

13 October 2023

FILE REF: SHA/26042

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DECISION MAKING BODY: NHS ENGLAND – BIRMINGHAM & SOLIHULL
REGION
("THE COMMISSIONER")

GMS CONTRACTOR: KINGSFIELD MEDICAL CENTRE
146 ALCESTER ROAD SOUTH
KINGS HEATH
BIRMINGHAM
B14 6AA

DISPUTE RESOLUTION: NATIONAL HEALTH SERVICE (GENERAL MEDICAL
SERVICES CONTRACT) REGULATIONS 2015

RE: NON PAYMENT FOR VACCINATIONS

1. Outcome

- 1.1 I am satisfied that the Commissioner can decline the request for payments for the period for the vaccinations given to its patient population for the 2021/22 financial year as the Contractor has not demonstrated that it submitted its DES agreement as required by the Enhanced Service Specification – Seasonal Influenza vaccination programme 2021/22 or the Enhanced Service – Childhood Seasonal Influenza Vaccination Programme 2021/22.
- 1.2 I note that neither party has submitted a claim for interest. I make no determination in this regard.

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RE: **NON PAYMENT FOR VACCINATIONS**

1. INTRODUCTION

- 1.1 The above Contractor referred the dispute in relation to its General Medical Services Contract for dispute resolution under the provisions of Regulation 83 of the National Health Service (General Medical Services Contracts) Regulations 2015 (the "Regulations").
- 1.2 The Secretary of State for Health and Social Care has directed that NHS Resolution exercise the functions of dispute resolution on their behalf. I, as an authorised officer of NHS Resolution, have made this determination.

2. APPLICATION FOR DISPUTE RESOLUTION

- 2.1 By email of 20 June 2023 the Contractor applied to NHS Resolution for dispute resolution.
- 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 Email from the Contractor dated 20 June 2023 with enclosures;
 - 2.2.2 Email from Birmingham LMC dated 22 June 2023 with enclosure;
 - 2.2.3 Email from the Contractor dated 4 July 2023 with enclosures;
 - 2.2.4 Email from the Contractor dated 10 July 2023 with enclosures;
 - 2.2.5 Email from the Commissioner dated 14 July 2023 with enclosures;
 - 2.2.6 Email from the Contractor dated 27 July 2023 with enclosures;

- 2.2.7 Email from the Contractor dated 16 August 2023 with enclosures;
- 2.2.8 Email from the Commissioner dated 24 August 2023; and
- 2.2.9 Email from the Commissioner dated 30 August 2023 with enclosures.

3. PARTIES SUBMISSIONS

The Contractor's application

- 3.1 In an email dated 10 May 2023 but received on 20 June 2023, the Practice Manager on behalf of the Contractor applied to NHS Resolution for dispute resolution and stated:

"I am contacting NHS Resolutions, on behalf of Kingsfield Medical Centre, in relation to the extremely disappointing decision received from NHS England, declining to provide payment to the Practice for Influenza Vaccinations carried out, during the 2021/22 campaign.

NHS England are adamant they did not receive the Enhanced Service Sign Up Sheet from the Practice for the 2020/2021 campaign. I am categorically sure that the form was forwarded to NHSE as I have retained a copy of the sign up sheet, signed by the GP, stamped with the scanning confirmation, and marked "done" which is the process for any type of document/form, etc. for the practice. Unfortunately, there weren't any reminders forwarded to practices this particular year to remind them if sign up forms hadn't been received by NHSE.

The Practice provided Influenza vaccinations during the 2021/2022 campaign to more than 2000 patients. A Flu Plan was also submitted to the CCG outlining our process to increase vaccination uptake that year. Additional flu vaccinations were also ordered and delivered out of the "Central Supply", proving that we had undertaken additional flu vaccinations, which we had also signed up to administer. Data (number of vaccinations given) is automatically extracted from our computer software via a system called CQRS each month, (the CQRS software provides the auto extraction for all Enhanced Services for Practices).

Please see attached evidence in relation to the Influenza campaign which includes:

The Enhanced Service Sign Up Sheet

Vaccine Order & Deliveries

Flu Plan (CCG)

Flu Vaccine delivery schedules and delivery notes

Patient lists of vaccines given

CQRS (previous years) automated extractions of vaccinations completed

NHS England Contracts Team & Practice communications/correspondence

The Practice & Partners are extremely upset by NHSEs decision to withhold payment for this Enhanced Service to which the practice have worked so hard to achieve such high standards not only for this year but equally for historical years. Unfortunately, from my own point of view, I feel absolutely devastated and have taken this whole situation personally. I feel that I have let both the Practice and the Partners down. I strongly feel that NHSEs decision to withhold payment was undertaken very quickly and not considered fairly and without fair justification based on the information the practice provided. This withheld payment is a substantial amount for the Practice, sadly needed

more than ever. We feel that we have been let down after trying to provide a standard invaluable service for our patients. We certainly don't want to cease from providing these Enhanced Services for our patients in the future, but after being treated in the manner we have been, we find ourselves having to think twice as hard before offering a service that has been refused payment due to an unfortunate oversight.

