



THE SCOTTISH OFFICE

NHS
MEL(1995)47

Chessa

National Health Service in Scotland Management Executive

St Andrew's House
Edinburgh EH1 3DG
21 July 1995

Dear Colleague

TRANSFER OF HERITABLE PROPERTY TO NHS TRUSTS

Summary

1. This letter provides colleagues with a copy of the model Cost Neutral Lease (Annex A).
2. It also describes its intended use and asks for the provision of the necessary information to enable The Scottish Office Solicitor's Office to prepare Cost Neutral Leases for all minor user Trusts and other NHS bodies (Annex B).
3. Finally it provides information and/or clarification on a number of transfer issues arising from MEL(1995)14 (Annex C).

Action

4. Chief Executives are asked to ensure that the requested information (Annex B, paragraphs 3 and 4) is returned to Mr McCallum as soon as possible, in the case of paragraph 4 not later than 28 August 1995.
5. Likewise any stated case that Chief Executives wish to make under paragraph 2 of Annex C should be provided as soon as possible in order that rulings can be made and the transfer programme facilitated.

Other Information

6. Following the early retirement of Mr Tucker, Mr McCallum, Head of Estates Division has assumed responsibility for all asset transfer matters.

Yours sincerely

PAUL WILSON
Director of Trusts

Telephone 031-244
Fax 031-244 2683

Addressees:

For Action:

Chief Executives,
NHS Trusts

For Information:

General Managers,
Health Boards

General Manager,
Common Services Agency

General Manager,
State Hospitals Board
for Scotland

General Manager,
Health Education Board
for Scotland

Executive Director,
SCPMDE

Enquiries to:

Roderick McCallum
Directorate of Trusts
Estates Division
Room 351
St Andrew's House
Edinburgh
EH1 3DG
Tel: (0131) 244 2079
Fax: (0131) 244 2323

LEASE

between

THE SECRETARY OF STATE FOR SCOTLAND, (hereinafter referred to as "the Landlord")

and

[] (hereinafter referred to as "the Tenant")

DEFINITIONS

1. Unless the context otherwise requires, in this Lease -

(i) "the Common Parts" means

(a) the following parts of the Building, namely the Main Structure, the front entrance and entrance hall and other entrance/exit doors, the lifts, including lift cars and other lift equipment, all staircases, landings and corridors, the fire escapes, the plant rooms, any vaults, the whole heating system including all radiators and generally all parts of the Building (including fixtures and fittings, lighting, conducting media, services and equipment) as are provided for the common use or benefit of the occupiers of the Building or are not located in any area intended for exclusive occupation; and

(b) all parts of the Landlord's Estate not forming part of the Building or of any other building erected on the Landlord's Estate including, without prejudice to that generality, the boundary walls, fences and others forming part of the Landlord's Estate, any other walls, fences or railings, any roads within the Landlord's Estate, any areas surfaced by tarmacadam or paving and the pavements, the car park, accesses, any structures or other erections, the signage, landscaped areas and trees.

(ii) "the Main Structure" shall mean the main structure of the Building

and shall include, without prejudice to the generality of the foregoing, the roofs, foundations, external walls and the windows and glass comprised therein, internal load bearing columns and walls and the structural slab of roofs, ceilings and floors;

(iii) "the Premises" shall mean the following:-

ALL and WHOLE [] as shown outlined in [] on Plan Number [] annexed and executed as relative hereto including without prejudice to the generality of the foregoing description:-

(a) every part of all doors, internal windows, glass and the frames thereof and the fastenings on doors and internal windows, but excepting such surfaces of any such doors or others as face into any parts of the Building as are provided for the common use or benefit of the occupiers of the Building and any parts of the Building which are not intended for exclusive occupation;

(b) the internal non-load bearing walls and the internal surface coverings and plaster work (if any) of the ceilings (including without prejudice to the foregoing generality, suspended ceiling treatments) and walls;

(c) the floor screed and other finishes;

(d) all other interior surface coverings and finishes of all parts of the Main Structure that face into the Premises;

(e) the Landlord's fixtures and fittings, equipment and apparatus (including all carpets and light fittings, provided by the Landlord) and all water, soil, electricity, telephone and other services (if any) exclusively serving the Premises and the service media therefor; and

(f) all other internal parts of the Premises.

