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17 April 2024

FILE REF: **SHA/26131**

DECISION MAKING BODY:	**NORTH EAST & NORTH CUMBRIA INTEGRATED CARE BOARD ("THE COMMISSIONER")**
GMS CONTRACTOR:	**THE ENDEAVOUR PRACTICE CLEVELAND HEALTH CENTRE 20 CLEVELAND SQUARE MIDDLESBROUGH TS1 2NX**
DISPUTE RESOLUTION:	**NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES CONTRACT) REGULATIONS 2015**
RE:	**NON-PAYMENT FOR CHILDHOOD IMMUNISATIONS**

1. Outcome

1.1 I am satisfied that the Commissioner can decline the request for payment as this has been made outside of the relevant time periods as set out in the 2013 SFE.

1.2 I note that neither party has submitted a claim for interest with regard to this dispute so I make no determination in this regard.

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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 82 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 4 January 2024 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 Cover email of 4 January 2024 from the Contractor enclosing the application for dispute resolution;

2.2.2 Cover email of 9 January 2024 from the Contractor enclosing further information;

2.2.3 Cover email of 19 January 2024 from the Contractor enclosing representations and supporting information; and

2.2.4 Cover email of 7 February 2024 from the Commissioner enclosing representations.

3. PARTIES SUBMISSIONS

The Contractor's application

3.1 In an application made under cover of an email of 4 January 2024 the Contractor stated:

3.2 "The Endeavour Practice seeks a dispute resolution by NHS Resolutions. [sic]

3.3 The practice is in contract with NENCICB under a GMS contract dated 1st April 2014. The terms of the contract are those in the Standard GMS Contract published by the Department of Health in 2014 and amended in the terms of the required variations also issued by the Department of Health.

3.4 A copy of the signature page and contract is attached to this application.

3.5 The contact for the practice is:

3.5.1 [SD]
Management Partner,
The Endeavour Practice,
Cleveland Health Centre,
20 Cleveland Sq.,
Middlesbrough,
TS1 2NX.
E-mail: [redacted]
Telephone: [redacted]

3.6 The contact for the Commissioner was [KB] but she has since left their employment. I am informed that the contact now is:

3.6.1 [BS]
Senior Commissioning Manager – North East and North Cumbria
NHS England (North East and Yorkshire)
Stella House
Goldcrest Way
Newcastle Upon Tyne
NE16 6PY
Email: [redacted]
Mobile [redacted]

3.7 Relevant Contractual Terms

3.8 The directions referred to in [3.4] include the Statement of Financial Entitlements (SFE) 2021.

3.9 Part 5 of the SFE refers to 'Vaccines and Immunisations', and in particular paragraphs 9-11 concern "Claims for payment".

3.10 Part 5 states:

Claims for payment

(9) A Contractor must use reasonable endeavours to submit a claim to the Board for payment of the IoS fee before the end of the period of 1 month beginning on the date of administration of the dose of vaccine and immunisation to which the payment relates.

(10) Without prejudice to paragraph (9) and subject to paragraph (11), a Contractor must submit a claim to the Board for payment of the IoS fee by no later than the period of 6 months beginning on the date of administration of the dose of vaccine and immunisation to which the payment relates.

(11) The Board may accept a claim made outside of the 6 months' period, if it considers it reasonable to do so.

3.11 Background

3.12 The practice provides its registered list with childhood immunisations in accordance with the regimes for both 2 and 5 year olds.

3.13 In January 2021, the practice successfully uploaded its data into the Exeter system within the deadline for payment.

3.14 After a huge managerial effort, the practice started to deliver its Covid vaccinations on 16 January 2021 at an off-site venue and on top of delivering the GMS contract, the practice delivered thousands of Covid vaccinations in the next six months, with most delivered on a weekend.

3.15 It was mandated that one of the two senior managers had to be at each clinic and usually both were present.

3.16 Clinics were held on 16, 20, 23 January, 5, 12, 16, 18 , 24 February, 5, 12, 19, 26 March, 2, 9, 16, 23, 30 April, 7, 14, 17, 21, 28 May, 4, 18 June, 2, 9, 16, and 23 July.