I would be very grateful if you could consider our appeal based on the information provided and on the basis that this scenario has never happened before. In all the years of participating in the Influenza campaign(s) we have never before had to make a retrospect claim.

Thank you for your consideration.”

Unsolicited comments

- 3.2 Birmingham LMC, in its covering email of 22 June 2023 with a letter in support of the Contractor stated:

“Please find attached letter in support of Kingsfield Medical Centre’s appeal, sent to you on 20 June 2023, in relation to an appeal against NHSE and their refusal to pay the practice funds for the Seasonal Influenza Vaccination Campaign.

Local Medical Committees are the only organisations recognised by the statute (The NHS Act 2006 as subsequently amended by the Health and Social Care Act 2012 as the bodies representing all the NHS GPs practising in an area.”

- 3.3 The letter of 15 June 2023 stated:

“Birmingham Local Medical Committee have offered to write this letter of support on behalf of Kingsfield Medical Centre as we feel the decision undertaken by NHS England to decline retrospective payment for the Seasonal Influenza Vaccination Campaign 2021/2022, is completely unfair.

We have based our supporting decision on information that has been supplied to us on behalf of the practice. This included historical records clearly identifying the Practice as a high achiever in previous years in connection with the Influenza Vaccination Enhanced Service. In fact, the year 2021/2022 appeared to be their highest vaccination figure than any other year since the Enhanced Service inception.

The Practice Manager has confirmed the Enhanced Service Form for 2021/2022 had been forwarded to NHSE as per their in-house protocol. This included the practice dating, signing, and marking the document as completed. The year 2021/2022 was an extremely late sign up, with no reminders received for this year, and in addition no further reminders via the CQRS auto-extraction system. Confusion arose again due to the end of year CQRS description stating, “Seasonal Influenza and Covid 19 Primary Care Staff Vaccination Recording 2021/22”. Whilst reviewing this the practice assumed this description referred to the 2020/2021 campaign, and the Covid vaccination was additional? As this was an auto extraction the Practice felt there was no necessity to continue to observe this monthly.

In summary, the Practice Manager and the Partners are extremely upset as they have worked so hard to achieve targets both in relation to the COVID vaccination and Influenza DES. Their income has been severely affected at a loss of approximately £20,000. This has also clearly had a devastating effect on the health and wellbeing of the Practice Manager. She feels that she has let the Practice and the Partners down, which has caused her huge upset. The lack of support from NHSE has proven to be disheartening for all.

Additional concerns have been highlighted around NHSEs Mission Statement? This situation clearly contradicts their offer to understand and support practices.

Many thanks for taking the time to read our letter, we feel strongly that this practice has enough evidence including in-house policies and procedures to prove that they have delivered this vaccination in its entirety. They will, of course, continue to provide the Influenza DES to the best of their ability whilst offering their patients access to what we all know is an extremely important vaccination.”

The Commissioner's representations

- 3.4 In an email of 14 July 2023 the Commissioner has provided representations on this matter which states:

“Thank you for sending through the appeals documentation (ref SHA26042). I have read and noted the contents of the letter of support from Birmingham LMC. There are a few sections of the letter that I would like to address in particular, and I shall do so below. Extracts from the letter shall be in italics. My response to each extract will be below.

We have based our supporting decision on information that has been supplied to us on behalf of the practice. This included historical records clearly identifying the Practice as a high achiever in previous years in connection with the Influenza Vaccination Enhanced Service. In fact, the year 2021/2022 appeared to be their highest vaccination figure than any other year since the Enhanced Service inception.

Historical performance has no bearing or relevance to this particular issue. The practice has been asked to provide evidence that they submitted the completed sign up sheet for the 2021/22 enhanced services (including Seasonal Flu and Childhood Seasonal Flu) to england.gp-contracting@nhs.net. NHS England has no record of having received the sign up documentation from the practice for the aforementioned services. Therefore, the practice did not formally enter into a contract with NHS England to provide these services.

The Practice Manager has confirmed the Enhanced Service Form for 2021/2022 had been forwarded to NHSE as per their in-house protocol. This included the practice dating, signing, and marking the document as completed.

Practice Manager confirmation is not evidence that the 2021/22 Enhanced Service sign-up sheet was actually emailed through to england.gp-contracting@nhs.net. It is a perfectly reasonable assumption that, whilst the sign-up sheet may well have been completed at the time, an oversight meant that the sign-up sheet was not emailed through to NHS England. The practice manager has been asked to provide a copy of the email which was sent through at the time, and which contained the completed 2021/22 Enhanced Service sign-up sheet. The practice manager has been unable to provide this.

