

30 September 2009

FILE REF: SHA/15166

PRIMARY CARE TRUST: #

PMS CONTRACTOR : DR #

**DISPUTE RESOLUTION – NATIONAL HEALTH SERVICE (PRIMARY
MEDICAL SERVICES AGREEMENT) REGULATIONS 2004 (AS AMENDED)
RE: SENIORITY PAYMENTS**

1 Introduction

- 1.1 As PMS Providers, the above contractor has referred the matter of Seniority payments 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 NHSLA have made this determination.

2 Application for Dispute Resolution

- 2.1 By letter dated 29 June 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 from the contractor dated 29 June 2009.
 - 2.2.2 Letter from the PCT dated 22 July 2009.
 - 2.2.3 Letter from the contractor dated 27 July 2009.
 - 2.2.4 Letter from the contractor dated 30 July 2009.
 - 2.2.5 Letter from the contractor dated 12 August 2009

3 Consideration

- 3.1 I note the application for dispute resolution concerns the PCT's decision to include seniority payments in the Contractor's PMS Baseline budget.
- 3.2 I note the Contractor's reference to a previous decision regarding abatement of Seniority. I did not feel that decision assisted me in my determination of the current application for dispute resolution.
- 3.3 I note there is an issue as to whether the application for dispute resolution (received 30/6/09) has been sent to this Authority (within the relevant time limits. The NHS (Personal Medical Services Agreements) Regulations 2004, Part 7, Regulation 95(4) states:

'Any party wishing to refer a dispute as mentioned in sub-paragraph (1) must send the request under paragraph (3) within a period of three years beginning with the date on which the matter giving rise to the dispute happened or should reasonably have come to the attention of the party wishing to refer the dispute.'

There is no provision in the Regulations to accept an application for dispute resolution made outside of the above time limit.

- 3.4 The PCT's email dated 6 December 2004, informed PMS practices in their area that unless the Trust was advised otherwise by 9 December 2004, it would be assumed that they wished to keep seniority within their baseline budget.
- 3.5 I note information provided by the Contractor to this Authority in their letter of 27 July 2009, indicates they had in 2004, asked their practice manager to inform the PCT in writing, they did not wish seniority payments to be included in the baseline budget. The PCT found no such letter from the Contractor. I consider it was the Contractor's responsibility to know their instruction had not been carried out.
- 3.6 I note the PCT considers the Contractor could have raised the 'matter' as soon as they received the first payment that was different to that they had expected, and thereafter at the beginning of each financial year when budget schedules were sent out. I note the Contractor's claim that the matter only came to their attention in April 2007 during discussions on accounts for the year end December 2006. The Contractor further claimed it was not until 2008 they had time to consider the implications of seniority being part of the PMS Baseline and in no way reflecting the actual payments due to the existing partners.
- 3.7 However, I note the Contractor's admission in their letter to this Authority of 29 June 2009, that they first raised the matter of seniority payments verbally with the PCT in 2005. Although I had no further information regarding the 2005 contact, I note the Contractor's accounts were said to be confused and disorganised in 2005 following departure of their practice manager. However, I am of the view that given the initial contact was made with the PCT in 2005 raising this issue with them, that this is when it 'reasonably came to the attention' of the contractor. As such I am of the view that this dispute was sent to this Authority outside of the time limits as set out in the Regulations.
- 3.8 I am of the view that no variation is to be made to the PMS Agreement in this regard.

Lisa Hughes
Appeals Manager

