

GP **Legal services - premises**

A guide to entering agreements of new
practice premises in the public sector







introduction

Recent changes in the NHS have placed GPs in the front line of health sector reforms with health care in the community increasingly being delivered through local medical centres.

We recognise that demand on GPs' time is high and that ongoing changes within the health service do not make for easy living.

CCW offers a very special service to GP practices. We are committed to offering an immediate and comprehensive service to GPs in all aspects of their practice. We aim to work closely with GPs in a friendly manner, whilst making sure that their interests are properly protected.

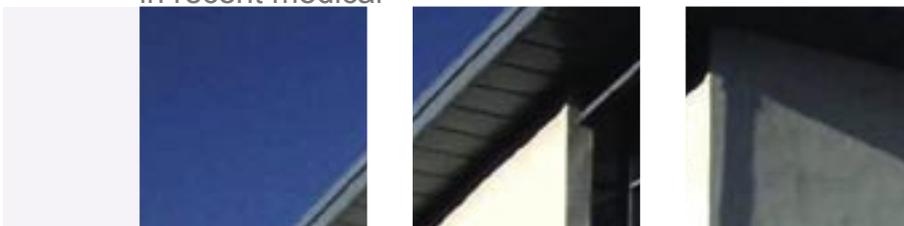
In this brochure we outline legal services we can offer GPs specifically in relation to agreements for new medical centres commissioned through a Private Finance Initiative model such as the Scottish Futures Trust ("hub agreements") or financed by a private sector developer with rent reimbursement through current market rent ("3PD" leases). We have acted as legal advisers for several GP practices in recent medical

centre developments, for example, those procured by the Scottish Futures Trust route.

We are willing to offer advice to GPs right from the start of a proposed project. In our experience projects work best if GPs know exactly what their legal responsibilities will be and what options they have from the very outset. That way GPs - and the local NHS service - can avoid wasting large amounts of time and money in pursuing non-viable projects.

We can also assist GPs in a wide variety of other ways, including advice on NHS LIFT initiatives, straight property purchases, leases and sales, re-financing, preparation and review of partnership agreements, in order to address, amongst other points, property issues for the practice.

We provide similar specialist services for other health care professionals including the pharmacy and dentistry professions and nursing home providers.



summary of how we can help

- we recommend that GPs should enter into a binding legal agreement only after the local Board has given the practice an undertaking to meet reimbursement costs
- we are happy either to discuss GPs' plans to dispose of their existing premises or deal with the legal side of selling them (if these are owned by the GPs)
- we can often negotiate changes "in the detail" of an occupancy agreement lease to the advantage of the tenants
- we will make every effort in negotiations with the Board's legal team or developers' lawyers to restrict the liability of GPs to rectify any potentially expensive design defects
- in 3PD lease transactions we will work with the local Board to ensure the rent review clause in the lease complies with the current NHS reimbursement requirements
- we will make every effort to ensure the full benefit of the differential between the open market rental value and the rent reimbursed is passed on to GPs
- we will argue for the tenants to have the right to use the premises for ancillary medical and complimentary uses including, for example, dental, pharmaceutical and community services
- we check the detail of the individual clauses in the lease - for example, in the rent review clause we pay close attention to the various assumptions and factors to be disregarded in assessing the amount of the revised rent
- we can carry out a thorough check of the title documents relating to the proposed medical centre site
- we can, where required, recommend tax advisers to GPs in order to minimise their Stamp Duty Land Tax or Land and Buildings Transaction Tax liability
- we can review the wording of construction guarantee documents and check the adequacy of the constructors' insurance cover
- we can arrange for other qualified professionals to review reports such as environmental and ground investigation reports and, where required, recommend that the GPs obtain the right to rely on those reports
- we can review the practice's partnership agreement, so as to ensure adequate account is taken of the terms of the new lease
- we can prepare occupancy agreements for other health workers or professionals



about CCW

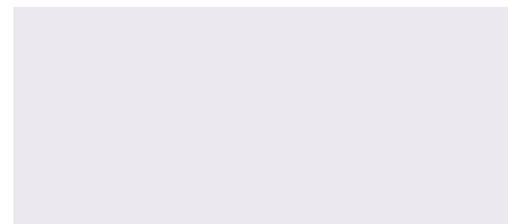
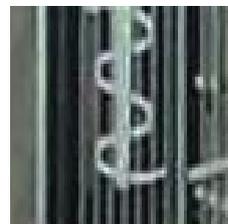
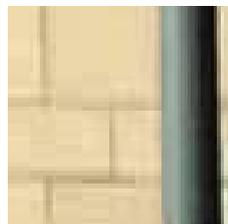
CCW Business Lawyers Limited ("CCW") is a commercial law practice with offices in Edinburgh, Dunfermline and Salisbury and specialising in advising owner-managed businesses. We act frequently for owners of health care practices, both in the private and the public sector. Within CCW we have solicitors who advise doctors on property issues as well as partnership agreements and employment issues.