The year 2021/2022 was an extremely late sign up, with no reminders received for this year, and in addition no further reminders via the CQRS auto-extraction system.

The 2021/22 Enhanced Services Sign Up sheet for Seasonal Flu and Childhood Seasonal Flu was sent out to all practices in August 2021. The reason for the “late sign up” is because neither the Enhanced Service Specifications, or the CQRS services, are actually made available for us to share/offer until this time. NHS England (Midlands) manages approximately 1,500 GP Practices across the entire Midlands region, the vast majority of whom completed and submitted their enhanced service sign-up sheets without issue.

Confusion arose again due to the end of year CQRS description stating, “Seasonal Influenza and Covid 19 Primary Care Staff Vaccination Recording 2021/22”. Whilst reviewing this the practice assumed this description referred to the 2020/2021 campaign, and the Covid vaccination was additional? As this was an auto extraction the Practice felt there was no necessity to continue to observe this monthly.

Unfortunately, practice confusion at the interpretation of CQRS service offers does not constitute an exceptional circumstance for which a retrospective claim would be considered. Furthermore, it is the practice's responsibility to ensure that any and all automated extractions which they have signed up to (or which they believe they have signed up to) are running correctly. In addition, the practice would have needed to have declared each and every one of the monthly extractions on CQRS which then raises the question as to why the practice failed to pick this issue up and report it sooner, and why it was actually only when the practice accountants flagged the issue that the practice manager became aware.

In summary, the Practice Manager and the Partners are extremely upset as they have worked so hard to achieve targets both in relation to the COVID vaccination and Influenza DES. Their income has been severely affected at a loss of approximately £20,000. This has also clearly had a devastating effect on the health and wellbeing of the Practice Manager. She feels that she has let the Practice and the Partners down, which has caused her huge upset. The lack of support from NHSE has proven to be disheartening for all.

NHS England appreciates and understands the upset which may have been caused as a result of the decision to decline the practice's appeal for a retrospective payment. However, it is worth reiterating that NHS England **did not** decline the appeal straight away. Instead, the practice manager was given ample opportunity to provide evidence that the practice had indeed returned their completed sign-up sheet back to england.gp-contracting@nhs.net and, in fact, was even informed that a retrospective payment could be considered if the practice were able to provide evidence (i.e.. the email sent back to NHS England with the completed sign-up sheet attached). The practice were not able to do this and, as such, NHS England's stance is that the practice did not formally enter into a contract (or cannot evidence that they did) to provide the Seasonal Flu and Childhood Seasonal Flu services.

Many thanks for taking the time to read our letter, we feel strongly that this practice has enough evidence including in-house policies and procedures to prove that they have delivered this vaccination in its entirety. They will, of course, continue to provide the Influenza DES to the best of their ability whilst offering their patients access to what we all know is an extremely important vaccination.

The delivery of the seasonal flu vaccine is not, and never has been, in question. NHS England does not doubt that the practice provided the seasonal flu vaccines during the 2021/22 flu season in good faith. The whole basis of the appeal and of NHS England's decision to decline it are based on the fact that the practice cannot evidence that they signed up to the service in the first instance. If the practice is unable to provide this evidence, then they effectively cannot evidence that they entered into a contract with NHS England to provide the service and, as such, the practice is not entitled to a retrospective payment with regard to the item of service fees (which is what NHS England pays under the terms of the enhanced service specification).

Furthermore, it may be worth noting that a very similar appeal has been considered by NHS Resolutions in the past (your reference - SHA/25797). The appeal was decided in NHS England's favour. The letter states:

I am satisfied that NHS England can decline the request for payments for the period for the vaccinations given to its patient population from September to December 2021, as the Contractor has not demonstrated that it originally submitted its Directed Enhanced Services (DES) agreement as required by the Enhanced Service Specification – Seasonal Influenza vaccination programme 2021/22.

Our response back to the practice on 21st March 2023 (declining their appeal) is comprehensive and clearly sets out the reasons behind NHS England's decision. NHS England shall therefore not be submitting any further representations with regard to this appeal and we look forward to hearing from you in due course."

The Contractor's representations

- 3.5 In an email of 27 July 2023 the Contractor provided additional information with regard to the contract held and stated:

"I have spoken to [MC], Head of Primary Care Contracting and Commissioning for NHS Birmingham and Solihull, and she has kindly provided me with the following Contract information:

"Original 2004 contract is attached, together with the Contract Variations for this current year and the last Partnership change (i.e. the current contract holders) Contract Variation. The Contract, as it stands today, would include all national Contract Variations for GMS from 2004 to date, most up to date national template for a GMS contract is April 2023 and can be found at:

[NHS England » GP Contract](#)

The April 2023 template will incorporate all national variations to that date."

