IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (ChD)

BETWEEN—

BUSHBURY HEALTH CENTRE

-and-

NHS PROPERTY SERVICES LTD

PARTICULARS OF CLAIM

PARTIES

1. The Claimant is a partnership in the business of operating a General Practitioner
doctors’ surgery and occupies property known as Bushbury Health Centre, Hellier
Road, Bushbury, Wolverhampton, WV10 8ED (‘the Premises’) pursuant to a tenancy
described as a tenancy at will dated 13 January 2004 (‘the Lease’).

2. The Defendant company was incorporated on 20 December 2011 pursuant to the
enactment of the Health and Social Care Act 2012 (‘the Act’). The Defendant is wholly
owned by the Secretary of State for Health and Social Care and carries out the premises
functions that were formerly undertaken by Primary Care Trusts (‘PCTs’).

3. On 1 April 2013 the interest in 3,600 properties was transferred to the Defendant from
151 PCTs and ten strategic health authorities. These properties were primarily
community healthcare facilities such as GP surgeries.

4. The Defendant is the registered freehold owner of the Premises having been registered
as such on the 22 May 2013 under Land Registry title number WM634799.
5. The Lease defines the Premises in the recitals thereto as follows:

Part of Bushbury Clinic Wolverhampton sketched red on the plan annexed hereto together with the right to use in common with the Landlord those parts of the Clinic sketched green on the said plan.

6. The Lease provides:

Clause 5.2 – Outgoings
5.2.1 To pay and indemnify the Landlord against all taxes assessment duties.
5.2.2 To pay to the Landlord the **apportioned cost of service supplied to the Premises including gas, electricity and water** such costs to be reasonably determined by the Landlord and payable by the Tenant quarterly on demand.
5.2.3 To pay to the Landlord the cost of any external telephone calls made from the Premises quarterly on demand.
5.2.4 To pay to the Landlord the **apportioned cost of repairing maintaining the interior of the Premises** on demand.

SERVICE CHARGE DEMANDS

7. The Defendant has demanded that the Claimant pay the following sums:

a. by a charging schedule for 2015 – 2016 dated 24 March 2016:
   i. Service Charge: £29,182.72
   ii. Facilities Charge: £11,399.89
   iii. Corporate Overhead: £870.81
   iv. Management fee: £2,898.63

b. by a charging schedule for 2016 – 2017 dated 13 May 2016:
   i. Service Charge: £42,945.44


c. by a charging schedule for 2017 – 2018 dated 6 September 2017:
   ii. Service Charge: £41,795.05
   iii. Facilities Management: £26,244.39

d. by a charging schedule for 2018 – 2019 dated 8 June 2018:
iv. Service Charge: £49,146.39
v. Facilities Management: £36,308.65

8. Historically, the Claimant has paid the Defendant’s predecessor in title the following sums in respect of service / facilities charges in addition to rent:

   a. 2011-2012: £1,540.92 per quarter
   b. 2013-2014: £1,500 per quarter

9. The Defendant has sought to charge the Claimant the increased sums as set out in paragraph 7 pursuant to its ‘Consolidated Charging Policy’ (‘the Policy’) which states its purpose to be:

   “...to drive more efficient use of space across the Government Estate, all public sector organisations are required to ensure that they charge their occupiers (or, if occupiers themselves, recognise) rent and service charges which better reflect the true market based cost of real estate to which the public sector is committed.”

10. Paragraph 7 of the Policy states:

   “... A separate management charge is also payable for occupations in NHSPS leasehold buildings reflecting the work done by NHSPS and is set at 5% of the rent payable by the occupier, the notional funding for which is included within Clinical Commissioning Groups (‘CCG’) baselines.”

11. In correspondence dated 27th September 2018 the Defendant’s solicitors Bevan Brittan LLP have asserted, wrongly, that:

   “...the policy documents, i.e. the charging policies of 2016/2017 and 2017/18 ... provide terms incorporated into the relevant contracts where there is no express lease or where the express lease does not deal with service charges”.
12. The charging schedule for 2016 – 2017 states as follows on page 4:

Rent: This financial year sees a move to market-rental charging, in line with Government initiatives to improve property utilisation and value for money. The market rent model offers benefits for our customers and the NHS, including greater transparency on property costs. As a result, some occupiers may see higher rental charges, however others may reduce. The Department of Health as agreed that any such increases in 2016/17 will be mitigated by funding adjustments from NHS England. Where NHS Property Services holds a property by way of a lease, a management charge of 5% of the rent will be made in order to reflect our additional costs and responsibilities.

Facilities Management: The amount charges for FM services will be the all-inclusive cost of delivering services to each customer.

Service Charges: A service charge arises in multi-occupied sites or buildings and is each occupier’s share or the costs incurred by the landlord in maintaining the common parts of the building and providing services that benefit all occupiers. The service charge includes core landlord services such as cleaning, heating, lighting, security and waste management, plus building maintenance and repairs. Our service charge also includes rates, utilities and insurance, apportioned without profit according to the net internal area held by each occupier. A management fee of 10% of the service charge reflects our costs in arranging and managing services provided except for business rates, utilities and the Superior Landlord’s service charge, for which the management fee is charged at 5%.


"The costs outlined in your Annual Charging Schedule are forecasts for the year ahead. At the end of the year, we re-calculate your costs again based on the actual amount of facilities or services you have used and settle the difference with you."
14. The demands for payment set out at paragraph 7 are in breach of the terms of the Claimant’s occupation of the Premises which require the Claimant to pay only the apportioned cost of:
   a. gas electricity and water and repairing; and
   b. maintaining the interior of the Premises.

15. The charges, said to be due pursuant to the Consolidated Charging Policy and as set out in the charging schedule for 2016 - 2017, take no account of the express terms of the Lease and the charges levied do not represent costs and expenses incurred but instead impose an arbitrary charges in an apparent effort to recoup the Defendant’s overall yearly expenditure.

16. The Consolidated Charging Policy purports to vary the same by the retrospective implication of a term that has not been agreed. There is no basis for such variation in the implied terms of the tenancy or in law.

17. Further and in particular, the Lease contains no provision regarding payments on account in advance of expenditure.

AND the Claimant seeks declarations that:

1. The terms of the Lease do not include the provisions of the Defendant’s Consolidated Charging Policy 2016/17 or 2017/18;
2. There is no implied term of the Lease that the Claimant should pay charges in accordance with the Defendant’s Consolidated Charging Policy 2016/17 or 2017/18;
3. There is no agreement between the Claimant and Defendant to vary the terms of the Lease by the provisions of the Defendant’s Consolidated Charging Policy 2016/17 or 2017/18;
4. The terms of the Lease have not been varied by the provision of the Defendant’s Consolidated Charging Policy 2016/17 or 2017/18; and
5. The provisions of the Defendant's Consolidated Charging Policy 2016/17 or 2017/18 are not incorporated into the Lease.

Dated this day of 13/11/20.

I believe that the facts stated in this Particulars of Claim are true.

Full name: John Laveslaus Claude Lewis

Signed:

Position or office held: Senior Partner