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20 December 2024

FILE REF: **SHA/26257**

DECISION MAKING BODY: **NHS GREATER MANCHESTER INTEGRATED CARE BOARD ("THE COMMISSIONER")**

GMS CONTRACTOR: **DR G CHOI & PARTNERS**
STAVELEIGH MEDICAL CENTRE,
KING STREET,
STALYBRIDGE
CHESHIRE
SK15 2AE

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

RE: BREACH NOTICE RE FRIENDS AND FAMILY TEST (FFT)

1. Outcome

1.1 Pursuant to regulation 83 (15) to the Regulations I confirm the decision of the Commissioner to issue the Breach Notice.

A copy of this decision is being sent to:

Staveleigh Medical Centre
NHS Greater Manchester ICB

8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

Tel: 0203 928 2000
Email: nhsr.appeals@nhs.net

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RE: BREACH NOTICE RE FRIENDS AND FAMILY TEST (FFT)

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 dated 3 July 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 The Contractors application for dispute resolution by email dated 3 July 2024 with enclosures;

2.2.2 The Contractors email to NHS Resolution dated 18 July 2024 with further information;

2.2.3 The Contractors email to NHS Resolution dated 23 July 2024 with further information;

2.2.4 The Commissioners email to NHS Resolution dated 4 September 2024 with enclosures; and

2.2.5 The Contractors email to NHS Resolution dated 17 September 2024 with enclosure.

3. PARTIES SUBMISSIONS

Covering email

3.1 "Please see attached a formal contestation of the Breach of Contract Notice to Staveleigh Medical Centre (P89007) issued by Greater Manchester Primary Care Team dated 15th March 2024.

3.2 The Contractors contest the Breach Notice and request immediate withdrawal based on the failure of the Commissioners to comply with their contractual requirement for a remedial notice, which constitutes a procedural irregularity.

3.3 A hard copy of the attached letter and exhibit has also been posted by recorded delivery to NHS Litigation Authority, FHS Appeal Unit, 1 Trevekyan [sic] Square, Leeds, LS1 6AE.

3.4 We can confirm that the appeal has been escalated as attempts for local resolution have been unsuccessful.

3.5 We look forward to hearing from you.

3.6 We give permission for Practice Manager to act as a communication point of contact on this matter."

The Contractor's application

3.7 "We are writing on behalf of Staveleigh Medical Centre (P89007) ("**Practice", "Contractors"**) to formally contest the breach of contract notice issued to the practice on 15th March 2024 concerning the non-submissions of Friends and Family Test results ("**FFT"**) to NHS England for the months of October 2023, November 2023, and December 2023. The Practice acknowledges the importance of compliance with Regulation 88 of the General Medical Services Contract ("**GMS Contract"**) and takes its contractual obligations seriously. However, we believe that the notice served is procedurally flawed and request that it be withdrawn for the reasons set forth below.

The Alleged Breach

3.8 Regulation 88 of the GMS Contract, section 16.7A.2.1 states: "The Contractor must give all patients who use the Contractor's *practice* the opportunity to provide feedback about the service received from the *practice* through the *friends and family test"*

3.9 In accordance with Regulation 88 of the GMS Contract, section 16.7A2 states "The Contractor must: 16.7A.2.1 report the results of completed *friends and family tests* to the Board; and 16.7A.2.2 publish results of such completed tests.

Background

3.10 On 6th February 2024, the Practice Manager received an email from Greater Manchester Primary Care Team, NHS Greater Manchester ("**The Commissioners**") from the email address enhancedserviceses1@nhs.net, attached as **Exhibit 1**.

3.11 The email, addressed generically to "Dear Practice Managers" with 27 other recipients, contained 2 attachments:

3.12 A letter dated 22 January 2024 from #, Director of Primary Care (NHS Greater Manchester), addressed to "Colleague" with the subject "RE: Friends and Family Test (FFT) -2nd non submission letter".