Observations

The Commissioner's observations

- 3.6 In a letter dated 30 August 2023, the Commissioner provided the following observations:

"Further to your email ref. SHA/26042, dated 24 August 2023, I am responding on behalf of the NHS England - Midlands region.

Kingsfield Medical Centre, in their submission, state they are disputing the decision of NHS England (NHSE) commissioners to withhold payment for flu vaccinations delivered by the practice for the flu season 2021/22. The basis of this dispute is essentially whether it was reasonable for NHSE as the commissioner not to set aside the requirement to submit the claim for payment within six months of administering the vaccine.

Initially, NHS England Midlands Region would set out the process that GP Practices should follow and as described in the Direct Enhanced Service Specification for the delivery and payment of seasonal influenza vaccines:

- 1) All GP practices that wish to deliver the flu vaccination programme are required to sign up to the Enhanced Service Specification (ES).
- 2) The 2021/22 annual flu season ran from September 2021 to March 2022. The submission of claims is on a rolling 6-month basis i.e. vaccinations delivered in September 2021 should be claimed for by March 2022.
- 3) The following is taken directly from the Seasonal influenza vaccination programme Enhanced Service Specification for 2021/22 Sections 3 (Background and Duration), 4 (Process) and 13 (Payment and Validation): Annex 1

3.1 This ES is for the Commissioner (NHSE) to commission the provision of influenza vaccinations to Patients. This ES shall be effective from 1 September 2021 to 31 March 2022 unless it is terminated in accordance with paragraph 3.2.

4.1 All GP practices which participate in this ES must sign up and respond to the commissioner (NHSE) in writing by 23:59 on Monday 16 August 2021. Payment and activity recording will be managed using the Calculating Quality

Reporting Service (CQRS)³ and all GP practices must sign-up to CQRS no later than 16 August 2021.

13.3 Claims for payment in accordance with this ES should be made monthly, wherever possible.

13.4 GP practices must validate and submit a claim to the Commissioner (NHSE) for payment within 6 months of the date of the administration of the completing dose of the vaccine save for where paragraph 13.5 applies.

13.5 GP practices must validate and submit a claim to the Commissioner (NHSE) for payment within 3 months of the date of the administration of the completing dose of the vaccine where the vaccination is co-administered with a COVID-19 vaccine.

13.6 GP practices shall ensure that claims submission are validated to enable the Commissioner (NHSE) to correctly calculate the payment.

13.7 Payment will be made in respect of claims submitted by the last day of the month following the month the submitted claims are validated by the GP practice.

13.8 GP practices will only be eligible for payment in accordance with this ES where all of the following requirements have been met and payment is conditional on:

13.8.1 the GP practice has entered into this ES, any variations and updates;

13.8.2 the GP practice complies (and maintains compliance) with the requirements of this ES;

13.8.3 the patient which received the vaccination(s) was a Patient at the time the vaccine was administered, and all of the following apply:

13.8.3.1 the GP practice has only used the specified vaccines recommended in this ES specification and/or NHS England guidance;

13.8.3.2 the GP practice administered the vaccine to the Patients;

13.8.3.3 the GP practice has not received and does not expect to receive any payment from any other source in respect of the vaccine or related to the delivery of the vaccination;

13.8.3.4 the GP practice makes available to the Commissioner (NHSE) any information under this ES, which the Commissioner (NHSE) needs and the GP practice either has or could be reasonably expected to obtain;

13.8.3.5 the GP practice make any returns reasonably required of it (whether computerised or otherwise) to the payment system or CQRS or as otherwise may reasonably be required by the Commissioner (NHSE) (or on the Commissioner's (NHSE) behalf) and do so promptly and fully;

13.8.3.6 in respect of any claims for payment relating to centrally supplied vaccines, the GP practice has complied with any published guidance relating to the ordering, use, claims and post-payment verification processes; and

13.8.3.7 all information supplied pursuant to or in accordance with this paragraph is accurate.

13.9 If the GP practice does not satisfy any of the above conditions, the Commissioner (NHSE) may withhold payment of any, or any part of, an amount due under this ES that is otherwise payable.