(iv) "the Building" shall mean the building known as [] and shown outlined in [] on the Plan Number [] annexed as executed as relative hereto, forming part and portion of the Landlord's Estate and shall include all its parts and pertinents.

(v) the "Landlords Estate" shall mean [full conveyancing description with plan if available] and the parts, privileges and pertinents thereof, together with the Building thereon and the Common Parts;

SUBJECTS OF LET

2. The Landlord hereby lets to the Tenant but expressly excluding assignees legal or conventional and sub-tenants, the Premises TOGETHER WITH [specify rights of access through Building and the Landlord's Estate and any other servitudes required].

DURATION

3. This Lease shall be for a period of Twenty five years from [] (hereinafter referred to as "the Date of Entry").

TENANT'S MONETARY OBLIGATIONS

4. The Tenant hereby undertakes throughout the period of this Lease:

Rent

(i) to pay to the Landlord the yearly rent of [] or from each Date of Review the corresponding Revised Rent ascertained in accordance with Clause 8 and that without written demand therefor payable by banker's order by equal quarterly payments in advance on the Scottish quarter days clear of all deductions;

Service Charge

(ii) to pay to the Landlord a service charge payable quarter yearly in arrears at the terms when rent is payable being an equitable proportion, to be determined by the Landlord acting reasonably, of the expenditure properly and reasonably incurred by the Landlord in connection with complying with the Landlord's obligations under Clause 6 (other than expenditure incurred in the renewal or rebuilding of the Main Structure). Declaring that the Landlord shall give a reasonable explanation to the Tenant of the basis of determination of such proportion and if requested by the Tenant will exhibit invoices supporting such expenditure.

Interest

(iii) to pay to the Landlord, without prejudice to any other right, remedy or power herein contained or otherwise available to the Landlord, interest on any sum of money payable under this Lease which shall have become due but remain unpaid within fourteen days of the date of demand for payment, such interest to run from the date when the same was demanded until payment thereof at 2% per annum above the Bank of Scotland Lending Rate or Rates.

Expenses

(iv) to reimburse the Landlord for the following:

(a) half of the expenses reasonably incurred by the Landlord in connection with the preparation of this Lease, in paying stamp duty hereon and recording this Lease in the Register of Sasines or registering this Lease in the Land Register whichever is appropriate.

(b) all expenses reasonably incurred by the Landlord incidental to the preparation and service of all notices relating to the deficiencies of repair or requiring the Tenant to remedy a breach of any of its obligations under this Lease whether the same be served before or after the Date of Entry.

(c) all expenses reasonably incurred by the Landlord in procuring the remedy of any breach of an obligation or the payment of arrears due by the Tenant under this Lease.

TENANTS' FURTHER OBLIGATIONS

5. The Tenant further undertakes throughout the period of this Lease to fulfil the obligations set out in Part I of the Schedule annexed and executed as relative hereto:

LANDLORD'S OBLIGATIONS

6.1 The Landlord shall use reasonable endeavours to provide the services, to the extent reasonably appropriate and reasonably necessary, set out in Part II of the Schedule annexed and executed as relative hereto throughout the currency of this Lease

6.2 The Landlord shall not be liable for the temporary deprivation of the

occupancy or the full use and enjoyment of the Premises through the bursting, leaking or failure of water supply, waste or soil pipes or the choking, stoppage or overflow thereof or of the drains, gutters, rhones or conductors or for the failure, fusing or breakdown of the central heating system (if any), electrical cables, wires or appliances.

RENT REVIEW

7. As from each anniversary at the Date of Entry (each such anniversary being hereinafter called "the Date of Review") the rent shall be increased to an amount (hereinafter called "the Revised Rent") calculated as follows:-

$$RR = A \times B$$

Where:

RR = the Revised Rent from the Date of Review in question.

