payment for such items as upkeep, maintenance (including lift maintenance where appropriate), cleaning and heating of common parts;
- (d) is for vacant possession;
- (e) is exclusive of rates;
- (f) includes a right for the tenant to assign or sublet the whole premises, subject to landlord's consent which is not to be unreasonably withheld; and
- (g) allows the premises to be used for practice purposes only.

SCHEDULE 3

NOTIONAL RENT ABATEMENTS AND NOTIONAL RENT SUPPLEMENTS

PART 1

NOTIONAL RENT ABATEMENTS

1. Where any capital (which was not borrowed, paid for, or otherwise provided by the contractor) has contributed to the cost of building or refurbishment work done in respect of practice premises, the notional rent payable in respect of those payments is to be abated (in proportion to the level of the capital contribution) as follows—

- (a) determine the current market rent for the premises prior to improvement (P_u);
- (b) determine the current market rent for the whole of the improved premises (P_i);
- (c) subtract one from the other ($P_i - P_u$), which will produce the current market rent value of the enhancement (I);
- (d) determine the amount of the capital provided by the contractor as a proportion of the whole cost of the improvement, expressed as a percentage (A);
- (e) (A) is then to be enhanced by adding 10% to cover normal landlord expenses, which is then applied to (I) and the resultant is added to (P_u).

2. Accordingly, expressed as a formula, the post improvement notional rent is—

$$I \times (A+10) \% + P_u \text{ (need to check formula)}$$

PART 2

NOTIONAL RENT SUPPLEMENTS

3. Where a notional rent supplement is to be calculated, the amount of that supplement, expressed as a formula, is: $I \times (A+10) \%$.