



**CYFARFOD BWRDD PRIFYSGOL IECHYD  
UNIVERSITY HEALTH BOARD MEETING**

<b>DYDDIAD Y CYFARFOD: DATE OF MEETING:</b>	26 November 2020
<b>TEITL YR ADRODDIAD: TITLE OF REPORT:</b>	Field Hospital at the Barn, Parc y Scarlets, Llanelli
<b>CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR:</b>	Huw Thomas, Director of Finance
<b>SWYDDOG ADRODD: REPORTING OFFICER:</b>	Huw Thomas, Director of Finance

**Pwrpas yr Adroddiad (dewiswch fel yn addas)**

**Purpose of the Report (select as appropriate)**

Ar Gyfer Penderfyniad/For Decision

**ADRODDIAD SCAA  
SBAR REPORT**

**Sefyllfa / Situation**

To provide the Board with an update on the Field Hospital at the Barn, Parc y Scarlets, Llanelli, and to seek ratification of the Underlease with Carmarthenshire County Council in the use of the facility.

**Cefndir / Background**

In March 2020, the University Health Board (UHB) was seeking additional bed capacity in Carmarthenshire to allow sufficient surge beds to respond to the COVID-19 pandemic. Carmarthenshire County Council (CCC) immediately supported the UHB by suggesting four sites in the county: Carmarthenshire Leisure Centre; Llanelli Leisure Centre; Parc y Scarlets; and Selwyn Samuel Centre, Llanelli.

On 1 May 2020, the UHB entered into an Underlease with Carmarthenshire County Council (CCC) from 22 April 2020 (terminating on 21 September 2020) at a 'peppercorn' rent. There was a Head Lease between Scarlets Regional Ltd (1) Carmarthenshire CCC (2). The Health Board has continued to remain in occupation of the Barn.

In accordance with a clear direction from Welsh Government (WG) in a letter dated 24 June 2020, the UHB was required to ensure that it had sufficient bed capacity to meet a potential second wave of the virus - a requirement of 613 acute beds. The Barn was essential to meet the UHB's capacity gap. At the time, there were no other viable options considered, as the issue of decommissioning the Parc y Scarlets site was a time and resource factor.

As the Underlease was due to terminate on 21 September 2020, the UHB needed to retain capacity based on the modelling projections relating to a second wave. Consequently, retaining the Barn was essential, as it is able to accommodate up to 212 beds.

CCC instigated the initial conversations with the Scarlets in early August 2020. On 17 August 2020, the UHB received a proposal from CCC that set out provisional terms for a new tenancy. The provisional terms stated that the Scarlets sought £100k per calendar month (pcm) for on-going usage and retention of the Barn.

The UHB requested a clear breakdown of how the £100k was quantified; this could not be provided, save for citing that the Scarlets were a commercial organisation. Moreover, they requested that this be dated from 1 September 2020 and this was non-negotiable.

The UHB entered into direct conversations with the Scarlets, who were unwilling to review the £100k pcm figure.

The UHB did highlight that the Barn as a going concern would only yield around £13,455 to £22,424 pcm based on a £3-5ft<sup>2</sup>, with the barn being roughly 5000m<sup>2</sup> (imperial equivalent 53,819.55 ft<sup>2</sup>). After a number of executive-led conversations, the Scarlets agreed to reduce the rent to £85k pcm (plus VAT). The Scarlets stated that the Barn was of strategic importance and anything less than £85k pcm (plus VAT) would require the UHB to return the Barn to the Scarlets at the end of the tenancy. Of the rental of £85k, around £70k pcm was classified as a consequential loss to the Scarlets, based on the rental return stipulated above.

Whilst demonstrating Value for Money at a commercial rental base rate inclusive of consequential losses is difficult, it should be noted that the UHB did occupy the Scarlets Stadium and Barn for nearly six months at a 'peppercorn' rent. Therefore, at an aggregate cost over the 15 months (March 2020 to May 2021) the rent would equate to £51k pcm, which is circa £11.37 per ft<sup>2</sup>. In addition, the cost of decommissioning the Barn is another factor, both in time and resources. Moreover, alternative premises would have to be identified which, given the size of the Barn, is problematic. If, however, another site had been identified, significant cost in commissioning the alternative site would have been incurred.

Upon the fee being agreed, there were a number of contractual points that proved challenging. For example, the UHB would only agree to replace the 3G pitch if the Scarlets could demonstrate that it fell below World Rugby standards. It was agreed that, as CCC had an existing relationship with the Scarlets, they would mediate between the parties. Furthermore, it was agreed that any new arrangements would reflect the previous position with the Head Lease being between the Scarlets and CCC and the Underlease between CCC and the UHB.

Therefore, at the end of September 2020, CCC commenced negotiations with the Scarlets. On 2 October 2020, NHS Wales Shared Services Partnership, Legal and Risk Services set out a number of material points to CCC in order to have an agreed Heads of Terms. On 29 October 2020, the UHB received the Head Lease and Underlease, informing the Health Board that these had been agreed and were not open to any further negotiation or re-drafting.