A = the proportion (expressed as a percentage) which the net internal area of the Premises bears to the net internal area of all buildings the Date of Review erected on the Landlord's Estate.

B = the sum of the return (being 6% or such other percentage as may from time to time be determined by the Secretary of State) and the depreciation charges (as calculated in accordance with guidelines from time to time laid down by the Secretary of State) which the Landlord is required to achieve by the Secretary of State for the Landlord's financial year in which the Date of Review in question falls in respect of the net assets comprised in the Landlord's Estate (being £[] or such other amount as the Secretary of State may from time to time determine).

IRRITANCY

8. If at any time during the currency of this Lease, the Tenant shall allow any term's payment of rent to remain unpaid for a period of 28 days (whether demanded or not) or, if the Tenants fail to comply with or contravene any of the other conditions, obligations, provisions and restrictions hereinbefore and hereinafter contained, or go into liquidation (otherwise than for the purpose of reconstruction, re-organisation or amalgamation), then and in any of these events it shall be in the power of the Landlord to put an end to this Lease without any declarator or process of law to be used to that effect and to remove the Tenant from possession of the Premises, and that without prejudice to the Landlord's claim for past, due or current rents, or any other

claims competent to him, and the Tenant hereby consents that summary diligence shall proceed hereon for removing it in any of the events aforesaid. Declaring however that the Landlord's right of forfeiture and re-entry herein contained shall not be exercised (a) on account of failure by the Tenant to make payment of the said rent or any part thereof within 28 days after the same shall have become due unless a further period of 21 days has elapsed after written notice shall have been given by the Landlord to the Tenant detailing the failure and referring to this Claim without the Tenant having made payment to the Landlord of the amount due; or (b) on account of any other breach, non-observance or non-performance by the Tenant which is capable of being remedied unless a period of 21 days (or such longer period as shall, having regard to the circumstances, be reasonable in any case) has elapsed after written notice shall have been given by the Landlord to the Tenant detailing the breach, non-observance or non-performance and referring to this Clause without the Tenant having remedied the same.

ARBITRATION

9. In the event of any dispute or difference arising between the parties hereto as to the intent, meaning or application of this Lease, either during the currency hereof or after termination of the same, the matter of difference shall be determined by a single arbiter appointed by the Sheriff of [] at [] and the award or awards interim and final of such arbiter shall be binding on the parties.

REGISTRATION

10. Both parties consent to the registration hereof for preservation and execution.

Register on behalf of the Secretary of State for Scotland in the Register of the County of [].

Solicitor, Edinburgh
Agent

Register on behalf of [] in the Register of the County of [].

Solicitor
Agent

THIS IS THE SCHEDULE REFERRED TO IN
THE FOREGOING LEASE

PART I

TENANT'S OBLIGATIONS

To repair maintain etc

1. To accept the Premises as being in good tenantable condition and repair and to maintain the Premises throughout the period of this Lease and to leave the Premises at the termination thereof for any reason in the like good tenantable condition and repair (excepting fair wear and tear) and in good decorative order.

To keep clean and tidy

2. At all times throughout the period of this Lease to keep the Premises in a clean and tidy condition and clear of all rubbish.

Use

3. To occupy the Premises and to use the same solely in connection with the fulfilment of the functions of the [NHS body] and for no other purpose whatsoever.

Not to create a nuisance

4. Not in general to do or permit to be done on the Premises anything which, in the reasonable opinion of the Landlord, may be or may tend to be a nuisance or cause disturbance inconvenience or damage to the Landlord or to the other tenants or occupiers of the Building or the Landlord's Estate or to any adjoining or adjacent or neighbouring property or the owner or occupier thereof.

Alterations

5. Not to carry out or permit to be carried out any structural or external alterations or additions to the Premises nor to erect any additional buildings or structures; Declaring however that the Tenant shall be entitled to make internal non-structural alterations and additions to the Premises, subject always to the Tenant reinstating the Premises to their original condition at the termination of this Lease.

