

27 November 2009

FILE REF: SHA/15330

PRIMARY CARE TRUST: #

GMS CONTRACTOR: DR #

**DISPUTE RESOLUTION – NATIONAL HEALTH SERVICE
(GENERAL MEDICAL SERVICES CONTRACTS) REGULATIONS
2004 (AS AMENDED)
RE: SENIORITY PAYMENTS**

1 Introduction

- 1.1 As a GMS Provider, the above contractor has referred the matter of seniority payments for dispute resolution under the provision of Schedule 6, Part 7 of the NHS (General Medical Services Contract) Regulations 2004.
- 1.2 On behalf of the Secretary of State for Health, the NHS Litigation Authority is directed to exercise the functions of dispute resolution and I as an authorised officer of the NHS Litigation Authority have made this determination.

2 Application for Dispute Resolution

- 2.1 By letter dated 18 August 2009, the GMS provider applied to the NHS Litigation Authority, for dispute resolution of the above issue.
- 2.2 I have had regard to the following documents made available to me in consideration of this matter to ensure the just, expeditious, economical and final determination of this dispute: -
 - 2.2.1 Letter (with enclosures) from the GMS provider to the NHSLA dated 18/8/09.
 - 2.2.2 Letter (with enclosures) from the PCT to the NHSLA dated 23 September 2009.
 - 2.2.3 Copy of the General Medical Services Contract Variation Notice – April 2005.
 - 2.2.4 Copy of the GMS Provider's letter to the NHSLA dated 8/10/09.

3 Consideration

- 3.1 I note the GMS provider's concern, that the PCT had without warning or explanation, reduced his seniority payment. In his letter to the PCT dated 5 January 2009, the GMS provider stated he had become aware of the reduction through a summary of payments for 31 December 2008. The GMS provider believed the PCT decision went against what was fair and reasonable.
- 3.2 I note the GMS provider's argument that he had always worked full time in his present practice. His commitment had increased since taking on students and with the start of extended hours surgeries. The GMS Provider believed seniority payments were intended to reflect a doctor's time commitment to General Practice and not simply their earnings. Full time partners in low earning practices should not be penalised.

3.3 I was provided by the GMS provider, with a copy of the Contractor's Standard GMS Contract Variation Notice – April 2005. However, I found nothing in that document to assist me in my determination of the application for dispute resolution.

3.4 I considered the wording of the General Medical Services Statement of Fees and Financial Entitlements 'the SFE' (as at 1 December 2007).

Paragraph 13.1

"Seniority payments are payments to a contractor in respect of individual GP providers in eligible posts. They reward experience, based on years of Reckonable Service."

3.5 Paragraph 13.2

"Contractors will only be entitled to a Seniority Payment in respect of a GP Provider if the GP Provider has served for at least two years in an eligible post, or for an aggregate of two years in more than one eligible post – part time and full time posts counting the same. The first date after the end of this two year period is the GP provider's qualifying date."

3.6 Paragraph 13.11 states:

"Once a GP provider has reached his qualifying date, he is entitled to a Seniority Payment in respect of his service as a GP Provider thereafter. The amount of his Seniority Payment will depend on two factors: his Superannuable Income Fraction, and his number of years of Reckonable Service."

3.7 Paragraph 13.12 states:

"At the end of each quarter, the PCT is to make an assessment of the seniority payments to be made in respect of individual GP providers working for or on behalf of its GMS Contractors."

Paragraph 13.14 states:

"In all cases, the full annual rate of a Seniority Payment for a GP provider is only payable under this SFE in respect of a GP Provider who has a Superannuable Income Fraction of at least two thirds"

3.8 Paragraph 13.17 states:

"If the GP provider has a superannuable Income Fraction of one third or between one third and two thirds, only 60% of the full annual amount payable in respect of a GP provider with his reckonable service is payable under this SFE in respect of him. If he has a Superannuable Income Fraction of less than one third, no seniority payment is payable under this SFE in respect of him."

3.9 Paragraph 13.18 states:

"Once a GP provider's full annual rate in respect of a quarter has been determined, and any reduction to be made in respect of his Superannuable Income Fraction has been made, the resulting amount is to be divided by four, and that quarterly amount is the Quarterly Superannuation Payment that the PCT must pay to the contractor under his GMS contract in respect of the GP provider."

3.10 I note there is no dispute that the GMS provider is eligible for Seniority payments in accordance with the SFE.

- 3.11 Whilst the GMS provider has provided his own interpretation of the intention behind seniority payments, I am mindful that SFE paragraph 13.1 clearly states that they “reward experience, based on years of Reckonable Service.” I have found nothing in the SFE to support the GMS provider’s claim seniority payments are intended to reflect a doctor’s time commitment to General Practice, and not simply their earnings. Further, SFE paragraph 13.11 indicates the amount of seniority payment will depend upon two factors, the GMS provider’s Superannuable income fraction, and his number of years of Reckonable service.
- 3.12 I note in their response to the application for dispute resolution, the PCT have referred to only 60% of the full annual amount being payable, where a GP provider has a superannuable income fraction of one third or between one third and two thirds. The GMS provider has not disputed the figures quoted by the PCT, nor did I have information to show the figures as used by the PCT in its calculations were not correct. I consider the PCT has acted in accordance with SFE paragraph 13.17.
- 3.13 I note the GMS provider’s claim that the PCT had without warning or explanation, reduced his seniority payment. However, I note that paragraph 13.12 puts the onus on the PCT to make an “assessment of the seniority payments to be made in respect of individual GP Providers”. As such, there is no obligation on the part of the PCT to “warn” providers if the amount is going to be less than previous quarters. The PCT having completed its calculations in accordance with the SFE, is then required to make the appropriate payment to the contractor on the last day of each quarter. I consider it is, as has happened, a matter for the contractor to take note of the payments made and where necessary to query them with the PCT.
- 3.14 I note the GMS provider’s reference to the decision of another PCT regarding seniority payments. However, I have not been directed to amendments to paragraph 13 of the SFE, nor was I made aware of any amendments by parties that could affect the outcome of this application for dispute resolution.
- 3.15 Accordingly, I have dismissed the application for dispute resolution and determine that the contractor is not entitled to any further payment for seniority than that already calculated by the PCT.

LISA HUGHES
Appeals Manager