The following is taken directly from the Childhood Seasonal influenza vaccination programme Enhanced service specification for 2021/22 Sections 4 (process) and 7 (Payment and Validation): Annex 2

- 4.1 This ES shall be effective from 1 September 2021 until 31 March 2022.
- 4.2 Commissioners will invite GP practices to participate in this ES before Monday 2 August 2021. All practices who wish to participate in this ES must respond to the commissioners' offer by 23:59 on Monday 16 August 2021. The agreement should be recorded in writing with the commissioner.
- 4.3 Payment and activity recording will be managed by the Calculating Quality Reporting Service (CQRS)⁷ and all GP practices delivering the service must sign-up to CQRS – no later than Monday 16 August.
- 7.2 GP practices will only be eligible for payment for this ES in circumstances where all of the following requirements have been met:
 - a. The GP practice is contracted to provide vaccine and immunisations as part of additional services.
 - b. All patients in respect of whom payments are being claimed were on the GP practice's registered list at the time the vaccine was administered and all of the following apply:
 - i. The GP practice administered the vaccine to the patients in respect of whom the payment is being claimed.
 - ii. The patient was an eligible patient on the date that the first vaccination was administered in respect of whom payment is being claimed.
 - iii. The GP practice did not receive any payment from any other source in respect of the vaccine (should this be the case, then the commissioners may reclaim any payments as set out in this ES).
 - iv. The GP practice submits the claim within six months¹⁵ of administering the vaccine (commissioners may set aside this requirement if it considers it reasonable to do so).
- 7.3 Claims for payments for this programme should be made monthly, after the final completing dose has been administered. Where claims are entered manually, this should be within 12 days of the end of the month when the completing dose was administered. Where there is an automated data collection, there is a five-day period following the month end to allow practices to record the previous month's activity before the collection occurs. Activity recorded after the collection period is closed (five days), will not be collected and recorded on CQRS. GP practices must ensure all activity is recorded by the cut-off date to ensure payment.
- 7.4 Payment will be made by the last day of the month following the month in which the practice validates and commissioners approve the payment.

- 7.5 Payments will begin provided that the GP practice has manually entered and declared achievement, or GPES17 has collected the data and the practice has declared such data. The first payment processed will include payment for the same period.
- 7.6 GP practices should ensure that the correct dosage is administered as clinically appropriate. Where two doses are required, a failure to do so may render the vaccination ineffective. Conversely where only one vaccination is clinically appropriate payment should not be made for a second dose within the period 1 September 2021 to 31 March 2022.

The chronology of communication between NHSE/GMAST and the practice has already been provided as part of the application and will therefore not be repeated in this response.

NHS England provide the following in terms of evidence and narrative to respond to the dispute details:

- 1) Kingsfield Medical Centre are familiar with the process and requirements under the Enhanced Service and this fact is confirmed in the statement:

We have based our supporting decision on information that has been supplied to us on behalf of the practice. This included historical records clearly identifying the Practice as a high achiever in previous years in connection with the Influenza Vaccination Enhanced Service. In fact, the year 2021/2022 appeared to be their highest vaccination figure than any other year since the Enhanced Service inception.

- 2) Regarding the statement:

The Practice Manager has confirmed the Enhanced Service Form for 2021/2022 had been forwarded to NHSE as per their in-house protocol. This included the practice dating, signing, and marking the document as completed.

NHSE, including the GMAST function, have no record of the contract sign up ever being received, we have been informed that the practice in question have no record of the signed contract being sent to NHSE. Without the signed contract, both adult and childhood influenza services were not offered out on CQRS.

- 3) NHS England Midlands region has more than 1200 GP practices across the region delivering flu vaccinations. The submission and acceptance of the sign-up forms has been completed without issue by most of these practices.
- 4) NHSE commissioners would confirm that the practice activity that this dispute relates to is for the 2021/22 flu season, which ran from September 2021 to March 2022, however the first time the practice raised this with NHSE was the 13 March 2023 – nearly 12 months after the end of that flu season. This meant that any retrospective payment NHSE would be able to make would be limited to the 6-month rule, ruling out any ability for pay for any activity that took place beyond 6 months.

- 5) Regarding the statement:

Confusion arose again due to the end of year CQRS description stating, “Seasonal Influenza and Covid 19 Primary Care Staff Vaccination Recording 2021/22”. Whilst reviewing this the practice assumed this description referred to the 2020/2021 campaign, and the Covid vaccination was additional? As this was an auto extraction the Practice felt there was no necessity to continue to observe this monthly.

NHSE would expect practices to check and declare their data on a monthly basis and to check that all expected services are represented in the list that is being declared,

given the practice did not highlight the issue with the influenza payments until March 2023 it would appear that the checking of all services did not take.

- 6) NHSE Commissioners decision making regarding this was based on the information that was made available at that time i.e. that the DES sign up was not provided to GMAST.
- 7) NHSE reaffirm with practices regularly that there should be robust systems and procedures in place to manage their financial claims for immunisations and vaccinations rather than reliance on a single individual within the practice in order to support timely submissions.