The UHB was under time pressure to complete the Underlease (as provided above) and this has resulted in only a headline review of the leases being possible. NHS Wales Shared Services Partnership, Specialist Estates Services (SES) were instructed to lead on the negotiations with the Scarlets at an early stage (August 2020) however, this was rejected; this is not the usual practice for property deals. The UHB considered that the Underlease should be a property document only and that all commercial/ financial matters should be dealt with by a separate legal agreement; this was rejected by CCC.

The UHB highlighted a number of significant issues that needed to be addressed; some but not all of these have been accepted by CCC. The residual risks are articulated and set out below.

### Asesiad / Assessment

There are a number of liabilities, risks and mitigations, which need to be referenced.

### Head Lease

- The Head Lease between the Scarlets and CCC is from 1 September 2020 until 31 May 2021 (1 day longer than the Underlease) with CCC entitled to give 6 weeks' notice to evoke a Break Clause no earlier than 31 December 2021.
- The Underlease accepts all liabilities as set out in the Head Lease; this is a key reason the Health Board needed to revise and clarify a number of terms and conditions.
- There are concerns that some of the provisions in the Head Lease are considered to be unclear and lack clarity in parts. Clearly, this could create uncertainty at the end of the lease(s).
- For example, the UHB is responsible for keeping the interior of the building in repair and in a good decorative order. Given that CCC is to be responsible for reinstatement, it was suggested that the UHB should only be required to keep the Barn in a clean and tidy condition. As drafted, the obligation is to hand back the Property to CCC in this condition being "in repair and good decorative order". This is a higher burden on the UHB than would normally be placed, given that CCC are ultimately responsible for the reinstatement and indemnified by the Health Board.
- However, in mitigation, it is considered that the collaborative relationship between CCC and the UHB should broadly negate any issues arising. This, coupled with the fact CCC are undertaking the reinstatement work, means it is unlikely CCC would argue around the decorative order in which it is returned to them. But clearly, the term is more onerous than anticipated.
- There is a further obligation for CCC to pay the Scarlets any costs incurred. This liability is transferred to the UHB through the Underlease. To note, these are restricted to costs associated with occupied areas and will include rates, utilities, telecommunications and other services consumed recharges.
- Whilst the above may seem onerous, it is not unusual for the Underlease to incorporate the terms and conditions as set out in the Head Lease.
- Any Conflict of Interest that may arise will be mitigated by having a Costing Adviser in place.

### Underlease

- Landlord & Tenant Act 1954: the Head Lease and Underlease include a provision to exclude s.24-28 of the Landlord & Tenant Act 1954 (LTA 1954) (not in the original documents). This means that the UHB will not be entitled to an Underlease on substantively the same terms at the end of the term and any further occupation will be by way of open negotiation. Members are advised that leases granted for a fixed term of six months or less do not benefit from security of tenure under Part II of the LTA 1954, which meant that the UHB did not have any lease renewal rights at the end of the original term.
- Term: the UHB renegotiated the term to end on 30 May 2021, which effectively means that the UHB can remain in occupation of the property until 19 April 2021 (to allow CCC to reinstate the property during the term of the Underlease/Head Lease). In a Landlord and Tenant situation, the UHB should have the right to exclusive occupation for the term (up to 30 May 2021), however the Underlease states that the UHB give up the exclusive possession on 19 April 2021 and continue to pay rent until 30 May 2021. In usual Landlord and Tenant situations, this could be considered as a derogation of grant as the UHB will not remain in occupation for the whole term. In mitigation, the UHB would be expected to cover all costs incurred by CCC (including any additional rent for the period of reinstatement) so although this is not the best legal vehicle, the liability to pay the cost and reinstate would fall on the HB in any event. CCC has inserted a clause that requires the UHB to pay rent for the additional day (31 May 2021), which was accepted.
- Reinstatement: CCC will undertake the decommissioning of the Barn and reinstatement on behalf of the UHB. The UHB has agreed to reimburse CCC for all costs incurred for this work. Whilst there is no agreement on what the full costs are likely to be for

reinstatement, the biggest risk (liability) will be the 3G pitch, which is capped at £134.2k (inclusive of VAT). Any claim for dilapidations will be pursued via the normal legal route.

- Repair: the repair clause refers to the state of repair and condition of the Property at the date of commencement of the Underlease (as agreed between the parties acting reasonably) but there is no formal documentation to support this. In mitigation, the UHB has secured some photographs from CCC that show the condition of the Barn in March/April 2020. This has the potential for disagreement in relation to responsibility for these minor repair works.

### Liabilities

- The drafting of the Head Lease and Underlease mean that the full extent of the UHB's financial liabilities are unknown and outside our control; this is particularly in relation to the reinstatement costs referred to above.
- In mitigation, the UHB has sent a Letter of Comfort to CCC confirming that they have agreed with CCC, albeit not legally, to support the UHB in any issues with the Scarlets.
- There is further mitigation in that the most significant liability, namely the 3G pitch, is capped at circa £134.2k (including VAT). Furthermore, the Health Board has also appointed an Independent Cost Advisor to oversee that any and all costs submitted are reasonable in nature.

