

Public Accounts Committee
NHS Property Services (HC 200)
Published 5 November 2019

Contents

Summary	3
Introduction	4
Conclusions and recommendations	5
1 Performance to date	9
The set up of NHS Property Services Limited	9
The lack of rental agreements	10
Outstanding debt owed by tenants	12
2 Future challenges	14
Striking the balance between local incentives and national control	14
Providing a level playing field	15
Formal minutes	17

Summary

NHS Property Services Limited has made progress in tackling some of the issues that it inherited when it was set up. However, it has struggled to get its tenants to sign rental agreements for the properties they occupy, and it is unacceptable that 70% of its tenants still do not have rental agreements in place. Without these agreements, it is very difficult to run an effective property management company and provide value for the NHS and taxpayers from the £3.8 billion estate that it was set up to manage. The lack of rental agreements has led to many bills being disputed, outstanding debt has almost tripled, to £576 million in March 2019, and £110 million of debt has been written off in the last five years.

The Department of Health & Social Care (the Department), NHS England and NHS Improvement and NHS Property Services have had six years to get a grip of this problem and have failed miserably. While we recognise that the situation is complex, and the provision of health services provided by tenants must continue uninterrupted by rental disputes, the whole system needs to work together far more effectively to find a solution which incentivises tenants to sign rental agreements and pay their bills promptly. We are concerned that the Department has yet to set out a course of action to address this problem, but instead is relying on others to find solutions without a clear timetable for achievement.

Introduction

NHS Property Services Limited was established in December 2011 as part of the reforms to the health system to manage, maintain and improve NHS properties in England then owned by 10 strategic health authorities and 151 primary care trusts. It is a company wholly owned by the Secretary of State for Health and Social Care and began activity in April 2013.

NHS Property Services' portfolio consists of about 2,900 properties (about 12% of the NHS estate by floor space) with an estimated value of £3.8 billion. More than 60% of its properties are health centres, surgeries or clinics. It has almost 7,000 tenants, half of which are NHS trusts and GPs. It has three main roles: acting as a landlord to manage the estate; providing strategic estates management; and providing facilities management services.

Conclusions and recommendations

1. **NHS Property Services was set-up to fail: it was created with a muddled objective – it does not have the same powers as a commercial landlord but is expected to run parts of the estate for the Department of Health and Social Care and it inherited a range of long-standing issues.** The Department did not set up NHS Property Services with the powers that a commercial landlord can use to enforce occupancy contracts and charges, because of the need to maintain the clinical services that its tenants provide. For example, it does not have access to conventional remedies such as legal action, penalty charges, cessation of services or eviction for NHS bodies. NHS Property Services also inherited a range of issues in 2013 including: limited data on properties and tenants; two-thirds of its tenants had no leases in place; tenants were not always fully charged for rent and services; and there were 2,400 different facilities management arrangements. The Department recognises that what was handed over to NHS Property Services was poorly defined and often not documented. The Department is currently undertaking a review of NHS Property Services which is due to report by the end of this year.

Recommendation: The Department should ensure that its current review addresses the recommendations set out below and should report back to the Committee on progress by July 2020.

2. **The lack of rental agreements in place undermines NHS Property Services' ability to manage its estate effectively and drive maximum value either in income or in public benefit.** In April 2019, six years after NHS Property Services began operating, only 30% of its tenants had rental agreements in place. It has no effective way of getting tenants to sign formal rental agreements and is retrospectively trying to agree leases with occupiers already in situ. It has sought to get more agreements in place by simplifying them and by issuing 3,500 non-binding summaries of the main features of the lease arrangements, but this has not worked. Rental agreements need to be based on a common understanding between the tenants and landlord about what is being rented and how much it costs. The data that NHS Property Services holds on its properties and tenants has improved but is liable to degradation if tenants do not inform it of changes to the space they use.

NHS Property Services recognises that it needs to continue to improve the accuracy of its data, but without effective powers of enforcement, it needs national bodies to do more to ensure that tenants engage, agree the supporting data and sign rental agreements. NHS Property Services is working with the national bodies - the Department and NHS England and NHS Improvement - to agree a joint plan to get rental agreements in place for all its tenants but could not provide us with a clear timetable for this.