3.17 On 27 July 2021, the practice noticed that payment for Oct-Dec 2020 Childhood Immunisations had not been received and queried this with the commissioner, in the name of [KB], Senior Public Health Commissioning Manager.

3.18 The matter was referred by [KB] to [JN] Senior Finance Manager, Direct Commissioning on 28 July.

3.19 [JN] confirmed on 17 August that activity had been submitted for Q3 but it was less than target and therefore had not generated payment.

3.20 For reasons unknown, despite the status of the upload being successful in the Exeter system, only a subset of the data had been received by the commissioner. Targets had been exceeded which should have generated payment.

3.21 The commissioner cited that the 4-month grace period had passed and therefore no payment would be forthcoming. Contact would have had to have been made with the commissioner by 30 April 2021.

3.22 Practice Position

3.23 The practice submitted a claim in a timely manner and the upload had been confirmed as "successful".

3.24 After the submission is successful, the only way of discovering that there is a problem is upon receipt of the payment.

3.25 Given the most exceptional circumstances in primary care in a generation and perhaps in the history of the NHS, the practice believes it was not reasonable to expect their management to highlight to the Commissioner that the payment had not been received within the usual window of time. Managers were working seven days a week at this time to ensure vaccines were rolled out as quickly as possible. Many routine tasks had

to be delayed and we feel that the discretion available to the Commissioner should have been used (SFE part 5 clause 11).

3.26 The practice has attempted to resolve this locally but the Commissioner has not graced their last approach with a response.

3.27 The immunisation achievement numbers relating to this application are provided.

3.28 Conclusion

3.29 The practice conducted childhood immunisations in all good faith at a time of a pandemic.

3.30 Payment was not received for this work.

3.31 The practice would like remuneration for the work it has completed."

3.32 The following documents were included with the application:

3.32.1 "Section 1: email trail highlighting the problem and confirmation that the payment will not be made.

3.32.2 Section 2: thread between the practice's Data Manager and the commissioner reinforcing that the matter will not be looked into and hence the payment will not be made.

3.32.3 Section 3: email to commissioner highlighting the issue had not been resolved and asking for the local dispute resolution process.

3.32.4 Section 4: email thread with CCG on the matter. Commissioner promised CCG that they would discuss the matter with practice but no contact was made.

3.32.5 Section 5: email to commissioner the Local Medical Committee copied in, highlighting the practice had no response at all via Section 3 & 4.

3.32.6 Section 6: final email to commissioner following guidance from NHS Resolutions [sic]."

Representations

<u>The Commissioner's representations</u>

3.33 In a letter of 7 February 2024 the Commissioner stated:

3.34 "Thank you for your letter of 18 January 2024 (reference SHA/ 26131). We have reviewed the content and attached enclosures.

3.35 We can confirm that following the request from The Endeavour Practice on 27 July 2021 that payment be made for childhood immunisations to be made for the period October-December 2020 (Quarter 3), a decision was made by NHS England (North East and Yorkshire) that payment would not be made. This is consistent with the approach notified in the email of 17 August 2021 – 07:36 from [JN] to [the Contractor] which describes that the approach is in line with Standing Financial Expectations.

3.36 Following our review of the enclosures we do not wish to amend this position. It is acknowledged that the Covid-19 pandemic and associated responses were ongoing at the time. However, this was equally the case for all contractors. Therefore, it has not been used to justify accepting claims beyond the period defined in the Standing Financial Expectations."

The Contractor's representations

3.37 In representations sent under cover of an email of 19 January 2024, the Contractor repeated their application for dispute resolution as set out above.

3.38 The following documents were included with the representations:

3.38.1 "Appendix 1: initial correspondence

3.38.2 Appendix 2: Refusal to pay reconfirmed

3.38.3 Appendix 3: Request for local dispute resolution

3.38.4 Appendix 4: Request for CCG to facilitate resolution

3.38.5 Appendix 5: Further request for dispute resolution

3.38.6 Appendix 6: Final request for dispute resolution

3.38.7 Appendix 7: Achievement numbers

3.38.8 Appendix 8: GMS Contract control sheet

3.38.9 Appendix 9: GMS Contract"

Observations

3.39 No observations were received from either party.

4. CONSIDERATION

4.1 Since 1 July 2022, Integrated Care Boards have taken on delegated responsibility for the commissioning of primary medical services.