### Roof

- The roof remains a concern and was leaking until it was repaired on Monday 2 November 2020.
- This has been raised with CCC and the Scarlets, and some minimal repair work has been undertaken, but there remain areas of concern.
- The Head Lease and Underlease state that the Scarlets must repair the roof by 16 November 2020 to the reasonable satisfaction of CCC. If this is not completed, CCC can serve 7 days' notice on the Scarlets to repair the roof
- In mitigation, if the problems remain, CCC can undertake the work with costs claimed against the Scarlets (to be deducted from the rent, if necessary).

### Pitch

- The Scarlets have stated that in commissioning the works to the Barn (March 2020), CCC has likely damaged the indoor pitch laid by the Scarlets in the autumn of 2019.
- The Underlease is drafted in such a way that the UHB could be liable to pay for a new 3G Rugby Pitch regardless of damage.
- There is no obligation to mitigate, or consider partial repair (if only some of the pitch is untenable), and no clarity on who would decide if the pitch meets or does not meet the required standard.
- In mitigation, both the Head Lease and the Underlease include a clause that reimbursement of this pitch is limited to £111,798.78 plus VAT (£134,200.00).

### Deducing Legal Title

- In usual landlord and tenant transactions, the UHB would expect to have sight of the Superior Landlord's legal title.
- Due to timescales, this was accepted in April 2020 as there was less liability on the UHB as we were paying a 'peppercorn' rent.
- Again, due to the enforced time pressures this has not taken place and therefore there could be Restrictions on the Title that the UHB is not aware of; for example, consent that should have been obtained which has not been obtained.
- This is mitigated by the fact that the UHB is already in occupation of the Barn, so would be subject to these Restrictions in any event.

Whilst there are remaining risks, the Underlease is between two public sector bodies, where our relationship and partnership working is strong.

Therefore, based on the timescales and the need to ensure all arrangements are underpinned with agreements and good governance, together with the fact that the UHB is on site and would be subject to all reinstatement costs, it was considered that the Underlease should be completed.

In light of the above and due to time constraints, Chair's action was sought on Friday 6th November to request approval of the Head Lease and Underlease. A challenging and robust discussion was held in relation to this matter with the Chair, the Chair of the Audit and Risk Assurance Committee, the Chair of the Finance Committee, the Chief Executive, the Director of Finance with support from the Board Secretary and key Health Board Officers. It was agreed that balancing all the risks, the Health Board would enter into the Underlease on the terms set out above; recognising, however, that as soon as it is safe and practicable to do so the Barn would be returned to the Scarlets. Therefore, Chair's Action was taken on 6<sup>th</sup> November 2020.

### Argymhelliad / Recommendation

Members are asked to ratify the Chair's Action Serial Number 118.

<b>Amcanion: (rhaid cwblhau)</b> <b>Objectives: (must be completed)</b>	
Cyfeirnod Cofrestr Risg Datix a Sgôr Cyfredol: Datix Risk Register Reference and Score:	N/A not a corporate risk
Safon(au) Gofal ac Iechyd: Health and Care Standard(s): <a href="#">Hyperlink to NHS Wales Health &amp; Care Standards</a>	Not Applicable
Amcanion Strategol y BIP: UHB Strategic Objectives: <a href="#">Hyperlink to HDdUHB Strategic Objectives</a>	All Strategic Objectives are applicable
Amcanion Llesiant BIP: UHB Well-being Objectives: <a href="#">Hyperlink to HDdUHB Well-being Objectives Annual Report 2018-2019</a>	10. Not Applicable

<b>Gwybodaeth Ychwanegol:</b> <b>Further Information:</b>	
Ar sail tystiolaeth: Evidence Base:	N/A
Rhestr Termiau: Glossary of Terms:	In the body of the paper.
Partion / Pwyllgorau â ymgynhorwyd ymlaen llaw y Cyfarfod Bwrdd Iechyd Prifysgol:	N/A

Parties / Committees consulted prior to University Health Board:	
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<b>Effaith: (rhaid cwblhau)</b> <b>Impact: (must be completed)</b>	
<b>Ariannol / Gwerth am Arian:</b> <b>Financial / Service:</b>	Referred to in the body of the paper.
<b>Ansawdd / Gofal Claf:</b> <b>Quality / Patient Care:</b>	The Field Hospital provision is important to ensure sufficient contingency beds during the winter period.
<b>Gweithlu:</b> <b>Workforce:</b>	N/A
<b>Risg:</b> <b>Risk:</b>	Contained within the body of the paper
<b>Cyfreithiol:</b> <b>Legal:</b>	Legal advice was provided by NHS Shared Services Legal & Risk Services
<b>Enw Da:</b> <b>Reputational:</b>	N/A
<b>Gyfrinachedd:</b> <b>Privacy:</b>	N/A
<b>Cydraddoldeb:</b> <b>Equality:</b>	Has EqIA screening been undertaken? No Has a full EqIA been undertaken? No