Regarding this specific application and to confirm the NHSE stance – for clarity the reasons given for not supporting the practices claim are listed below:

- We are not aware of any evidence being provided by the practice to support the form being submitted back in the required timeframe.
- NHS England has no record of it having been received into the General Medical Advice and Support Team (GMAST) and subsequently being processed by them.
- On the basis of the form not being received there is no contractual relationship established between the practice and NHS England for the service to be offered out on the Calculating Quality Reporting Service (CQRS).
- The Midlands Public Health Commissioning Team in NHS England has a clear and agreed policy that claims made outside of the 6-month contractual range will not be paid and therefore in order to be fair and transparent to all practices this policy is applied consistently.

Should any further information be required please do not hesitate to contact me.

Enc:

- Annex 1: Enhanced Service Specification Seasonal influenza vaccination programme 2021/22
- Annex 2: Enhanced Service Specification Childhood seasonal influenza vaccination programme 2021/22
- Annex 3: CQRD Declaring an Achievement for Payment Job Aid
- Annex 4: CQRS Viewing, Accepting and Rejecting Quality Services Offered Job Aid"

The Contractor's observations

- 3.7 In response to the comments from the Commissioner in response to the letter from the LMC, the Contractor stated:

"We totally appreciate that there was no eventual record of the email trail, but we were merely pointing out that our response had been based on the hope that NHSE would recognise the situation regarding the Pandemic, the confusion caused by the Covid/Flu interpretation of the DES's, and the fact that their mission statement clearly states that NHSE are there to understand and support Practices.

As above, the Practice understands that there is no record of the email trail, but, again, were merely pointing out other contributory factors in that the DES was a late sign up, with no reminders (which has been normal in other years) and a confusing CQRS auto-

extraction system which displayed several DES's available, including Flu's, Covid and staff/ Healthworker Flu vaccinations. CQRS does not display all of the DES's.

We have always gone the extra mile when providing this service to our patients and have never before had any problems submitting sign-up sheets and always follow the same procedure. IT were contacted to see if they could find the original email sent, but with no success, as emails do get deleted over time to make space. NHSE say they didn't receive the sign-up sheet, we feel that we did submit it. Either way, something has evidently failed.

We totally accept that many other practices have submitted their Enhanced Service sign-up sheet without issue, but would like to point out that it's not the Practices problem if NHSE do not receive their instructions until August, when flu's are lined up for delivery in September? Clearly, by August/September time, practices are already preparing clinics ready for vaccination without worrying whether they have signed the Contract or not.

It was not picked up by the Practice as the Practice were under the impression that we had been paid for the Enhanced Service. Payments are always received late and it's difficult to identify on the statements nine times out of ten as to what Practices are being paid, However, claims were made on the following CQRS returns (PCN calculations, Weight Management referrals, 6in1 vaccinations, Men B vaccinations, MMR vaccinations, Meningococcal ACWY Vaccination, pertussis vaccination, Pneumococcal vaccination, Rotavirus, Shingles vaccination, immediate necessary Influenza vaccination, Seasonal Influenza and Covid staff vaccination) and the Accountants notified us of the missing payment. Payments are always late, you can never tell what the payment is for on the statements and the Accountants asked that we check when payment might be received as they were aware of the campaign and work we had done.

As previously mentioned, the Practice were unable to obtain evidence through the email system and did, in fact, contact the CCG IT Department to ask for assistance with this. Time was spent going through all the emails available with IT to see if we could locate it. This was not to be and it was considered that the email had been deleted due to the time lapse and to possibly creating apace [sic] on the system, as inbox/sent boxes are always full.

You could ask the question that just because the email wasn't received doesn't mean it was not sent? No system is perfect, unfortunately.

We would like to envisage that each case is judged on its own merit and not based on someone else's case, which may have a completely different perspective than our own."

4. CONSIDERATION

- 4.1 Since 1 July 2022, Integrated Care Boards have taken on delegated responsibility for the commissioning of primary medical services. NHS Resolution will issue this decision to the Commissioner which has responded to this dispute.
- 4.2 As part of this consideration of the application for NHS dispute resolution, I required an up-to-date version of the contract in dispute containing all variations agreed since the contract was signed. This was provided and has not been disputed by the Commissioner. I am satisfied that the Contractor is party to a General Medical Services Contract.
- 4.3 From the information provided to me I am satisfied that the application for dispute resolution has been made within the time limits set out in the Regulations.

