

22 December 2009

FILE REF: 15462

PRIMARY CARE TRUST: #

GMS CONTRACTOR: #

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

1 INTRODUCTION

- 1.1 As GMS Providers, the above contractor has referred the matter of QOF Payments for Patient Experience, 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 20 October 2009 the contractor 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 of application (with enclosures) dated 20 October 2009.
 - 2.2.2 Letter from the PCT dated 16 November 2009 (with enclosures)
 - 2.2.3 Letter from the Contractor dated 27 October 2009.

3 CONSIDERATION

- 3.1 I note that the letter of application from the Contractor dated 20 October 2009 is headed "Appeal against QOF – Patients Survey – PE7 and P58 – 2008/9". I am presuming that "P58" is in fact PE8, although this is not qualified in the letter of application. I further note that the Contractor seeks to rely on copies of correspondence between the Contractor and the PCT, and states in the letter of application that due to the response rate for the National Survey (52%) this does not show a true picture with regards to confidence levels. The contractor further submits that when the Contractor did its own survey it had a 100% response rate which was a truer reflection.
- 3.2 In a letter to the PCT dated 26 June 2009 the contractor seeks to lay a claim to a discretionary payment, which the PCT can make, when there is an absence of the Survey result, or when the survey result is very low for an individual practice. The contractor alleges that the results were very low and this does not show a true reflection of the appointments available at the Practice.

- 3.3 The PCT in a letter to the contractor dated 3 July 2009 states that guidance from the Department of Health advises that discretion applies where either there is no survey result or the result is very low for an individual practice.
- 3.4 I note in a letter to the contractor dated 22 July 2009 the PCT which sets out the Appeal Panel's criteria for payment for judging whether the Contractor is entitled to this discretionary payment, and that the Appeal from the contractor was rejected on the basis that "your results do not meet the criteria to alter your achievement for 2008/9 and the evidence supplied could not prove any significant changes in practice to previous years." Further the PCT states "Panel stated substantially change, 43% confidence level 12% and last year's result 54% 11% confidence level did not trigger payment". I note that the contractor has not disputed these figures. I further note that the Contractor has not challenged the criteria applied by the PCT or directed me to any alternative provision within the contract, the SFE or any other guidance issued by the PCT or the Department of Health which entitles them to payment of the challenged indicators.
- 3.5 I further note that in a letter to this Authority dated 16 November 2009 the PCT advises that the criteria used for this assessment were the same criteria applied to all practices that appealed against the results of PE7 and PE8. I note that this is not disputed by the Contractor. I further note that in this letter the PCT advises that the response rate for the contractor was higher than both the national average and the PCT average; again I note that the contractor has not disputed this. I further note that the PCT provides information with regards to the percentage confidence levels with regards to pre-bookable appointments and that this is below the threshold set out in the SFE which is 60-90%; again this is not challenged by the contractor.
- 3.6 I note that in the letter to this Authority dated 27 October 2009 the Contractor maintains that the response rate did not reflect the true picture and that it is of the view that it provides a very good service to patients.
- 3.7 I am of the view from the information provided to me that the PCT has exercised its discretion as set out in the Guidance issued to them by the Department of Health. The Contractor has not provided me with any other documents to challenge this guidance, or disputed any of the figures provided by the PCT. The Contractor seeks to rely on the low response rate as not demonstrating the true position of the practice; however I note that this response rate is not low when compared with the PCT area. I am of the view that information provided to me, which has not been challenged, indicates that the PCT has exercised its discretion equitably and reasonably and as such I am of the view that the contractor has not demonstrated an entitlement to any further payment in accordance with QOF PE7 and PE8.

LISA HUGHES
Appeals Manager