We are regularly asked to handle work by professional organisations, charities, developers, industrial and commercial companies, pension funds, banks and other financial organisations as well as other corporate clients.

Within the property team Michael Dewar, a partner in the firm, gives advice to GPs and local health boards on PFI occupancy agreements, 3PD leases and other forms of occupancy agreements for new medical centres.

**commercial
corporate
property
contract
employment law**

**professional organisations
charities
developers
industrial and commercial companies
pension funds
banks and other financial organisations
various corporate clients**





example of our approach

It is important for a practice to use a solicitor who fully understands the different models of premises provision commonly used by Health Boards and developers. To take a 3PD lease as one example, most developers will want this to be in a very standard form and a poorly advised practice may not realise the changes they could or need to make to the agreement.

Our starting position is to argue that 3PD leases are not the same as genuine private sector leases in that the landlords, unlike in the private sector, are virtually guaranteed payment of rent through the rent reimbursement scheme.

Often the changes we manage to negotiate are “in the detail” of the lease. Detailed changes made to a lease by lawyers who know what they are doing may ensure GPs are not exposed to contingent risks and may even save GPs many thousands of pounds in the longer term.

We would adopt this approach in negotiations with solicitors acting for the 3PD developer on the terms of the development agreement, leases and construction guarantees to be provided to GP practices.

some key points for GPs

We recognise that certain points are of particular importance in transactions involving GP practices. We list some below:

construction of the building and design defects: GPs as tenants will be responsible under the lease for rectifying any design defects. This is one of the most significant issues. We make every effort to restrict the liability of GPs to rectify any potentially expensive design

defects. Our firm can provide a solution to GPs in two ways. First, we negotiate hard with the developers on the terms of the GPs' repairing obligation under the lease. Second, we can, if required, insist upon satisfactory construction guarantees from the building contractor and other professional consultants involved in the construction of the new medical centre. In a number of recent transactions we have succeeded in significantly restricting GP and NHS Board repairing obligations.



some key points for GPs

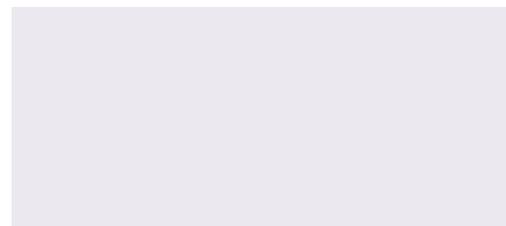
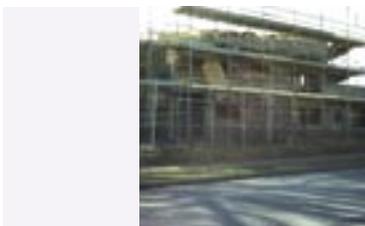
GPs' ability to exit the lease: GPs, particularly those considering retirement, may want specific safeguards built into the lease, so that the individual GPs can exit the lease. This may take the form of revisions to the lease document or the developers agreeing to give "back letters" to GPs, or both. Although the GMS Contract offers significant incentives to GPs who wish to lease their premises under GMS or PMS arrangements, we recommend that GPs wishing to retire or resign should continue to ask for exit clauses to be included in the lease or back letters.

rent review: we liaise with the NHS Board and developers to ensure that the rent review clause in each lease is consistent with the detailed NHS Premises Costs Directions requirements.

GPs' partnership agreement: as part of any lease transaction we offer to review the practice partnership agreement, so that adequate account is taken of the terms of the new lease. As an additional service we can offer to review the whole agreement, in order to ensure the practice is well regulated.

title audit: we carry out a thorough check of the title documents relating to the proposed medical centre site. Sometimes we find that what may be acceptable to a developer may not be acceptable to the Board or a GP practice. Specifically, we check to ensure that the developer is able to grant a valid lease to GPs, that the full range of ancillary rights are in place (e.g. rights for access and services) and that there are no adverse conditions or restrictions contained in the title documents (e.g. conditions restricting the use of the site).

client care: we balance the requirement to keep GPs informed against the need to minimise disruption to GPs' time. At the outset we usually provide GPs with detailed information in the form of comprehensive reports on the main terms of the lease, title and construction documentation. We follow up these reports with an initial meeting, in order to discuss any significant issues and to take detailed instructions. From then on we should be able to keep the Board and GPs informed by phone calls and in writing, as we progress to the detailed negotiations. Assuming the other partners agree, we can take instructions from one designated partner in the practice.