Access for Landlord etc

6. To permit the Landlord, his agent or any other person as may be authorised by him at convenient times during the currency of this Lease by prior arrangement with the Tenant except in cases of emergency to enter into and upon the Premises to:

(i) examine the state of repair and condition of the same and, within a reasonable period having regard to the nature of the defect or want of repair after notice in writing to the Tenant shall have been given or left at the Premises of all defects and wants of repair found on such examination to repair and make good the same according to such notice and the conditions herein contained and in case the Tenant shall make default in so doing it shall be lawful for the workmen or others to be employed by the Landlords to enter upon the Premises and repair and restore the same and all expenses incurred thereby shall on demand be paid by the Tenant to the Landlord and if not so paid shall be recoverable by the Landlords with interest thereon from the date on which the said demand is made until payment; and

(ii) carry out the Landlord's obligations set out in the Schedule annexed and executed as relative hereto.

To indemnify

7. To indemnify the Landlord against all liability for which the Landlord may become responsible as a result of anything done or omitted to be done on the Premises by the Tenant, its servants or agents or any other party for whom the Tenant may be responsible and against all relative or consequential expenses.

Not to assign or sub-let

8. Not to assign this Lease in whole or in part nor sub-let nor part with possession of the Premises or any part thereof.

To remove

9. To remove from the possession and use of the Premises at the expiry or earlier termination of this Lease, without any warning away or process of removal, leaving the Premises, including said fixtures and fittings in such order and condition as shall be in accordance with the provisions hereinbefore contained and making good to the reasonable satisfaction of the Landlord any damage caused to the Premises or the said fixtures and fittings or to the Building (including the Common Parts) for reason of or arising out of or attributable to such removing.

PART II
LANDLORD'S OBLIGATIONS

To repair maintain or renew

1. To repair and keep in good and substantial repair and maintained in every respect and to redecorate, replace, renew or rebuild whenever reasonably necessary the Common Parts.

To pay proportion of expense of maintaining party walls, drains etc

2. To pay such proportion, if any (but including 100%) as the Landlord is liable to pay of the costs and expenses of making, laying, repairing, maintaining, renewing, rebuilding, cleaning and cleansing all ways, roads, lanes, pavements, landscaped areas, vaults, sewers, drains, pipes, watercourses, walls, fences, mutual walls, mutual fences, mutual structures and other items which may belong to or be used for the Landlord's Estate either exclusively or in common with other subjects near or adjoining thereto.

Landscaping etc

3. To keep the landscaped areas and trees within the Landlord's Estate (as such areas are existing from time to time) in a neat and tidy condition, drained and with such pruning, litter removal, watering, application of pesticides, grass cutting, fertilising, weeding, stocking and replacement of grass, shrubs and trees as the Landlord sees fit, together with any lopping or felling of trees that the Landlord may consider appropriate for the amenity or safety of the Landlord's Estate.

Cleaning etc

4. To clean the exterior and interior faces of all windows and other glasswork in the Common Parts and keeping cleaned and treated (including where applicable stone cleaning and treatment) all other parts of the Common Parts.

Heating etc

5. To provide, run, maintain, and replace or renew heating systems serving the Building (including the Premises) and, if the Landlord sees fit, to provide and thereafter to run, maintain and replace or renew ventilation and air conditioning systems serving the same; and

Hot Water

6. To provide hot water, power and lighting throughout the Building.

Carpets etc in Common Parts

7. To maintain and, not more frequently than once in every five years of this Lease, replace the carpeting of the Common Parts, maintaining and, if necessary, replace the other floor coverings of the Common Parts with suitable floor coverings; to maintain and replace as necessary, furnishings, fittings, plants and planters for the Common Parts.

