

*From the Office of David Flory CBE
Deputy NHS Chief Executive*

*Richmond House
79 Whitehall
London
SW1A 2NS
Tel: 020 7210 5014
David.flory@dh.gsi.gov.uk*

All Chief Executives of Strategic Health Authorities
All Chief Executives of Primary Care Trusts

16 February 2011

Gateway reference number: 15582

Dear Colleagues

Directions concerning all transactions involving property 2011

1. This letter contains directions to Strategic Health Authorities and Primary Care Trusts pursuant to sections 8 and 272(8)(b) of the National Health Service Act 2006 (the 2006 Act).
2. The Secretary of State for Health directs that Primary Care Trusts (PCTs) must not enter into any agreements relating to the acquisition, management and disposal of property or to interests in land or buildings, under paragraph 15 of Schedule 3 to the 2006 Act, or section 7 of the Health and Medicines Act 1988 except in accordance with paragraphs 3 and 4.
3. Where the value of the transaction is less than £35 million, the PCT must obtain the prior written consent of the Strategic Health Authority (SHA), in accordance with paragraph 8.
4. Where the value of the transaction is £35 million or above the PCT must obtain the prior written consent of:
 - (a) the SHA in accordance with paragraph 8; and
 - (b) the Department of Health.
5. Examples only (not a full list) of the transactions to which these Directions apply are
 - (i) Disposals of freehold or leasehold property;
 - (ii) Acquisitions of freehold or leasehold property, including the acquisition of a sub-lease over property;

- (iii) Granting of leases and sub-leases, and assignments of the same;
 - (iv) Granting of licences in respect of freehold or leasehold property;
 - (v) Granting of legal charges over freehold or leasehold property;
 - (vi) Entering into contracts relating to their freehold or leasehold property such as management, maintenance or cleaning contracts;
 - (vii) Placing land, when required, on the Register of Surplus Public Sector Land.
6. These directions apply to all new transactions, amendments to existing agreements and to transactions which have been approved under previous PCT delegated powers but where contracts have not yet been signed, but not to existing agreements. This is to ensure that such transactions do not adversely affect the future implementation of the transfer of PCT owned property to other NHS or non-NHS organisations.
7. For clarification, these directions will not apply to any agreements relating to the reimbursement of GP premises' costs pursuant to the National Health Service (General Medical Services – Premises Costs) (England) Directions 2004¹. However, they will apply to any new property transactions or amendments to existing transactions in respect of Local Improvement Finance Trusts, (which are approved by the Secretary of State for the purposes of improving primary care facilities and services in a particular area)² and externally financed development agreements³.
8. The Secretary of State directs SHAs that in determining whether to approve a transaction, the SHA will only do so where it is satisfied that the proposal:
- (a) will not adversely affect the future implementation of the transfer of the PCT's owned property to other NHS or non-NHS organisations; and
 - (b) is in accordance with (i) good estate management principles - guidance is available in the DH publication Health Building Note 00-08: Estatecode⁴, (ii) the delegated limits for capital investment whereby all capital contracts entered into by PCTs with a value below £35m are required to have the prior approval of the SHA⁵.

¹ <http://www.pcc.nhs.uk/nhs-gms-premises-costs-directions-2004>

² See the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, S.I. 2002/2375.

³ A PCT has power to enter into such an agreement pursuant to paragraph 17 of Schedule 3 to the 2006 Act.

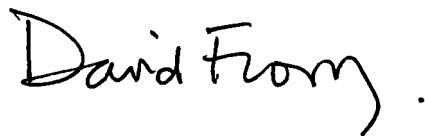
⁴ This is available at www.spaceforhealth.nhs.uk, or by writing to the local Strategic Health Authority or Primary Care Trust.

⁵ Delegated limits for capital investment, December 2010.

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_122842.pdf

9. In satisfying itself as to the effect of the proposed transaction, the SHA must consider all relevant factors, including the duration of the contract, the timing and amounts of any payments due, and the best future use of the estate. In relation to the best future use of the estate, SHAs should have regard to the guidance set out in "Transforming Community Services – the assurance and approvals process for PCT-provided community services"⁶.
10. SHAs must consider requests made to them pursuant to these directions for consent expeditiously. PCTs must provide all relevant information to the SHA and, where appropriate, the Department of Health to enable those bodies to make an early decision. This is particularly important where these directions now cover transactions approved under previous PCT delegated powers, but where contracts have not yet been signed.

Yours sincerely

A handwritten signature in black ink that reads "David Flory". The signature is written in a cursive, flowing style with a period at the end.

David Flory
Deputy NHS Chief Executive

⁶http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_112146.pdf