Recommendation: Within two months the Department should set out a clear timetable for NHS Property Services to agree tenancy details with all tenants by July 2020. This will require:

- proper transparency between NHS Property Services and tenants on the basis for all proposed charges;
- national bodies to ensure that tenants fully engage with the process to agree tenancy arrangements;
- an agreement from national bodies of any funding arrangements required to meet agreed obligations;
- an agreed process for making changes to tenancy arrangements and billing.

3. **Outstanding debt from tenants has almost tripled to £576 million.** Between March 2014 and March 2019, outstanding debt from unpaid bills for rent, facilities management services and service charges increased from £210 million to £576 million. Only 55% of the debt is for bills issued in 2018-19, the rest of the debt relates to bills NHS Property Services issued in previous years. About half of the current debt is subject to review because it has been challenged by tenants for several reasons, including inaccurate information or inappropriate apportionment of costs. It has been suggested to the Committee that in some cases tenants carry the liability in their accounts while disputes are ongoing. The time wasted in issuing, challenging, pursuing and correcting contested invoices is not a good use of over-stretched NHS resources which should be focused on healthcare delivery. From 2015-16 to 2018-19, the average number of days that tenants took to pay their bills increased from 91 days to 214 days. Over the last five years NHS Property Services

has written off £110 million of debt. NHS Property Services said that it plans to be more robust on recovering the debt and that the dispute resolution process, where tenants challenge bills, needs to work better than it does now in terms of speed and outcome.

Recommendation: The Department should set NHS Property Services clear debt recovery targets for current year debt and agree an approach for historic debt.

The Department should clarify whether tenants are being expected to carry liabilities in their accounts while disputes are ongoing.

4. **NHS Property Services has not got the balance right between local initiatives and incentives and national control.** NHS Property Services aims to dispose of properties that are under-used or no longer needed. By March 2019, it had disposed of 410 surplus properties with a capital receipts value of £347 million. The Department noted that NHS Property Services' release of surplus land has delivered 1,921 housing unit equivalents, as part of the government's scheme for releasing public land for housing. However, the decision on whether a property is surplus to requirements is made by the health commissioners and clinicians who use the property and not by NHS Property Services. Receipts from property sales are reinvested in the estate at a national level rather than going back to the local area in question. NHS Property Services acknowledges local occupiers or health systems are not sufficiently incentivised to release property because they may not benefit from a sale. We are also concerned that there is a lack of transparency in NHS Property Services' property disposal decisions, for example, whether decisions are taken that are in the best interests of the local health system or to achieve the greatest financial benefit. NHS Property Services has reduced the number of separate facilities management arrangements across its portfolio from 2,400 to about 50. Some of these services are delivered by NHS Property Services themselves and some are outsourced. Rationalising the arrangements has had clear benefits, but it is not clear to us why NHS Property Services has a mix of in-house and outsourced facilities management services and why these decisions were made.

Recommendation: The Department and NHS Property Services should engage local areas as how best to maintain and improve their local estate. As part of this:

- the Department should consider the benefits of developing a shared incentive plan that guarantees local areas a percentage of the disposal value of any local property disposals by March 2020;
- NHS Property Services should engage more with local bodies in making decisions about their local estate; and
- NHS Property Services should review whether its mix of inhouse and outsourced facilities management contracts delivers value for money to both the taxpayer and local tenants.

5. **There is not a level playing field for all NHS tenants in terms of the rent paid and compulsion to pay it.** About 18% of GP surgeries in England are owned by NHS Property Services. The rest are either commercially owned or owner-occupied. We are concerned that one GP practice can pay a full rent on its commercial premises, while another GP practice down the road occupying broadly similar premises can get away with not paying its rent on time or at all. In addition, tenants were not always fully charged for rent and services before NHS Property Services took on ownership. Initially, the Department agreed that tenants would only be charged 60% of their total charges with the remaining 40% being charged to commissioners. These arrangements have largely been withdrawn over time, but current levels of subsidy are not known. Some tenants have cited affordability as an issue for their unwillingness to pay bills, and this is sometimes linked to the withdrawal of subsidies. The Department accepts that the current system can lead to unfairness and that it needs to work with commissioners on a case-by-case basis to ensure fairness.

Recommendation: The Department needs to move towards a more equitable model of charges, with transparency about any subsidies that are received, and ensure that tenants and commissioners are funded at an equitable level.