- 4.4 In an email of 13 March 2023 the Contractor raised the matter giving rise to the dispute with the Commissioner stating:
- “Our Accountants have picked up that we have not been paid for any flu vaccinations for 2021/22. On speaking to CQRS it seems that the Commissioner has not offered the Seasonal Adult and Child Influenza service via CQRS to the Practice for 2021/22. All other years are there including this year.*
- Obviously we are down a lot of money having brought in nearly 2000 Flu injections at the time. Please can we make a one off manual claim for this, as we have done the work and brought the vaccines. The service should have been offered on CWRS as all other years and same as this year, but it wasn't or some unknown reason.”*
- 4.5 In an email of 13 March 2023 the Commissioner responded to the Contractor stating:
- “According to our records, we did not receive a sign-up sheet from the practice for 2021/22. We sent out several reminders to any practice whose sign-up sheet was outstanding and extended the sign up deadline but we still do not appear to have received anything from Kingsfield Medical Centre. The practice, therefore, did not formally enter into a contract with NHS England to provide Seasonal Flu or Childhood Seasonal Flu for 2021/22, and as such these services were not offered to the practice on CQRS and no item of service fee payments were made.”*
- You will also be aware that there is a strict 6 month deadline for both Seasonal Flu and Childhood Seasonal Flu (as set out in the enhanced service specifications) during which practices should either:*
- *Declare achievements on CQRS*
 - *Raise issues with achievements / offers by emailing england.gp-contracting@nhs.net”*
- 4.6 After a series of emails between the Contractor and the Commissioner, as well as telephone calls, the Commissioner, in an email of 21 March 2023 determined that payment would not be made as *“NHS England is not in a position to be able to agree to make a retrospective payment to the practice for Seasonal Flu vaccinations undertaken during the 2021/22 Flu season.”* The email went on to state *“I am sorry that this is not the reply that you had hoped for. The practice may appeal the decision, however there is no further appeals route via NHS England as the decision has been made in line with the Enhanced Service specifications and guidance.”* and provided details of how to dispute the final decision.
- 4.7 There is no dispute between parties that local dispute resolution has been exhausted and that the Contractor has made an application for NHS dispute resolution following receipt of a final decision from NHS England. I am content that local dispute resolution has been completed.
- 4.8 The application for dispute resolution is for payment for seasonal influenza vaccines for the financial year 2021/22. The Commissioner determined that payment for this financial year would not be made. I have been provided, by the Contractor, with a copy of the “Enhanced Service Specification – Seasonal influenza vaccination programme 2021/22”. The Commissioner has also provided me with copies of “Enhanced Service Specification Childhood seasonal influenza vaccination programme 2021/22”; “CQRS Declaring an Achievement for Payment Job Aid” and “CQRS Viewing, Accepting and Rejecting Quality Services Offered Job Aid”. The contents of the specifications and the application of them have not been disputed by the Contractor.
- 4.9 I note that the period in question, the year 2021/22, is covered by the above specifications.

- 4.10 There is no dispute between the parties that the practice provided the vaccinations and that the dispute centres around whether or not the practice signed up to the enhanced specification and is therefore entitled to payment for the provision of the vaccines from NHS England in accordance with the Enhanced Service Specification.
- 4.11 The Contractor has provided me with a copy of the "Practice Authorisation for Enhanced Services 2021/22" which has the practice details completed and in response to the Directed Enhanced Services to be provided has circled "Yes" for both Seasonal Influenza Vaccination Programme" and "Childhood Seasonal Influenza Vaccination Programme". The authorisation has been signed by Dr O'Malley, GP Partner on 12 August 2021. Further, the form has been annotated with "done" and a tick in response to the statement "please return the complete form signed to england.gp-contracting@nhs.net" [sic]. The form has also been stamped "scanned" by the practice and dated 12 August 2021.
- 4.12 I next consider whether the Enhanced Service Specification – Seasonal Influenza vaccination programme 2021/22 a copy of which was provided to me by both parties, assists either parties' position.
- 4.13 In the specification under the heading 'Background' there is the following explanation of the service: *"The national influenza immunisation programme aims to provide direct protection to those who are at higher risk of influenza associated morbidity and mortality. Groups eligible for influenza vaccination are based on the advice of the Joint Committee on Vaccination and Immunisation (JCVI) who review the latest evidence on influenza vaccines and recommend the type of vaccine to be offered to Patients."*
- 4.14 Section 3 of the specification is headed 'Background and Duration' which states:
"This ES is for the Commissioner (NHSE) to commission the provision of influenza vaccinations to Patients. This ES shall be effective from 1 September 2021 to 31 March 2022 unless it is terminated in accordance with paragraph 3.2."
- 4.15 Section 4 under the heading 'Process' the specification states:
"4.1 All GP practices which participate in this ES must sign up and respond to the commissioner (NHSE) in writing by 23:59 on Monday 16 August 2021. Payment and activity recording will be managed using the Calculating Quality Reporting Service (CQRS) and all GP practices must sign-up to CQRS no later than 16 August 2021.
4.2 A GP practice's participation in this ES shall only continue for so long as it is in compliance with its terms."
- 4.16 Section 12, under the heading 'Monitoring' states:
"12.1 GP practices must ensure that they comply with all reporting and monitoring guidance issued by the Commissioner (NHSE) including in relation to the process for recording the administration of vaccinations to enable the Commissioner (NHSE) to calculate payments accurately.
12.2 The Commissioner (NHSE) will monitor the provision of the services under this ES and will calculate payments under this ES using CQRS, wherever possible."
- 4.17 Section 13 is headed 'Payment and Validation' and states:
"13.8 GP practices will only be eligible for payment in accordance with this ES where all of the following requirements have been met and payment is conditional on:
13.8.1 the GP practice has entered into this ES, any variations and updates;