3.13 The letter is attached as **Exhibit 2.**

3.14 A table of submission dates for FFT.

3.15 Exhibit 2 outlines the FFT process, specifies the key requirement to submit FFT through the Calculating Quality Reporting Service (**"CQRS"**), notes that the Practice had not submitted FFT for October and November 2023, and warns of potential breach consequences for failure to submit for three consecutive months. It also requests submission for the next month (any time between the end of the month and the twelfth working day of the following month)

3.16 On 6th February 2024, a practice representative attended the local Practice Managers Forum, where a representative from the ICB verbally indicated that practices failing to submit two months' FFT might receive a remedial letter. Discussions acknowledged historical technical difficulties with the CQRS system and confusion around submission dates due to paused and restarted contractual requirements. The notes taken from the Practice Managers Forum are attached as **Exhibit 3.**

3.17 On 7th February 2024, the Practice logged into CQRS to submit the missing FFT results. No option existed to submit previous FFT results for October, November and December 2023: The system only had opportunity to submit FFT results for January 2024, which the Practice submitted following the request in Exhibit 2 to submit FFT data for the next month. A screenshot of the FFT submissions for the period in question on CQRS is attached as **Exhibit 4.**

3.18 On 13th March 2024, the Practice successfully reported results of the FFT for February 2024 via the CQRS system. On 8th April 2024, the Practice reported results for March 2024.

3.19 On 15th March 2024, an email with the subject heading "P89007 Friends and Family Test – Breach Notice" was sent from NHS Greater Manchester Integrated Care to the Contractors, with the Practice Manager copied in. It stated the Practice had not submitted FFT data for three consecutive months (October, November, and December 2023). The email is attached as **Exhibit 5**, with the Breach Notice as **Exhibit 6**.

3.20 On 15th March 2024, upon receiving the Breach Notice, the Practice Manager replied by email to challenge the notice based on technical mitigating circumstances, highlighting the lack of received warning letters and offering an alternative submission route for the missing data. The response from the Commissioners on 18th March 2024 stated that non-submission notices were sent to the Practice Manager on 3rd January 2024 and 6th February 2024, although only the 6th February 2024 notice was received.

3.21 On 30th May 2024, the Practice Manager again contested the Breach Notice via email to the Commissioners. In this communication, the Practice Manager asserted that no opportunity for remedial action had been provided to the Practice, thereby contravening contractual procedures. Furthermore, the Practice Manager sought clarification regarding the duration for which the Breach Notice would remain active against the Practice's record. In their response, the Commissioners stated that the Breach Notice had been issued on the basis that no remedy was feasible due to the closure of the reporting window on CQRS. The Commissioners further clarified that there was no expiration date associated with the Breach Notice. The email exchange is attached as **Exhibit 7**.

The Appeal

Non-compliance with Contractual Remedial Notice Requirements

3.22 The Primary Medical Care Policy and Guidance Manual (PGM) stipulates that upon identifying a breach, the Commissioners are required to provide an adequate remedial notice period to the practice to rectify the breach. This period is critical to ensuring that practices have a fair opportunity to address and correct any issues identified. In this

case, the breach notice served did not provide such a remedial period. The relevant sections of the PGM are clear:

3.23 **Clause 1.3.4** states: "The Commissioner may issue a Remedial Notice to the contractor setting out the actions that must be taken to remedy the breach." A Remedial Notice was issued to the practice (Exhibit 2), and the action outlined in Paragraph 7 to submit FFT data for the next month. The practice complied by submitting FFT for the next month the following day.

3.24 **Claure 1.3.6** states: “The Commissioner must issue a Remedial Notice before it takes any other action . . except where the breach relates to the rights of termination”. The rights of termination are detailed which includes of a serious nature such as fitness to practise matters, a serious risk to patient safety and a risk of financial loss to NHS England. The Practice does not believe that non submission of FFT qualifies any such detail outlined where appropriate remedial action could not be taken. The Practice hereby challenges the statement from a representative of the Commissioner, as documented in Exhibit 7, wherein it is asserted that a remedial period was not possible due to the closure of the CQRS reporting window and that the issuance of a Breach Notice was therefore appropriate. The Practice contends that this assertion is inconsistent with the actions of the Commissioner, who did, in fact, issue a Remedial Notice, thereby indicating that remedial action was indeed considered feasible.

3.25 **Clause 1.3.7** outlines examples where a breach is capable of remedy and states an example of “failure to provide information to the Commissioner”, confirming that not providing FFT information does constitute an action for which a remedial period is possible and appropriate.