1. Performance to date

1. Based on a report by the Comptroller and Auditor General, we took evidence from the Department of Health & Social Care (the Department), NHS England and NHS Improvement and NHS Property Services Limited.¹
2. NHS Property Services was established in December 2011 as part of reforms to the health system to manage, maintain and improve NHS properties in England and facilities then owned by 10 strategic health authorities and 151 primary care trusts. It is a company wholly owned by the Secretary of State for Health and Social Care and began activity in April 2013. A shareholder director represents the Secretary of State as a board member of NHS Property Services.²
3. NHS Property Services' portfolio consists of about 2,900 properties (about 12% of the entire NHS estate by floor space) with an estimated value of £3.8 billion. More than 60% of its properties are health centres, surgeries or clinics. It has almost 7,000 tenants. Almost half of the Service's tenants are NHS trusts and NHS foundation trusts (31%) and GPs (18%).³
4. NHS Property Services' has three main roles. First, it acts as a landlord to manage the estate, agreeing and recording the basis on which its tenants occupy buildings (rental agreements), billing them, collecting payments and chasing outstanding debts. Second, it provides strategic estates management by modernising and maximising the use of current facilities, buying new facilities, selling facilities the NHS no longer needs and releasing surplus public land for housing. Third, it provides support and facilities management services such as maintenance, cleaning and catering services.⁴

The set up of NHS Property Services Limited

5. The Department did not set up NHS Property Services with the powers that a commercial landlord can use to enforce occupancy contracts and charges, because of the need to maintain the clinical services that its tenants provide. It therefore

¹ Report by the Comptroller and Auditor General, [Investigation into NHS Property Services Limited](#), Session 2017-19, HC 2222, 26 June 2019

² Q 102; [C&AG's Report](#), paras 1, 1.1

³ Qq 7, 152; [C&AG's Report](#), para 2

⁴ Q 26; [C&AG's Report](#), para 2

cannot act like a “normal” property company because of the public interests involved.⁵ For example, it does not have access to conventional remedies such as legal action, penalty charges, cessation of services or eviction for NHS bodies. Any enforcement action that NHS Property Services plans to take against tenants must be approved by the Department on a case-by-case basis.⁶

6. NHS Property Services inherited a range of issues from its predecessor organisations. These issues included: limited data on properties and tenants; two-thirds of its tenants had no leases in place; tenants were not always fully charged for rent and services; and over 2,500 different facilities management arrangements with different suppliers.⁷ The Department acknowledged that it had not been widely understood how little information about the previous system was going to be handed over to NHS Property Services and therefore how much remedial work would need to be done. For example, there was no paperwork for many tenants that were occupying buildings.⁸
7. The Department is currently undertaking a review of NHS Property Services. The review will examine whether there is still a need for this company and if so whether the correct control and governance arrangements are in place. The review was due to be completed by 31 October 2019. The Department confirmed that the timetable had slipped and said that it will now be completed by the end of 2019.⁹

The lack of rental agreements

8. About two-thirds of the tenants that NHS Property Services inherited in 2013 did not have rental agreements in place and therefore it has been retrospectively trying to agree leases with occupiers already in situ. NHS Property Services told us that it has sought to get more agreements in place by simplifying them and by issuing 3,500 non-binding summaries of the main features of the lease arrangements.¹⁰ NHS Property Services has put in place over 1,750 new occupancy agreements of various forms over last few years. However, because of churn in the tenants that occupy its buildings, by April 2019, only 30% of its tenants had rental agreements

⁵ Qq 1-2, 8-10, 95, 98, 103

⁶ Qq 9, 99; [C&AG's Report](#), para 1.6

⁷ Qq 1-2, 39, 127; [C&AG's Report](#), para 1.5

⁸ Qq 95, 127

⁹ Qq 127-129; [C&AG's Report](#), para 3.3

¹⁰ Qq 2, 5-6, 55

in place.¹¹ NHS Property Services acknowledged this not where it wants to be and that without these rental agreements in place, it is difficult to manage those properties effectively.¹²

