

29 October 2009

FILE REF: 15301

PRIMARY CARE TRUST: #

PMS CONTRACTOR: #

DISPUTE RESOLUTION – NATIONAL HEALTH SERVICE (PRIMARY MEDICAL SERVICES AGREEMENT) REGULATIONS 2004 (AS AMENDED)
RE: QOF PAYMENTS FOR PE8 2008/9

1 INTRODUCTION

- 1.1 As PMS Providers, the above contractor has referred the matter of QOF payments for PE8 for 2008/9 for dispute resolution under the provision of Paragraph 95, Schedule 5 of the NHS (Personal Medical Services Agreement) 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 4 August 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 dated 4 August 2009 with enclosures.
 - 2.2.2 Letter of representations from the PCT dated 24 August 2009 with enclosures.
 - 2.2.3 A copy of the signed PMS Agreement as provided by the contractor.

3 CONSIDERATION

- 3.1 I note that in a letter to this Authority dated 4 August 2009 the contractor challenges none payment of QOF indicator PE8.
- 3.2 I note that the copy PMS Agreement provided by the contractor advises that the Quality and Outcomes Framework which accompanies the new GMS contract will apply. I note that this is not challenged by parties.
- 3.3 I note that the provisions of the SFE for PE8 for the period 2008/9 are:
 - 3.3.1 *PE8 Patient Experience of Access (2) – the percentage of patients who, in the national patient experience survey, indicate that they were able to book an appointment with a GP more than 2 days ahead. (35 points – 60-90% payment Stages).*

- 3.3.2 The percentage of patients who, in the national patient experience survey, indicate that they were able to book an appointment with a GP more than 2 days ahead.

PE 8.1 Practice guidance

- 3.3.3 This indicator, alongside PE 7, is designed to encourage and incentivise practices to continue to improve quick and convenient access to GP consultations for their patients.
- 3.3.4 The indicator reflects the previous access target for advance booking of appointments which featured in the Improved Access Directed Enhanced Services and which was subject to measurement through the national patient experience survey titled the GP patient survey.
- 3.3.5 Practices should note that the national patient experience survey is in addition to the practice survey in PE 2.
- 3.3.6 Achievement of this indicator will continue to be measured through the national patient experience survey and a new GP patient survey is being established in 2008/09. The survey will continue to be conducted by a third party polling expert on behalf of the Department of Health. The third party will administer the survey to registered patients and results will be collated for all GP practices.
- 3.3.7 Practices will want to encourage patients to respond to the survey by displaying the relevant communication materials when invited by the Department of Health/third party provider. Some patients may not want to take part in the survey and practices will need to facilitate such requests in accordance with notified arrangements for patient opt outs.
- 3.3.8 A sliding scale will apply to payments between 60% and 90%, in the same fashion as other thresholds in the clinical domain. Exception reporting does not apply.

PE 8.2 Written evidence

- 3.3.9 The national patient experience survey will deliver results to inform practices of their levels of achievement, this will initially be via a short report from the PCT. In the first year practices will not be required to enter their achievement values from this report on QMAS. PCTs will do this on practices behalf. This is because reports will not be available until following the last day of the financial year and PCTs will therefore need to use the adjustment facility to ensure correct achievement payments are made to practices.

PE 8.3 Assessment visit

- 3.3.10 The results should be discussed and ways of improving patients' experience of access in the future. The Improvement Foundation provides a general source of advice to practices and PCTs over improving patient access, www.improvementfoundation.org

PE 8.4 Assessors' guidance

- 3.3.11 It may be useful to note if patient participation is encouraged by display of the appropriate communication materials.
- 3.4 I note that the PCT quotes from the Department of Health policy for making discretionary payments for PE8 (gateway reference 91615) and that this states:

- 3.4.1 We have clarified in previous guidance that there remains provision for PCTs to make discretionary local payments where this is beneficial to the delivery of services and there is an absence of a survey result or where the result is very low for an individual practice and the PCT can reasonably be assured by other evidence that achieved survey results may be “unduly skewed” from the limited response an individual practice received. In these circumstances, PCTs will need to be satisfied that:
- 3.4.1.1 The survey result is substantially lower and different than that of previous years, and
 - 3.4.1.2 The practice can provide clear evidence that they routinely provide arrangements that consistently offer 48 hour and advanced booking access, backed up by evidence from patient participation groups or local surveys. This evidence must be clear and auditable to demonstrate that decisions reached are fair and justified.
- 3.5 I note that the contractor does not appear to be disputing that he was not paid what he would be entitled to be paid under the provisions of the SFE. I further note that in his letter to this Authority dated 4 August 2009 he provides mitigating circumstances as to why a payment should be made to him, which the PCT has taken as, in their letter to us dated 24 August 2009, a request for a discretionary payment made under the terms of Department of Health Guidance as quoted above. I note that the contractor has not disputed this.
- 3.6 I note that the PCT advises that it emailed to practices its procedure for considering a discretionary payment, and that the contractor had advised that he had not received this email, and therefore a copy of the procedure to be adopted by the PCT. I am of the view however, that although this was unfortunate, the contractor has not provided this Authority with any information to suggest that he was disadvantaged by this, in that he appears to have applied for the discretionary payment, and there is no suggestion that this was not fully considered by the PCT.
- 3.7 I note that in the letter to this Authority dated 24 August 2009 the PCT advises that the survey results for 2008/9 was 70%, with the previous year being 73%, and that this is not disputed by the contractor. I agree with the view of the PCT that this survey result does not meet the first criteria as set out in the Department of Health Guidelines as quoted (at 3.4.1.1) as it is not “substantially lower or different” to previous years. As such I am of the view the PCT reasonably exercised its discretion whether or not to make a payment to the contractor.
- 3.8 I form no view on whether the second point (at 3.4.1.2) of the Guidelines would be met if the contractor had satisfied the first point.
- 3.9 I direct that the contractor is not entitled to any additional monies for PE8 of QOF.
- 3.10 The PCT may wish to consider a system for satisfying itself that documents emailed to practices is received by all the intended recipients.

LISA HUGHES
Appeals Manager