3.26 **Clause 1.3.9.2** states “provide the contractor with an opportunity to provide an explanation as to the circumstances that led to the breach”. The Practice was not given this opportunity to explain technical difficulties with the CQRS system and did request an alternative reporting method.

3.27 **Clause 1.3.9.5** of the relevant agreement stipulates: “This is to be completed as quickly as is reasonably possible, as long delays between the breach occurring, or the Commissioner becoming aware of the breach, and the Remedial Notice being issued, could lead to an argument that the Commissioner has accepted the breach and waived its right to take action.” The Practice first received a Remedial Notice on 6th February 2024, indicating that FFT results for October and November 2023 had not been received. This notice was issued four months after the initial event, which the Practice contends constitutes a long delay, thereby leading to the argument that the Commissioner has accepted the breach and waived its right to take action.

3.28 Furthermore, upon receipt of the Remedial Notice on 6th February 2024, the submission window for December 2023 FFT results via CQRS (the 12th working day of the following month) had already closed. This closure deprived the Practice of an adequate opportunity to remedy the situation and submit the FFT results for December 2023 via CQRS. The Practice asserts that had a Remedial Notice been served in November 2023, indicating non-compliance with reporting October 2023 FFT data, and in December 2023 for non - compliance with reporting November 2023 FFT data, the Remedial Notice would have been effective in its intended purpose. The Commissioners' delay in serving the Remedial Notice until February 2024 led to an inevitable third consecutive month of FFT data not being submitted.

3.29 **Clause 1.3.10** states “A Remedial Notice must specify: . . . 1.1.2 the steps the contractor must take in order to remedy the breach . . . 1.1.3 the period in which the steps must be take . . . any arrangements for reviewing the matter to ensure that the requirement of the Remedial Notice have been met”. The Remedial Notice (Exhibit 2) notes the steps the contractor must take is “submit FFT for the following month”. The Practice complied by submitting the FFT for the following month.

3.30 In the absence of the Commissioner clarifying in the Remedial Notice which month was intended, the Practice submitted the FFT data the day following receipt of the Remedial Notice for the next available month, which was January 2024. If the Commissioner had intended for the Practice to submit FFT data for December 2023, the Commissioner should have issued the Remedial Notice earlier, before it became impossible for the Practice to comply with such a requirement.

3.31 **Clause 1.3.13** states: “The period to remedy the breach must not be less than 28 days from the notice date.” The Remedial Notice did not ensure a 28-day remedial period, and the submission window for December 2023 had already closed when the notice was served.

3.32 **Clause 1.3.14** stipulates that "The Remedial Notice must be delivered to the contractor in accordance with the notice provisions of the contract. This usually requires hand delivery or postal delivery (first class or registered post)." On 6th February 2024, the Remedial Notice was emailed to the Practice Manager. No hand delivery or postal delivery occurred. The named Contractors themselves did not receive any Remedial Notice. Additionally, the Remedial Notice was not addressed to the Contractors or the Practice but was generically sent to multiple practices. This lack of specificity created ambiguity, as the Contractors could not ascertain with certainty that a generic email sent to the Practice Manager as part of a wider group email referred to a serious matter such as a breach of contract directly concerning the Contractors.

3.33 Had the Contractors received the Remedial Notice via hand delivery or postal delivery addressed directly to them, or at the very least to the Practice, the Practice is confident that the issue could have been appropriately addressed. Furthermore, the Commissioner claims that a first Remedial Notice was emailed to the Practice Manager on 3rd January 2024, but this email was never received. If the Commissioner indeed intended to issue a Remedial Notice on 3rd January 2024, delivering it appropriately to the Contractors by post or hand delivery, as specified within the contract, would have ensured timely receipt and provided the Practice with adequate time to implement remedial steps. The Commissioner’s failure to deliver the Remedial Notices appropriately caused a delay in the Contractors’ ability to take remedial actions.

3.34 **Clause 1.3.15** states: “The Commissioner should follow up a Remedial Notice appropriately and timely.” The Contractor was simply instructed to submit FFT results for the next month, which they did, yet a Breach Notice was still issued.