9. Rental agreements need to be based on a common understanding between the tenants and landlord about what is being rented and how much it costs.¹³ The data that NHS Property Services holds on its properties and tenants has improved but this data is liable to degrade if tenants do not inform it of changes to the space they use. The absence of leases means that there is no enforceable process to ensure that tenants inform NHS Property Services of changes to the space they use.¹⁴ NHS Property Services recognises that it needs to continue to improve the accuracy of its data. However, without effective powers of enforcement, it needs national bodies to do more to ensure that tenants engage, agree the supporting data and sign rental agreements. NHS Property Services told us that if it gets the data right and puts tenant-friendly draft documents in front of occupiers, it would be helpful if there were some sort of requirement that tenants enter into those agreements.¹⁵
10. NHS Property Services stated that it is working with the national bodies - the Department and NHS England and NHS Improvement - to agree a joint plan to get rental agreements in place for all its tenants. It told us that key elements to the action plan include: getting the national bodies to pre-endorse a suite of occupancy documents for tenants to sign; improving the data that they hold and making sure that tenants inform them of any changes to the space they use; and introducing a “no lease, no occupancy” policy going forwards.¹⁶ However neither the Department or NHS Property Services could provide us with a clear timetable for all tenants to have signed rental agreements in place. NHS Property Services told us that it aims to have deemed rental agreement in place for 90% of its tenants by April 2020, where the rental area and rent are agreed with tenants but without a signed document.¹⁷

¹¹ Qq 1-2, 6-7, 17; [C&AG's Report](#), Figure 7

¹² Qq 3, 6

¹³ Qq 2, 95

¹⁴ Qq 7, 66; [C&AG's Report](#), para 2.5

¹⁵ Qq 6-7, 10, 18, 53, 98

¹⁶ Qq 7, 10-12, 16, 78-79

¹⁷ Qq 51, 57-63, 121-122

Outstanding debt owed by tenants

11. Tenants are taking longer to pay their bills and outstanding debt is increasing. The average number of days that tenants take to pay their bills increased from 91 days in 2015-16 to 214 days in 2018-19. Outstanding debt has increased from £210 million in March 2014 to £576 million in March 2019. About 55% of the debt is for bills issued in 2018-19, the rest of the debt relates to bills NHS Property Services issued in previous years.¹⁸ NHS Property Services told that it had made good progress on the £800 million it had billed tenants for in 2018-19, recovering £600 million. Between 2014-15 and 2018-19, the Service wrote off £110 million of debt. NHS England and NHS improvement informed us that any future decisions on writing off debts will be made on a case-by-case basis. It noted that, in some cases, it may be necessary for NHS Property Services to write off an element of historic charges. For example, where past charges prove to be inaccurate or where the charging position going forward is agreed and there is no value to the health system in incurring additional cost to work through the historic billing.¹⁹
12. About half of the current debt is subject to review because it has been challenged by tenants for a range of reasons, including bills being based on inaccurate information or inappropriate apportionment of costs.²⁰ Written evidence we received from a number of tenants, or bodies representing tenants, cited the inaccuracy of information as a reason for disputing debt. For example, NHS Clinical Commissioners told us that its members are still raising concerns about billing accuracy and would like to see a fundamental change in degree of information that is provided within a bill.²¹ NHS Property Services said that it plans to be more robust on recovering the debt. It plans to sit down with 2,000 customers to agree the charges it has issued this year and pre-agree those charges for 2021, to remove scope for dispute.²²

¹⁸ Qq 1, 19; [C&AG's Report](#), paras 2.11-2.12

¹⁹ Q 1, 14, 135; [Written evidence from NHS England and NHS Improvement dated 30 September 2019](#); [C&AG's Report](#), para 2.13

²⁰ [C&AG's Report](#), Figure 12

²¹ Written evidence from NHS Clinical Commissioners ([NPS0005](#)), Central London Community Healthcare NHS Trust ([NPS0004](#)), Sussex Healthcare Partnership ([NPS0002](#)) and the British Medical Association ([NPS0003](#))

²² Qq 17-18

13. NHS Property Services stated that it has a debt recovery plan with a range of actions, including direct payment of rental charges, where commissioners give occupiers the funds to pay their rent to NHS Services. It also acknowledged that the dispute resolution process, where tenants challenge bills, needs to work better than it does now in terms of speed and outcome.²³ To date, NHS Property Services has proposed 60 cases for arbitration to the national bodies for approval, of which 19 were approved. The Department told us that arbitration should only be used when all other options have been exhausted.²⁴