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.

4.3 I note from the information provided to me that the application for dispute resolution has been made within the time limits as set out in the Regulations.

4.4 In an email of 27 July 2021 the Contractor raised the matter giving rise to the dispute with the Commissioner stating:

4.4.1 *"I am ploughing my way through year end and I note that both Endeavour and … have only 2 payments each for both 5 & 2 year olds (on 15/9 & 15/12). I am not aware there was an issue at our end. Please confirm where we go from here."*

4.5 Following an email conversation between the Commissioner and the Contractor, the Commissioner responded to the Contractor in an email of 17 August 2021 and confirmed that:

4.5.1 "*I can see from our records that activity submitted for Q3 (1.10.20 – 31.12.20) was less than target, hence no payment and it also looks as though no activity was submitted for Q4 (1.01.21 – 31.3.2021).*

In line with SFE guidance (section 11), you have a grace period of 4 months at the end of each quarter to provide necessary information/evidence to support a claim, unfortunately you did not flag a query on Q3 claim until 27 July 2021, so this puts you outside of the 4 month period.

That said, you did flag a query with you Q4 payment within the 4 month period, but it has been my delay in responding to you that has pushed this outside the cut off date of 31st July 2021.

If you are able to provide me with Q4 activity date for each practice (on the attached excel template), then I will put through a manual payment."

4.6 The initial query regarding the non-payment for Q4, January 2021 to March 2021, was raised with the Commissioner within the relevant period and whilst there was a delay, which the Commissioner admitted was due to them, as set out above, this submission was accepted and payment was made. There is no further dispute between the parties with regard to Q4 of 2020/2021 and therefore I make no further comment in this regard.

4.7 I note that the application for dispute resolution is for payment for childhood immunisations for October to December 2020, Quarter 3 of the 2020/21 financial year. The Commissioner, in its email of 17 August 2021 determined that the payment for this quarter would not be made and the Contractor was advised of this.

4.8 In a further email of 19 August 2021 the Contractor was again advised by the Commissioner that "*We are unable to pay Q3 claims as they are outside the 4 month claim period."*

4.9 Further email exchanges occurred between the Commissioner and the Contractor during September 2021 with additional emails being sent by the Contractor in October 2021 and February 2022 to which no replies appear to have been sent by the Commissioner.

4.10 The Contractor remains dissatisfied with the position of the Commissioner as set out in emails of 17 and 19 August 2021 that they are unable to make payment for childhood immunisations for the period October – December 2020.

4.11 I note that there is no dispute between the 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 the Commissioner. I am content that local dispute resolution has been completed.

4.12 Whilst I have not been provided with a copy of the NHS General Medical Services Statement of Financial Entitlement 2021 ("the SFE"), I note that the Commissioner makes reference to the SFE guidance in its email of 17 August 2021. The Contractor makes reference to the SFE in its initial application as well as in subsequent representations and has included an excerpt from the SFE. The application of the SFE has not been disputed by the Commissioner.

4.13 I note that neither party has provided me with a copy of the "GP Practice Vaccination and Immunisation Agreement" which forms the basis of the payment for childhood vaccinations. Given that payments were received by the practice for Q1 and Q2 of 2020/21 and that the Commissioner subsequently made a payment for Q4 of 2020/21, I am of the view that there is no dispute between the parties that the Contractor signed up to the agreement.

4.14 The Commissioner, in its representations continues to assert that:

"*We can confirm that following the request from [the Contractor] on 27 July 2021 that payment be made for childhood immunisations to be made for the period October – December 2020 (Quarter 3), a decision was made by NHS England (North East and*

Yorkshire) that payment would not be made. This is consistent with the approach notified in the email of 17 August 2021 -07:36 from [JN] to [SD] which describes that the approach is in line with Standing Financial Expectations."

4.15 I am unsure what the "Standing Financial Expectations" document is that the Commissioner refers to. Further, I note that the Commissioner has not directed me to the "Standing Financial Expectations" nor has it expanded upon this or provided me with any excerpts or references on which they seek to rely.