13.8.2 *the GP practice complies (and maintains compliance) with the requirements of this ES;*

...

13.9 *If the GP practice does not satisfy any of the above conditions, the Commissioner (NHSE) may withhold payment of any, or any part of, an amount due under this ES that is otherwise payable."*

- 4.18 I note that similar wording is used in the "Enhanced Service Specification – Childhood seasonal influenza vaccination programme 2021/22" a copy of which was provided to me by the Commissioner. The sign-up sheet, as provided to me by the Contractor of 12 August 2021, is also the agreement for the provision of this directed enhanced service.
- 4.19 Section 4 of the "Childhood seasonal influenza vaccination programme 2021/22" is headed "Process" and states:
- 4.1 *This process shall be effective from 1 September 2021 until 31 March 2022.*
- 4.2 *Commissioners will invite GP practices to participate in this ES before Monday 2 August 2021. All practices who wish to participate in this ES must respond to the commissioner's office by 23:59 on Monday 16 August 2021. The agreement should be recorded in writing with the commissioner.*
- 4.3 *payment and activity recording will be managed by the Calculating Quality Reporting Service (CQRS) and all GP practices delivering the service must sign up to CQRS – no later than Monday 16 August."*
- 4.20 I have not been provided with a copy of the cover email which the practice believes it sent to NHS England with the completed sign-up sheet and further the Contractor is unable to locate a copy of the email to NHS England. In this regard, the Contractor contacted the CCG IT department for assistance but has been unable to obtain evidence through the email system that the email was sent or find a copy of the email. I further note the comments from the Contractor in their observations that they "appreciate that there was no eventual record of the email trail".
- 4.21 Whilst I note the comments from the Contractor that the document being stamped "scanned" is confirmation that the internal processes were followed, I have not been provided with any information, in the form of the cover email to demonstrate that the email was sent and that the practice signed up to provide the directed enhanced service.
- 4.22 The Commissioner, in its representations states "*Practice manager confirmation is not evidence that the 2021/22 Enhance Service sign-up sheet was actually emailed through ...*" The Commissioner goes on to state "*The Practice Manager has been asked to provide a copy of the email which was sent through at the time, and which contained the completed 2021/22 Enhanced Service sign-up sheet. The Practice Manager has been unable to provide this.*"
- 4.23 Whilst I can appreciate the pressures that the practice was under as a result of the global COVID-19 pandemic, based on the considerations above, I cannot be satisfied that the Contractor's DES agreement was sent to and received by NHS England in August 2021. As a consequence, without the Contractor having entered into an agreement with NHS England, no payment for the services is possible.
- 4.24 Finally I note that the Contractor states that they were not aware that payment had not been made until it was brought to their attention by their accountant in March 2023 for the 2021/22 financial year. I note the comments from the Commissioner that they

“would expect practice to check and declare their data on a monthly basis and to check that all expected services are represented in the list that is being declared.”

- 4.25 I further note that I have been provided with copies of “Annex 3 – Declaring an Achievement for Payment Job Aid” and “Annex 4 – Viewing, Accepting and Rejecting Quality Services Offered” the application of which have not been disputed by the Contractor. These documents set out how a practice can navigate through CQRS so that they are able to see which services have been offered to them and they have signed up for as well as showing how payment declarations can be submitted. I am of the view that the Contractor should have been aware sooner than the end of the next financial year that there was a problem with this DES and that payment had not been made but in any event I am not aware of any provision that overcomes the fact that it has not been proven that the DES 2021/22 agreement between the Contractor and the Commissioner, ever actually existed.

5. DECISION

- 5.1 I am satisfied that the Commissioner can decline the request for payments for the period for the vaccinations given to its patient population for the 2021/22 financial year as the Contractor has not demonstrated that it submitted its DES agreement as required by the Enhanced Service Specification – Seasonal Influenza vaccination programme 2021/22 or the Enhanced Service – Childhood Seasonal Influenza Vaccination Programme 2021/22.
- 5.2 I note that neither party has submitted a claim for interest. I make no determination in this regard.

**Head of Appeals
NHS Resolution**