

2 February 2010

FILE REF: 15513

PRIMARY CARE TRUST: #

GMS CONTRACTOR: #

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

RE: QOF PAYMENTS – DIABETES REGISTER

1 INTRODUCTION

1.1 As GMS Providers, the above contractor has referred the matter of imposition of contract sanctions re QOF Diabetes Register 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 11 November 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 11 November 2009 with enclosures.

2.2.2 Letter from PCT providing representations (with enclosures) dated 25 November 2009.

2.2.3 Letter providing final observations from the contractor dated 16 December 2009.

2.3 The contractor has failed to send a copy of the contract with its request for dispute resolution as is required by Part 7 paragraph 101(3) of the Regulations. I am satisfied that I can resolve this dispute without sight of the contract.

3 Relevant paragraphs in the SFE

Part 2 of the SFE

3.1 Paragraph 6.1 (Achievement Payments, Basis of Achievement Payments) states:

'Achievement payments are to be based on the Achievement Points to which a contractor is entitled each financial year, as calculated in accordance with this Section and Section 4.'

3.2 Paragraph 6.2 (Achievement Payments, Basis of Achievement Payments) states:

'The date in respect of which the assessment of achievement points is to be made is the last day of the financial year, subject to the following exceptions-

(a) *if a contractor is under an obligation, under its GMS contract, to provide an additional service for part of the financial year but ceases providing that service before the end of the financial year-*

(i) *permanently, or*

(ii) *temporarily, but does not then resume providing the service before the end of the financial year,*

the assessment of the Achievement Points to which it is entitled in respect of that service is to be made in respect of the last date in the financial year on which it was under an obligation, under its GMS contract, to provide that service; and

(b) *if a GMS contract terminates before the end of the financial year, the assessment of the Achievement Points to which it is entitled is to be made in respect of the last date in the financial year on which it was under an obligation, under its GMS contract, to provide essential services.'*

3.3 Paragraph 6.3 (Returns in respect of Achievement Payments) states:

'In order to make a claim for an Achievement Payment, a contractor must make a return in respect of the information required of it by the PCT in order for the PCT to calculate its Achievement Payment.'

3.4 Paragraph 6.13 (Conditions attached to Achievement Payments) states:

'Achievement Payments, or any part thereof, are only payable if the contractor satisfies the following conditions:

(a) *the contractor must make the return required of it under paragraph 6.3;*

(b) *the contractor must ensure that all the information that it makes available to the PCT in respect of the calculation of its Achievement Payment is based on accurate and reliable information, and that any calculations it makes are carried out correctly;*

(c) *the contractor must ensure that it is able to provide any information that the PCT may reasonably request of it to demonstrate that it is entitled to each Achievement Point to which it says it is entitled, and the contractor must make that information available to the PCT on request;*

(d) *the contractor must make any returns required of it (whether computerised or otherwise) to the Exeter Registration System, and do so promptly and fully;*

3.5 Paragraph 6.14 (Conditions attached to Achievement Payments) states:

'If the contractor breaches any of these conditions, the PCT may, in appropriate circumstances, withhold payment of all or part of an Achievement Payment that is otherwise payable.'

4 **Consideration**

4.1 I note that the dispute is with regards to the Contractual Sanction imposed by the PCT of QOF for Diabetes Register and the deduction of QOF points reducing the total payment under QOF for 2007-2008.

4.2 I note that following a QOF visit in September 2007 it was brought to the Contractor's attention that there were some concerns with regard to the accuracy of some of the

registers. The Contractor was advised by the PCT as early as October 2007 that "If at the end of the year we determine that any of your registers are inaccurate we will have no alternative but to remove all points associated with the particular disease in question". The Contractor accepted this, replying in November 2007, stating that "I would agree with your determination so long as it is in line with part 2 paras 6.13 and 6.14 as well as annex D section2, clause 1.3 of GMS Statement of Financial Entitlements".

- 4.3 Following the submission of the disease registers in March 2008, I note that the PCT still had concerns with regards to the validity of the disease registers and a visit to the practice was arranged to validate the registers concerned. The initial concerns were with regard to the CHD register, however following examination of patients notes there were no problems identified with this register but other issues were brought to the PCT's attention including the higher than expected exception reporting for diabetes, with the majority of these entries being made on 28 and 31 March 2008. In this meeting the Contractor stated that they were not aware of any problems with exception reporting until this visit, but accepted that the practice was at fault with regard to the high exception reporting for diabetes
- 4.4 I note that there has been a lot of correspondence between the PCT and the Contractor to try to resolve the discrepancies over the high exception reporting which led to a visit to the practice on 27 January 2009. The letter from the PCT of 16 February, following this visit, sought to impose conditions as the PCT concluded that inaccurate information had been provided in respect of QOF achievements and breached the conditions stipulated by the SFE at paragraph 3.16. In line with paragraph 6.14 the PCT decided to deduct all points and payments associated with the QOF diabetes indicators affected by the exception reporting.
- 4.5 I note that subsequently the Contractor formally disputed the imposition of contract sanctions and as a result of the local dispute process it was agreed that a QOF clinical assessor from another PCT would visit the practice and given an independent assessment of the disputed contract sanction. The outcome of this report was that the exception reporting was not appropriate and it also identified a wide range of issues with the accuracy of the QOF data signed by the Contractor as accurate at the end of the 2007/08 financial year. the PCT advised the Contractor of this in a letter dated 5 October 2009 in which they also advised that they would be proceeding with the contract sanction.
- 4.6 I note that the PCT arranged three separate visits to the practice including one by an independent assessor to try to validate the QOF data, however all of the visits have concluded that there are inaccuracies within the reporting of and inputting of data into the system. I note that from the first visit, the Contractor was advised of the issues arising with the data inputting, including this being done by a non-clinical member of staff, however this does not appear to have been rectified and the Contractor submitted the information as being accurate and reliable in accordance with paragraphs 6.13 (a) and (f) of the SFE.
- 4.7 I note the comments from the Contractor that it is the PCT's role to prove beyond reasonable doubt that the information supplied by the practice is accurate. I note that the data submitted by the Contractor in April 2008 was confirmed by them as being accurate. The test for the PCT is not proof beyond reasonable doubt but is based on the balance of probability. I note that there were two visits conducted by the PCT which identified concerns and that there was a third carried out by an independent assessor from another PCT which also concurred with the findings and view of the original PCT. I conclude therefore that on the balance of probability the PCT has taken all reasonable steps to ensure the accuracy of the data supplied by the Contractor. I am also of the view that the PCT was acting reasonably in not disregarding its own findings as well as those of the independent assessor.

- 4.8 I consider that the Contractor has a responsibility to ensure that it provides evidence in line with the SFE and associated guidance. All such documentation is in the public domain and pertains to the Agreement which the contractor has signed with the PCT and as such should be aware of the implications of the SFE and any associated guidance.
- 4.9 Given the onus is upon the Contractor to make appropriate returns to the PCT, I determine that the PCT are entitled to impose a Contractual Sanction and to deduct all points and associated payment from the QOF Diabetes indicators affected by the exception reporting.

Lisa Hughes
Appeals Manager