4.16 The Contractor, in its application states "*The directions referred to … include the Statement of Financial Entitlements (SFE) 2021."*

4.17 I note that the SFE 2021 at Part 5, Vaccines and Immunisations, paragraph 18(5) states:

Eligibility for payment

(5) A Contractor is eligible for the IoS fee referred to in paragraph (2) if –

(a) the vaccination or immunisation was administered on or after 1st April 2021 but before the period ending on 31 March 2022;

4.18 There is no dispute between the parties that the claims are for the period October to December 2020. I am of the view that the vaccinations or immunisations were administered before 1 April 2021. I am therefore of the view that whilst the SFE does apply, it is the 2013 SFE which is the relevant SFE to be applied in this case.

4.19 I note the reference from the Commissioner in its email of 17 August 2021 to the SFE and in particular to section 11. Section 11 of the 2013 SFE is entitled "Childhood Immunisations" and information regarding the payment for the immunisations is contained within this section in particular paragraphs 11.12 and 11.22 which state:

> ***"11.12.** The amount payable as a Quarterly TYOIP is to fall due on the last day of the quarter after the quarter in respect of which the contractor is seeking payment (i.e. at the end of the quarter after the last quarter in which immunisations were carried out that could count towards the targets). However, if the contractor delays providing the information the Board needs to calculate its Quarterly TYOIP beyond the Board's cutoff date for calculating quarterly payments, the amount is to fall due at the end of the next quarter (that is, just under nine months after the cohort was established). No Quarterly TYOIP is payable if the contractor provides the necessary information more than four months after the final date for immunisations which could count towards the payment."*
>
> ***"11.22.** The amount payable as a Quarterly FYOIP is to fall due on the last day of the quarter after the quarter in respect of which the contractor is seeking payment (i.e. at the end of the quarter after the last quarter in which completed courses were carried out that could count towards the targets). However, if the contractor delays providing the information the Board needs to calculate its Quarterly FYOIP beyond the Board's cut-off date for calculating quarterly payments, the amount is to fall due at the end of the next quarter (that is, just under nine months after the cohort was established). No Quarterly FYOIP is payable if the contractor provides the necessary information more than four months after the final date for immunisations which could count towards the payment."*

4.20 I am of the view that it is for the Contractor to ensure that the data provided in its reporting of its activity is accurate, correct and submitted within the required timescales.

4.21 I note that there is no dispute between the parties that the Contractor first became aware of the non-payment for Q3 and Q4 when the year-end reconciliation was being carried out.

4.22 I note that some monies must have been paid to the Contractor (the claims for Q1 and Q2 of 2020/221) as these are not part of this dispute. I am of the view that the Contractor is therefore aware of how monies are paid and that it is for the Contractor to ensure that systems are in place to check that the correct amounts have been received having regard to the immunisation information that they hold.

4.23 Whilst I can understand and appreciate the pressures that the practice was under as a result of the global COVID-19 pandemic as well as the frustration that the payments have not been made, I am of the view that the Contractor should have been aware of when payments were due to be made. If payments were not made when they were expecting them to be, based on the data that they had submitted, then the Contractor should have reviewed this and sought to rectify the problem within the period allowed for submission.

4.24 I note that the payment dates for childhood immunisations are approximately 8 weeks after the deadline for the automatic extraction of the data and the deadline for claims is a further 4 weeks after the automatic payment.

4.25 I am of the view that there is sufficient time after the date that payment should have been made for a Contractor to raise the issue of non-payment, for whatever reason, with the Commissioner before the final date to make a claim has passed.

4.26 Whilst I appreciate that this came to light when the year-end accounts were being finalised, I am of the view that the Contractor should have been aware sooner than 7 months after a payment was not made that there was a problem and that no payment had been received in this regard.

4.27 Based on the information provided by both parties as well as the requirements of the 2013 SFE, there is no provision to extend the payment period beyond the 4 months specified.

5. DECISION

5.1 I am satisfied that the Commissioner can decline the request for payment as this has been made outside of the relevant time periods as set out in the 2013 SFE.

5.2 I note that neither party has submitted a claim for interest with regard to this dispute so I make no determination in this regard.

Head of Appeals
NHS Resolution