standard of service

We aim to provide the following standards of service:

- 1** to review legal papers and return these within 2 working days of the Board/GPs giving us instructions
- 2** to give clear, practical and informative advice to the Board and GPs
- 3** to return all telephone calls and respond to all general correspondence no later than the next working day
- 4** to be contactable out with normal working hours and at weekends
- 5** to attend all necessary meetings, wherever these are held in Scotland

We explain below how we aim to deliver on each of the above five service standards

- 1** We are very familiar with most of the lease, development and construction documents used in GP medical centre lease transactions. We maintain and constantly update a styles bank of the relevant documents as well as lists of ready-made suitable revisions.
 - 2** Our experience in this type of work means that we are familiar with the issues that tend to arise. In particular, where we act for GP practices we tailor our advice and approach to match the differing approaches of GPs. We find that some GPs are willing to take a very robust view to the risks involved and just want to “press on”. Others prefer a slower pace, in which case we make sure they are given enough time to understand the detail of the documentation. Finally, we have prepared detailed information packs for GPs on the main issues that arise in such transactions and give these to GPs at the outset.
 - 3** Unlike some other law firms, we guarantee that a solicitor experienced in this area of work will deal with the transaction on a day-to-day basis. Each solicitor works in a team, so that another solicitor in the same team can deal with the transaction in the event of illness or holiday.
- 3, 4 & 5** We have adopted flexible working practices with full IT support. All of our legally qualified staff work with notebook PCs, carry mobile phones and can travel and work when and where necessary. We recognise that medical staff work long hours and aim to hold meetings and speak to Board staff/GPs at times convenient to them.



our track record in GP medical centres

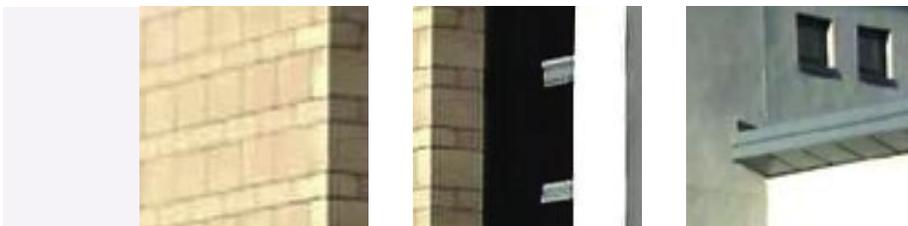
Members of our property team have acted for health boards and GP practices in a number of PFI and 3PD lease transactions and are familiar with the issues that tend to arise.

Projects in which we have recently acted include:

- ☀ a major multi-purpose medical facility in the centre of Edinburgh (in which we acted for three GP practices and the local Health Board)
- ☀ a purpose-built medical centre forming part of the main student campus building at one of Scotland's major universities
- ☀ several medical centres combining GP practice and local Trust accommodation in Edinburgh, West Lothian and Midlothian (in each case we acted for both the GP practice and the local Health Board)
- ☀ GP practice premises at Dumfriesshire and Edinburgh
- ☀ a one-off specially negotiated lease between the local PCT and a Fife GP practice which led to new medical premises being built

professional charges

We can give estimates of our fees for carrying out legal work in each project. We build into our fee calculation a contingency for some complications and delays which can occur in projects of this type, despite the best efforts of the professionals involved.



more information

This brochure gives a brief outline only of our services. For a more detailed guide to our legal services on GP medical centres please contact:



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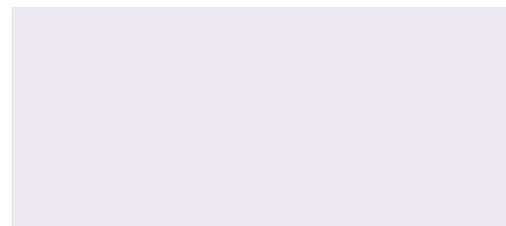
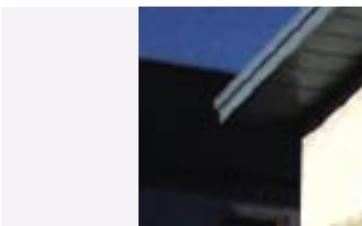




legal notice

Whilst we hope you find the contents of this brochure interesting and informative, we wish to make clear that it provides an overview only of our services. It is not meant to be, and should not be relied upon as giving, legal advice. Legal or other professional advice should be taken in specific cases.

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