Payment of rates etc

8. To pay and discharge all rates, taxes, duties, levies, charges, assessments, impositions and outgoings whatsoever whether parliamentary, regional, district, parochial, local or of any other description which are now or at any time hereafter may be taxed, assessed, charged or imposed upon or payable in respect of the Landlord's Estate or any part thereof except in so far as the same are the responsibility of the Tenant or of any other tenant or occupier.

Statutory Requirements

9. To execute all works and provide and maintain all arrangements which by or under any Act of Parliament or Statutory Instrument already or hereafter to be passed or by any Government Department, Local Authority or other Public Authority or duly authorised officer or Court of competent jurisdiction acting under or in pursuance of any enactment are or may be directed or required to be executed, provided or maintained at any time upon any part of the Landlord's Estate for the repair of which the Landlord is responsible.

Costs of abating nuisance etc

10. To pay all costs, charges and expenses of abating a nuisance and of executing all such works as may be necessary for complying with any notice served by a Local or other competent Authority in connection with the Landlord's Estate or any part thereof in so far as the same is not the liability of or attributable to the fault of any individual tenant or occupier of any part thereof.

Maintaining Services

11. To maintain, repair, cleanse, empty, drain, extend, amend and renew, all as the Landlord shall think fit, the drainage systems, all water supply, gas, soil, electricity, telephone and other installations and services (if any), and all

electrical and mechanical equipment (including lift equipment and cars) in, upon or serving the Landlord's Estate (but excluding such installations and services which are within and exclusively serve the Premises or are within and exclusively serve any area let or intended for letting to occupational tenants within the Building).

Provision of Staff

12. To provide supervisory, commissionaire, security, gardening and other staff in or for the Landlord's Estate as the Landlord. shall think fit and also to provide, renew, repair, maintain and if necessary, renew suitable facilities therefor (including without prejudice to the foregoing generality, the provision of the uniforms and boiler suits and other protective clothing).

Electrical and other power

13. To provide for the Landlord's Estate, in such manner and to the extent that the Landlord shall determine, electricity, gas and other power and provide lighting (including emergency lighting, floodlighting and streetlighting) and power for the operation of the lifts; and

Floodlighting etc Systems

14. To maintain, repair, extend and renew the flood lighting systems, street lighting and other lighting serving the Landlord's Estate.

Special Costs etc

15. To pay any special costs which may be made by the Local or other competent Authority on the Landlord or the Landlord's Estate as a whole or the Building and relate to or arise from the administration thereof including, without prejudice to the generality of the foregoing, the collection of refuse therefrom.

Security Equipment and Telephones

16. To provide, operate, maintain and replace such security, telephone or other like equipment as the Landlord considers necessary or desirable for the benefit of the Landlord's Estate.

Service Equipment

17. To provide, maintain and renew such equipment as may from time to time, in the opinion of the Landlords, be necessary or desirable for the carrying on of the acts and things mentioned in this Clause and any other services and amenities which the Landlord may from time to time consider

necessary or desirable.

Store for Equipment

18. To provide accommodation to house vehicles, equipment and personnel employed in providing the services mentioned in this Clause.

Signage

19. To provide, maintain, repair and as necessary renew any signage for the Landlord's Estate that the Landlord may consider desirable from time to time.

Fire Alarm & Fighting Equipment

20. To provide, maintain and renew fire alarm and fighting equipment and appliances for the Common Parts.

Additional Services

21. To provide any other service which, in the opinion of the Landlord (which shall be conclusive), it is reasonable for the Landlord to provide for maintaining, securing or improving the facilities and amenities of the Landlord's Estate as a whole.

Cost Neutral Leases (CNL)

1. The need for and purpose of cost neutral leases was set out in paragraph 9.5 of MEL(1995)14. The model CNL has now been drawn up (see Annex A).

2. Clarification has been sought on what bodies are to be covered by the CNL provision. They are NHS bodies only, being NHS Trusts, Health Boards, Common Services Agency, and the Health Education Board for Scotland.

