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

BETWEEN—

COLEFORD FAMILY DOCTORS

-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 has occupied property known as Coleford Health Centre, Railway Drive, Coleford, Gloucestershire GL16 8RH (‘the Premises’) since 1990.

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 freehold owner of the Premises having been registered at the Land Registry as the same on 3 June 2016 under title number GR90156.

TERMS OF OCCUPATION

5. The Claimant occupies the Premises under an unwritten periodic tenancy and the Defendant is the Claimant’s landlord.
6. There being no written tenancy, the terms of the Claimant’s occupation are implied from the parties’ conduct in demanding and paying service / facilities charges as set out at paragraph 8 below.

SERVICE CHARGE DEMANDS

7. The Defendant has demanded the Claimant pay the following sums in addition to rent:
   a. by invoices for the period 2013 – 2014: £23,928.46
   b. by invoices for the period 2014 – 2015: £18,448.92
   c. by a charging schedule for 2015 – 2016 dated 21 December 2015:
      i. Service Charge: £18,449.01
      ii. Facilities Management: £29,548.54
   a. by a charging schedule for 2016 – 2017 dated 18 July 2017:
      i. Service Charge: £12,803.36
      ii. Facilities Management: £37,239.98
   b. the Claimant has not received the usual charging schedule for 2017 – 2018 but was sent an invoice as follows:
      i. Service Charge: £29,609.20 later reduced to £18,979.78
      ii. Facilities Management: £30,094.54
   c. by a charging schedule for 2018 – 2019 dated 14 June 2018:
      i. Service Charge: £26,218.52
      ii. Facilities Management: £30,549.57

8. Historically, the Claimant has paid the Defendant’s predecessor in title the following sums in respect of service / facilities charges in addition to their rent:
   a. 2002 – 2003: £5,916
   b. 2003 – 2004: £6,036
   c. 2004 – 2005: £6,184
   d. 2005 – 2006: £6,184
   e. 2006 – 2007: £6,340
   f. 2007 – 2008: £6,340
   g. 2008 – 2009: £6,340
h. 2009 – 2010: £6,086.22
i. 2011 – 2012: £7,393.95
j. 2012 – 2013: £12,818.20

9. Since the Defendant acquired its interest in the Premises, the Claimant has paid the following sums inclusive of service / facilities charges to the Defendant:
   a. 2013 – 2014: £23,928.46
   b. 2014 – 2015: £18,884.92

10. The Defendant has sought to charge the Claimant the increased sums as set out in paragraph 7 above 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.”

11. 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.”

12. 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”.

Rent: This financial year sees a move to market-based 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%.

14. The charging schedule for 2018 – 2019 states:

“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.”
BREACH

15. The demands for payment of service charges as set out at paragraph 7 above are in breach of the terms of the Claimant’s occupation of the Premises which require the Claimant to pay service charges of no more than £14,038.17 p.a.

16. The Consolidated Charging Policy takes no account of the terms upon which the Claimant occupies the Premises and 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.

PAYMENT

17. The Claimant has made the payments set out in paragraph 9 above under sufferance and without accepting liability for the significant increase in the sums demanded from 2013-2014.

AND the Claimant seeks declarations that:

1. The terms of the tenancy 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 tenancy 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 tenancy by the provisions of the Defendant’s Consolidated Charging Policy 2016/17 or 2017/18;
4. The terms of the tenancy 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 tenancy.

JOHN DE WAAL QC
KATRINA MATHER
Dated this 24th day of December

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

Full name    Barbara Cunn

Signed..............

Position or office held    Partner

GP Partner

ELIZABETH WILLIAMS