

02 April 2013

*Richmond House
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Letter of explanation in relation to the transfer of assets to NHS Property Services Limited

To: Those landlords, sponsors and/or funders of NHS property schemes where the NHS counterparty after 1st April 2013 is NHS Property Services Limited ("NHSPS")

On 31st March 2013, Primary Care Trusts ceased to exist. A statutory transfer order will transfer all of the assets and liabilities of a dissolving Primary Care Trust to another entity or entities. A significant number of properties previously owned or leased by Primary Care Trusts (together with all resulting liabilities) will transfer to NHSPS. The Secretary of State for Health holds all of the shares in NHSPS.

In recognition of the foregoing, I thought it would be helpful if I wrote to clarify the responsibilities of the Secretary of State for Health in relation to NHSPS. Attached to this letter is a paper that summarises how NHSPS will receive its funding from the NHS Commissioning Board.

As Secretary of State for Health, I acknowledge the fundamental importance to the NHS of patients having access to good quality premises from which they can receive treatment. This is enshrined in a pledge in the NHS Constitution on behalf of the NHS to ensure that "services are provided in a clean and safe environment that is fit for purpose, based on national best practice".

Primary Care Trusts are being abolished as part of the wider NHS reorganisation. I consider that reorganisation to be an important part of securing the long term future of the NHS and recognise that one of the consequences of this is the need to deal with the assets of the organisations which are being dissolved.

NHSPS has been established to manage the NHS' interest in a large number of properties as it represents the best way of ensuring a coherent strategy for dealing with these properties during the period of transition.

NHSPS is not subject to the provisions of section 70 of the National Health Service Act 2006, which ensured that any outstanding liabilities of a Primary Care Trust would survive dissolution meaning, for example, that a debt owed to a landlord would be preserved. However, it would be wrong to think that this signifies any reduction in the commitment of the Secretary of State for Health to the assets and liabilities that NHSPS will inherit.

The Secretary of State for Health is the sole shareholder in NHSPS and this is a role which I take very seriously. I have appointed a Departmental director to the board and NHSPS' board governance protocol requires the approval of that director to all board resolutions. In addition, a number of core matters concerning the on-going management of NHSPS require express shareholder consent and other members of the Department are involved in the running of the company. Accordingly, I will continue to take all the actions of a responsible shareholder to ensure both the continued good running of NHSPS and that the directors comply with their fiduciary duties in relation to NHSPS.

I have also entered into an irrevocable indemnity in favour of NHSPS which ensures payment, on demand, of all valid payment obligations of NHSPS arising from any of those properties which will transfer to NHSPS for such time as NHSPS is the head tenant (or equivalent counterparty) of the relevant facilities. My intention in providing such guarantee is to ensure that NHSPS is always in a position to meet its obligations in respect of the assets transferred to it.

As a shareholder in NHSPS, the proposition that the Secretary of State for Health would:

- (a) allow NHSPS to be run in such a manner as to place it at risk of going into administration or being subject to any insolvency type proceedings; or
- (b) not take all immediate action to remedy any situation which had led to NHSPS being subject to an administration or insolvency type situation; or
- (c) take any shareholder action to wind up NHSPS without first having transferred the assets and liabilities of the company to another entity capable of dealing with them being an entity of equal covenant strength, for example, another company controlled by the Secretary of State for Health (with the benefit of the indemnity referred to above) or an organisation within the wider NHS family (including either the Commissioning Board or Clinical Commissioning Groups on the assumption that, in the intervening period, they will be shown to be of broadly equivalent covenant strength to Primary Care Trusts)

is untenable.

As we move forward and the changes introduced by the reorganisation settle down, I would expect the head tenancies of the transferred facilities to remain with NHSPS or an entity of equal covenant strength (as set out in (c) above) and it is untenable that I would dispose of a controlling interest in NHSPS to a private sector company (not controlled by the Secretary of State) without having first ensured that this was the case. I would expect both NHSPS and Departmental officials to continue to engage actively with all interested parties to discuss all developments that might affect that market.

Whilst nothing in this letter or the enclosed paper should be construed by you as a guarantee by the Secretary of State for Health of the obligations or liabilities of NHSPS, nor as a restriction on the way in which the Secretary of State for Health

would exercise his discretionary powers in any particular case, I hope that you will find them helpful.

Signed by authority of the Secretary of State for Health

A handwritten signature in black ink, appearing to read 'P Coates'.

Peter Coates
A member of the Senior Civil Service

Explanation of funding for NHSPS

This note serves to outline the arrangements that have been agreed to fund NHS Property Services Ltd for the costs that they will incur in operating the properties that will transfer to them on 1 April 2013.

Activities are currently underway for certain privately financed primary care buildings to be transferred statutorily to NHS PS. This means that NHS PS will become liable to pay the lease rental or PFI unitary charge in respect of those properties.

A wide variety of arrangements is currently in existence in respect of the occupation of these properties. In addition to an assumption of the obligation to pay the lease rental or PFI unitary charge, NHS PS will become entitled to receive the benefit of any sub-lease arrangement in place with occupiers.

For each privately financed building, NHS PS will reconcile the income received from occupiers with the amount it will be liable to pay. The NHS CB or the relevant CCG will fund NHS PS for any shortfall.

NHS PS has also been given access to working capital cash so that it can meet its lease rental obligations and PFI unitary charge payments on a timely basis.

This arrangement has been agreed for 2013-14 and it is anticipated that a similar arrangement will be in place in 2014-15. As the NHS restructuring moves forward, it is anticipated that the obligations relating to these privately financed primary care buildings will be funded increasingly directly by the occupants. It is recognised that the occupants' contracts for providing services to the NHS will need to be funded appropriately to enable them to accept rental arrangements that will enable NHS PS to recover fully the costs incurred by it in providing the properties. That is why the 2013-14 arrangements are likely to be in place for many properties at least until 2014-15.

The anticipated move towards payments flowing increasingly through occupants is to incentivise the system to optimise property utilisation and value for money.