

20 November 2009

FILE REF: 15397

PRIMARY CARE TRUST: # # #

GMS CONTRACTOR: # # #

DISPUTE RESOLUTION – NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES CONTRACTS) REGULATIONS 2004 (AS AMENDED)
RE: QOF – PATIENT EXPERIENCE, ACCESS

1 INTRODUCTION

1.1 As GMS Providers, the above Contractor has referred the matter of QOF payments for Patient Experience (Access) 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 1 October 2009 the Contractor applied to the FHS Appeal Unit of 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 of application dated 1 October 2009 with enclosures.

2.2.2 Letter from PCT providing representations (with enclosures) dated 21 October 2009.

2.2.3 Signed copy of the contract in dispute.

3 CONSIDERATION

3.1 I note that the dispute is with regards to the non-payment by the PCT of QOF for Patient Experience; Access. I note that it would appear that the PCT refused to pay the Contractor QOF payments under the provisions of the SFE as the Contractor did not meet the level required of it in the SFE. I note that the Contractor is not disputing that he failed to meet the levels required in the SFE.

3.2 I note that the Contractor is concerned that the PCT's refusal to pay this is a contradiction of the PCT document setting out what practiced based commissioning savings can be spent on which, at SO.9, states that the PCT wishes to reduce the gap between people with the best health and those with the poorest health, by targeting support where it is needed most.

- 3.3 I note that the Contractor in support of his claim for payment advises that the National Access Survey “significantly disadvantages” the Contractor’s Practice because with “such a high level of deprivation, the levels of literacy and comprehension are considerably less than the national average”. The Contractor also advances that by the PCT refusing to pay the Practice will “have to reduce staffing levels and facilities that are available to patients”, and that this goes against the PCT idea of “targeting support where it is needed most”. The Contractor further advances that its own survey is a more accurate reflection of patient access in the Practice. The Contractor provides a copy of a letter dated 17 September 2009 addressed to the PCT which sets out the results of its own survey on access.
- 3.4 In response the PCT provided a copy of a letter dated 29 June 2009 addressed to the Contractor which advised that the PCT does have discretion to make a payment to a Contractor who fails to meet the criteria required by the SFE for payment, and that this discretion is set out in guidance from the Department of Health which states that “the PCT will need to be satisfied that the survey result is substantially lower and different than in previous years”. In this letter it further states that the survey result for 2007/8 was # and that for 2008/9 it was # and as such the PCT is not satisfied that it is “substantially lower or different to” the preceding year. I note that the Contractor does not dispute this finding of the PCT or that this guidance applies.
- 3.5 I further note that the PCT advised in a letter to the Contractor dated 21 September 2009 that the independent survey provided by the Contractor was insufficient and provided too late to influence the panel in its decision not to pay the Contractor for QOF PE8.
- 3.6 I am of the view that as the appropriate paragraphs in the SFE refer to “the appropriate national survey” then a local survey carried out by the practice, after the deadline for submission of evidence in support of QOF payments (which is set out in the SFE as being prior to the last day of the financial year when a PCT is expected in accordance with the SFE to calculate such payments), cannot be given sufficient weight as to be the only form of evidence in support of payment.
- 3.7 Although it is unfortunate that the decision of the PCT maybe in contradiction to its policies elsewhere, of which I form no view, I am mindful that the Contractor has not provided me with any other information to suggest entitlement to be paid under the provisions of the SFE or his GMS Contract.
- 3.8 Given the above I am of the view that the Contractor is not entitled to any further QOF payment for PE8 under the provisions of the SFE.

LISA HUGHES
Appeals Manager

