

26 November 2009

FILE REF: 15386

PRIMARY CARE TRUST: #

GMS CONTRACTOR: #

DISPUTE RESOLUTION: NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES CONTRACTS) REGULATIONS 2004 (AS AMENDED)

RE: PAYMENT FOR CHILDHOOD IMMUNISATION PROGRAMME

1 INTRODUCTION

- 1.1 As GMS Providers, the above contractor has referred the matter of Childhood Immunisation Programme (pneumococcal) 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. I as an authorised officer of the NHS Litigation Authority have made this determination.

2 APPLICATION FOR DISPUTE RESOLUTION

- 2.1 By letter dated 25 August 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 25 August 2009 with enclosures.
 - 2.2.2 Letter of representations from the PCT dated 21 October 2009.
 - 2.2.3 Letter providing final observations from the contractor dated 30 October 2009.

3 CONSIDERATION

- 3.1 I note that the dispute has arisen around alleged late payments to the contractor for Childhood Immunisations in line with an agreed Service Level Agreement (SLA) between parties. I note that it is not disputed by either party that the contractor is entitled to the payment, or that the payment was made earlier than is being alleged by the contractor.
- 3.2 I note that the contractor has supplied a copy of his contract which has in it at clause 602 an "Entire Agreement Clause" which stipulates that "...this contract constitutes the entire agreement between the parties with respect to its subject matter". I note Part 17 clauses 473 thru 475 regarding payments made under the contract; and

further note that there is no penalty imposed on a PCT, in the clauses, for any late payment. I further note the provisions of the SFE and particularly the copy of the SFE provided by the contractor which again do not provide a penalty for late payment of owed monies.

- 3.3 I further note that the contractor has provided me with a copy of the SLA between parties for the claimed for service, however, there is no provision within this SLA for the payment of monies that might be owed to the contractor for the provision of the service, nor are there any agreed timescales.
- 3.4 I note that in the letter of application which sets out the nature of the dispute the contractor does not direct me to provisions within the contract, or any other associated documents to that contract such as the SFE or the SLA as to where there is a penalty imposed on the PCT for late payment.
- 3.5 I note that the Contractor has provided me with a copy of "A User's Guide to late payment legislation" and an extract from "The Late Payment of Commercial Debts (Interest) Act 1998", but has not directed me to whereabouts in the contract his entitlement to payment under this act lies. I note that in the User's Guide it states the following "If the purchaser [the PCT] does not apply the interest and/or compensation for debt recovery costs, the supplier can pursue the claim through the courts". I further note that later in the User's Guide it refers to the "County Court". Neither of these documents provided by the Contractor refer to the NHS Dispute Resolution Procedure or this Authority as having jurisdiction to make a determination in accordance with these Regulations.
- 3.6 As such I am of the view that on the information provided to me, the contractor has not demonstrated his entitlement under the terms of his GMS Contract, to interest payments for the alleged late payment by the PCT of #
- 3.7 I take no view on whether the contractor is entitled to payment under "The Late Payment of Commercial Debts (Interest) Act 1998" through an alternative Court or Tribunal.

LISA HUGHES
Appeals Manager