²³ Qq 10, 17, 56

²⁴ Qq 8-9, 99-102; [C&AG's Report](#), para 2.15

2. Future challenges

Striking the balance between local incentives and national control

14. NHS Property Services aims to dispose of properties that are under-used or no longer needed. By March 2019, it had disposed of 410 surplus properties with a capital receipts value of £347 million.²⁵ The Department confirmed that NHS Property Services' release of surplus land has delivered 1,921 housing unit equivalents, as part of the government's scheme for releasing public land for housing, about 20% of the Department's total delivery.²⁶ The decision on whether a property is surplus to requirements is made by the health commissioners and clinicians who use the property and not by NHS Property Services.²⁷ NHS Property Services noted that occupiers benefit from disposals, in that they are immediately relieved of their operating costs, rent, and other charges if appropriate. However, they do not benefit from the sale of the property as these receipts are reinvested in the estate at a national level rather than going back to the local area in question.²⁸
15. We raised concerns about the lack of transparency in NHS Property Services' property disposal decisions. For example, whether decisions are taken that are in the best interests of the local health system or to achieve the greatest financial benefit. NHS Property Services told us that it aims to get the best value for the taxpayer and that it has really good engagement with local health systems and the national bodies on property disposals.²⁹ We also received evidence that NHS Property Services does not always engage with local health systems on investments and developing the estate for the future.³⁰
16. NHS Property Services inherited over 2,400 separate facilities management arrangements, some of which were provided in-house and some of which were outsourced. It has rationalised these arrangements down to fewer than 50 suppliers and aims to rationalise them further.³¹ We raised concerns about whether NHS

²⁵ [C&AG's Report](#), para 1.2 and Figure 13

²⁶ Qq 105-106

²⁷ [C&AG's Report](#), para 2.17

²⁸ Qq 26-29, 75

²⁹ Qq 32-37; written evidence from Central London Community Healthcare NHS Trust ([NPS0004](#))

³⁰ Written evidence from NHS Clinical Commissioners ([NPS0005](#))

³¹ Q 39; [C&AG's Report](#), para 2.23

Property Services should be involved in facilities management, or whether it would be better to let the local tenants organise these services. NHS Property Services stated that it can achieve national economies of scale, either through letting national contracts or by operating on a national standards model and can drive costs down. It noted that it makes insourcing or outsourcing decisions by looking at each type of service to see what the most cost-effective solution is, and that if a tenant thinks it can achieve better value elsewhere, they are not obliged to use the services provided by NHS Property Services.³² NHS Property Services and NHS England and NHS improvement cited examples where local NHS bodies are in the process of taking control of the property that they currently rent from NHS Property Services.³³

Providing a level playing field

17. About 18% of GP surgeries are owned by NHS Property Services. The rest are either commercially owned or owner-occupied.³⁴ We asked NHS Property Services whether it is fair that one GP practice is paying a full rent on its commercial premises, and yet another GP practice down the road occupying broadly similar premises can get away with not paying its rent to NHS Property Services on time or at all. NHS Property Services acknowledged that it was not equitable, but also said that the starting positions were very different. Tenants in commercial properties willingly took on tenancy agreements compared to its tenants who were already in occupation, where the basis for occupation and charging were unclear, and in the absence of any documentation, the enforcement route is unclear.³⁵
18. Tenants were not always fully charged for rent and services before NHS Property Services took on ownership. Initially, the Department agreed that to begin with NHS Property Services would charge tenants in the same way as the previous owners, primary care trusts and strategic health authorities. In practice, this meant tenants would only be charged 60% of their total charges with the remaining 40% being charged to commissioners. These arrangements have largely been withdrawn

³² Qq 39-42

³³ Qq 69-72

³⁴ [C&AG's Report](#), para 1.3

³⁵ Q 55

over time, but current levels of subsidy are not known.³⁶ Some tenants have cited affordability as an issue for their unwillingness to pay bills, and this may be linked to the withdrawal of subsidies. The Department told us that one of the reasons that it moved away from replicating exactly what primary care trusts and strategic health authorities had done previously, to a more commercial market rental system for all, was to ensure fairness. However, it accepts that the current system can lead to unfairness and that it needs to work with commissioners on a case-by-case basis to ensure fairness.³⁷

³⁶ Q 101; Written evidence from NHS Clinical Commissioners ([NPS0005](#)); [C&AG's Report](#), para 1.5

³⁷ Q 101; [C&AG's Report](#), Figure 12

Formal Minutes

Monday 4 November 2019

Members present:

Meg Hillier, in the Chair

Sir Geoffrey Clifton- Layla Moran

Brown Bridget Phillipson

Nigel Mills

Draft Report (*NHS Property Services*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 18 read and agreed to.

Introduction agreed to.

Conclusions and recommendations agreed to.

Summary agreed to.

Resolved, That the Report be the First of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[Adjourned to a day and time to be fixed by the Chair