3.35 **Clause 1.3.16** specifies that "Where a Commissioner is satisfied that the contractor has taken the required steps to remedy the breach within the required period, a letter should be issued to the contractor informing them the terms of the Remedial Notice have been satisfied and no further action will be taken." The Practice complied with the terms of the Remedial Notice by submitting FFT data for the next available month on 7th February 2024. However, no letter was received from the Commissioner indicating their satisfaction with the steps taken within the required period.

3.36 The Practice contends that the Commissioner acted prejudicially and never intended to provide the Contractors with an opportunity to successfully complete the required remedial actions. This assertion is based on the following grounds:

3.36.1 The Commissioner did not set an appropriate time period for compliance.

3.36.2 The Commissioner failed to clarify the intended meaning of "next month" in the Remedial Notice.

3.36.3 If the Commissioner intended "next month" to refer to the submission of FFT data for December 2023, the Remedial Notice was issued too late for compliance to be feasible.

3.37 Furthermore, upon challenge, the Commissioner admitted that no remedy was possible (Exhibit 7). The Contractors feel that the Commissioner's actions represent a gross injustice, as they failed to comply with their procedural duties for rectifying incidents that led to the Remedial Breach. The Contractors believe that the Commissioner has exploited this situation to unfairly target this practice and assert commissioning authority.

3.38 **Clauses 1.3.22 to 1.3.28.4** specify the circumstances and process for issuing a Breach Notice where a breach is not possible of remedy. Despite this, the Commissioner issued a Remedial Notice to the Contractor on 6th February 2024 (and the Commissioner asserts that a Remedial Notice was also sent on 3rd January 2024, although it was never received), indicating that the Commissioner considered the failure to report FFT data as a breach possible of remedy.

3.39 Contrary to this, in the email exchange between the Practice Manager and the Commissioners dated 30th May 2024 (Exhibit 7), the Commissioner representative stated that the actions of the Contractor were not possible of remedy. This inconsistency suggests that the Commissioner did not adhere to the proper process for issuing either a Remedial Notice or a Breach Notice and displayed no intention of collaborating with the Contractor to achieve full compliance.

3.40 The Practice has consistently expressed regret for not fully complying with Regulation 88 of the GMS contract and has demonstrated a willingness to remedy the situation at the earliest opportunity. This demonstrates the Practice's commitment to compliance and its readiness to address any shortcomings, highlighting the Commissioner's failure to engage constructively in resolving the accused breach.

3.41 **Clause 1.3.29** states, "The Breach Notice must specify details of the breach." The Breach Notice sent to the Contractors on 15th March 2024, alleges that the Contractors did not comply with Regulation 88, section 16.7A.2.1 of the GMS Contract, which requires the Contractor to provide all patients who use the Contractor's service an opportunity to provide feedback through the friends and family test (FFT).

3.42 The Contractors dispute this Breach Notice as incorrect. The Contractors have, in fact, provided all patients the opportunity to provide feedback through the FFT, including for the months of October 2023, November 2023, and December 2023. FFT data for these months has been offered to the Commissioners in response to the Breach Notice. This demonstrates that the Contractors have complied with the requirements set forth in Regulation 88, section 16.7A.2.1, thereby invalidating the Breach Notice issued by the Commissioner.

3.43 **Clause 1.3.31** states, "The Breach Notice must be delivered to the contractor in accordance with the notice provisions of the contract. This usually requires hand delivery or postal delivery (first class or registered post). The Commissioner should review the relevant provisions of the contract to ensure proper delivery." The Breach Notice dated 15th March 2024 was received by email. The Notice was addressed to "Mr Rowlands," who is neither a current nor former Contractor of the Practice. Due to this improper delivery by the Commissioners and the Notice not being addressed to the correct Contractors, the Contractors cannot ascertain whether the Breach Notice pertains to them or if it has been sent in error. This uncertainty is exacerbated by at least one of the alleged breaches in the Notice being incorrect.

3.44 Therefore, the Contractors contend that the Breach Notice has not been properly delivered in accordance with the contract's notice provisions, leading to ambiguity regarding its relevance and validity to the Contractors named in the Notice.