3. It is not intended that a CNL be entered into where an agreement already exists which is satisfactory to both parties. Where this is the case, and in order to ensure that CLO's Asset Transfer Unit and the Scottish Office's Solicitors Office can expedite transfer, Chief Executives of major-user Trusts should provide appropriate written confirmation, copied to the other NHS body as soon as convenient.

4. In all other cases the following information is now required from all major-user Trusts with a relevant minor-user Trust or other NHS body interest in order that The Scottish Office Solicitor's Office can prepare a CNL for all relevant minor-user Trust interests and similarly for other NHS bodies.

4.1 A statement describing the following:-

- a. the extent of the subjects to be leased to a minor-user under CNL terms.
- b. any rights of access that the minor-user will require over roads and footpaths etc belonging to the major-user.
- c. any rights that the minor-user will require for the use of sewers, drains, water, gas and other pipes, electricity and telephone cables etc which run through the major-user's property.
- d. any other rights that the minor user will require to be given over the major user's property.

4.2 A plan or plans showing the following:-

- a. delineation of the subjects to be leased.
- b. the location of the subjects to be leased within the property owned by the major-user.
- c. the roads, footpaths etc over which access rights are required, the location of the sewers, pipes etc which the minor-user requires rights to use and the route or location of any other rights which the minor-user requires from the major-user.

4.3 A statement of the initial rental calculated in accordance with Clause 7 of the model CNL.

4.4 The date that the CNL is to start.

4.5 A copy letter from the Chief Executive/General Manager of the minor-user to the major-user Trust Chief Executive confirming that the information provided under sub-paragraphs 4.1 to 4.4 is agreed.

5. The information should be returned to:

Roderick McCallum
Head of Estates Division
Directorate of Trusts
Management Executive
Room 351
St Andrew's House
Edinburgh
EH1 3DG

as soon as possible and in any case not later than 28 August 1995.

Estates Division
Directorate of Trusts
July 1995

Other Transfer Issues

Scottish Ambulance Service NHS Trust

1. Paragraph 9.2 of MEL(1995)14 refers.
2. The Scottish Ambulance Service NHS Trust has identified a list of sites to which it would wish to acquire title in its own right but which form part of a larger title that would otherwise transfer to a major-user Trust. The Trust is in the process of seeking each major-user Trust's views on the proposals. If both parties are agreed then title will be transferred to the Scottish Ambulance Service. If the parties cannot agree then the major-user Trust should inform CLO of this, and provide a stated case for the Management Executive's ruling. In taking that decision the Management Executive will have regard for the major user Trusts plans for development or rationalisation of its estate and for any damaging effect the giving of a separate title might have.

Universities and the Medical Research Council

3. Paragraph 9.7 of MEL(1995)14 refers.
4. Action is ongoing in respect of University interests in land to be transferred to Aberdeen Royal Hospitals NHS Trust and Dundee Teaching Hospitals NHS Trust.
5. The Management Executive is in the process of contacting other Trusts who share sites with Universities and/or the Medical Research Council.

Health Centres

6. Paragraph 10 of MEL(1995)14 refers.
7. The Directorate of Primary Care has health centre policy under active consideration.
8. In the meantime the sale of health centres and GP surgeries continues to be governed by the terms of the NHS Property Transactions Handbook (Part C Section 6).
9. A working definition of health centres for the purposes of property transfers has been agreed. It is "**Premises provided by Health Boards with a primary care focussed service and with a GP practice or practices operating out of them.**" Using this definition Trusts are requested to advise the Asset Transfer Unit of Central Legal Office of those properties falling within the definition in order that all other transfers can be expedited. This should be done as soon as possible.
10. This definition excludes clinics which would not be the practice base for a GP or GP partnership, albeit that the GP may provide services within it on a regular basis. It also excludes GP surgeries which may of course be purchased (see para 8) and which do not fall within the scope of the health centre policy review.

Community Hospitals

11. There has been some discussion about whether community hospitals should be included in the health centre policy review. It has been agreed that they should not and consequently that transfer of title to the relevant Trust can proceed.

Estates Division
Directorate of Trusts
July 1995