3.45 **Clause 4.4.4** states that when a dispute arises "The Commissioner will immediately cease all actions in relation to the disputed notice". Following the Practice's challenge to the Commissioners upon receipt of the Breach Notice, the Commissioner failed to accept the dispute and did not abstain the Breach Notice against the Contractors

pending a resolution and outcome. This failure to comply with the contractual obligation under Clause 4.4.4 has resulted in continued uncertainty and potential adverse consequences for the Contractors named in the disputed Breach Notice.

3.46 **Clause 4.4.7** specifies that following a dispute, "The Commissioner may acknowledge the notification of dispute within seven days of receipt and request submission of supporting evidence from the contractor within a further 28 days." In contravention of Clause 4.4.7 of the PGM, the Commissioner failed to acknowledge the Contractor's dispute within the stipulated seven days. Furthermore, the Commissioner did not extend an invitation to the Contractor to submit supporting evidence within the additional 28-day period as required by the contractual terms. This failure to adhere to the prescribed procedural requirements has deprived the Contractor of the opportunity to present pertinent evidence in defence of the disputed matter.

3.47 **Clause 4.4.8** mandates that following a dispute, "The Commissioner should review the evidence within 28 days and invite the contractor to attend a meeting, which should be as soon as possible, but at the very latest within a further 28 days. The contractor(s) has the opportunity to invite representative bodies to support it at the meeting, for example, the LMC." The Commissioner did not afford the Contractor the opportunity for a meeting to discuss the dispute. Furthermore, the Contractor was not allowed to extend an invitation to representative bodies such as the Local Medial Committee (**"LMC"**) to participate in any meeting concerning the dispute. This failure to adhere to the contractual provision has denied the Contractor the chance to present their case in person and to benefit from the support of relevant representative bodies, thereby undermining the principles of procedural fairness and due process.

3.48 Despite the requirement for Commissioners to adhere to the procedures outlined in the PGM for issuing Remedial or Breach Notices, the Contractors were not afforded the opportunity to remedy the breach within the specified period. The failure to accurately address and deliver both a Remedial Notice and a Breach Notice, along with providing an adequate period to rectify the issue, constitutes a procedural deficiency that renders the breach notice invalid.

3.49 Furthermore, despite the Practice raising challenges against the Breach Notice on separate occasions, the Commissioner failed to adhere to due process by not suspending the Breach Notice while allowing the Contractors the opportunity to present further evidence. Additionally, the Commissioner did not extend an invitation to a meeting with the Commissioners to the Contractors and appropriate representatives such as the LMC, as provided for in ClausE 4.4.8 of the PGM. This failure to observe procedural requirements has prejudiced the Contractors and undermined their right to a fair and lawful process.

Mitigating Circumstances

3.50 The Contractors would also like to bring to your attention to certain mitigating circumstances that contributed to the delay in submitting the FFT results:

3.51 The CQRS reporting system has exhibited a documented history of technical deficiencies in the months and years preceding the alleged breaches. Particularly during the COVID-19 pandemic, the contractual obligations for Contractors to report FFT results via CQRS were temporarily suspended.

3.52 Subsequent to the reinstatement of this requirement, significant delays were encountered in restoring full functionality to the CQRS system, affecting Contractors' ability to comply in a timely manner.

3.53 **Exhibit 8,** appended hereto, comprises an email correspondence dated 7th May 2021 between the Practice and the Commissioners. This exchange evidences the Practice's proactive stance in identifying and reporting technical impediments associated with submitting FFT data through the CQRS system to the Commissioners. Notably, the

Practice explicitly conveyed its reluctance to be penalised for any failure to submit data resulting from these technical challenges.

3.54 On the 22nd June 2022, the Practice encountered technical difficulties while attempting to submit FFT results through the CQRS platform. The Practice promptly notified the Commissioners via email, highlighting the unavailability of the FFT service on CQRS to declare data. The Practice explicitly sought guidance from the Commissioners on how to address the technical issue and emphasised that FFT data had indeed been collected, in accordance with Regulation 88 of the GMS contract. Additionally, the Practice inquired about alternative methods for submitting FFT results.

3.55 Despite these proactive efforts by the Practice, no response was forthcoming from the Commissioners. Furthermore, no Remedial Notice or Breach Notice was issued by the Commissioners in relation to the reported technical difficulties and subsequent failure to submit FFT data.

3.56 **Exhibit 9** attached hereto comprises the complete email exchange between the Practice and the Commissioners on this matter, providing documentary evidence of the Practice's efforts to communicate the issue and seek resolution from the Commissioners.

3.57 **Exhibit 10** comprises an email exchange dated 7th July 2022 between the Practice and a neighbouring practice, which serves to demonstrate that technical difficulties encountered with the CQRS system for reporting FFT results were not isolated incidents affecting only this Practice. Furthermore, posts on Practice Manager media forums further indicate the issues with CQRS reporting were not isolated and a known wider issue.

3.58 The Practice encountered challenges in reporting FFT results for October 2023, November 2023, and December 2023 due to technical difficulties arising from changes in the sign-in procedures for CQRS, specifically transitioning to a two-factor authentication method. Unfortunately, the Practice did not notify the Commissioners of these issues due to prior instances where such notifications did not elicit a response or assistance in resolving similar CQRS reporting issues. The Practice perceives it as unjust that a Remedial Notice and Breach Notice were issued solely on this occasion when technical difficulties hindered its ability to fulfil reporting obligations, especially considering that no such actions were taken previously for similar instances involving this or other practices. The Contractors believe that the Commissioners have demonstrated bias in their actions on this matter.

3.59 Despite these challenges, the Practice has implemented corrective measures to ensure the timely submission of FFT results in the future, consistent with the remedial actions stipulated in the Remedial Notice issued on 7th February 2024.

Commitment to Compliance

3.60 Staveleigh Medical Centre affirms its commitment to full compliance with all contractual obligations, particularly regarding the timely submission of FFT results. We have instituted an internal review protocol where the Contractors verify the successful reporting of FFT results through the CQRS reporting system. In situations where factors beyond our control, such as technical malfunctions, hinder our ability to report results, we pledge to promptly notify the Commissioners and pertinent technical teams.

Deformation of Character

3.61 The issuance of a Breach Notice to Staveleigh Medical Centre has unjustly tarnished the reputation of a practice that has otherwise demonstrated consistent success and efficacy in fulfilling its obligations. The FFT data, alongside comprehensive clinical indicators, unequivocally attests to the Practice's firm commitment to delivering exemplary patient care and positively impacting public health outcomes. The adverse

consequences of a Breach Notice include the potential for patients to lose trust with the Practice and register with other practices with the resultant financial implications on the Practice's Global Sum payments, as well as increased operational pressures on recipient practices.

3.62 Moreover, the issuance of a Breach Notice may deter prospective job candidates from applying for positions within the Practice, thereby impeding recruitment efforts.

3.63 Additionally, the Practice's eligibility for future tender applications or business bids could be adversely affected, particularly if evaluated by the same Commissioner responsible for the Breach Notice, despite the Practice's otherwise meritorious qualifications for such opportunities.

3.64 Furthermore, the Practice's reputation has been impugned within the local Primary Care Network (**"PCN"**) and among its member practices, as the Breach Notice has been utilised as grounds for withholding full achievement funding under the Capacity & Access scheme. Such administrative lapses should not unjustly impact patient care or funding allocations to other practice where patients have sought alternative care arrangements.

Staff Welfare

3.65 During a period when NHS England has prioritised colleague welfare and actively promoted the continuation of quality improvement initiatives, Staveleigh Medical Centre regrets that the recent incident has triggered considerable anxiety and distress among its staff. This impact is notably felt by those personnel responsible for reporting FFT results, given that the alleged breaches occurred due to circumstances beyond their control. The Practice is deeply saddened by these consequences, as it strives to maintain a supportive and conducive work environment for all staff members involved in operational compliance and patient care initiatives.

Conclusion and Request

3.66 In light of the procedural deficiencies evident in the issuance of the breach notice and the mitigating circumstances presented herein, Staveleigh Medical Centre respectfully requests the following actions:

3.66.1 Withdrawal of the Breach Notice: We request the immediate withdrawal of the breach notice issued on 15th March 2024. This request is based on the failure to comply with the contractual requirement for a remedial notice period, which constitutes a procedural irregularity.

3.66.2 Acknowledgement of Remedial Actions: We seek formal acknowledgment of the corrective measures undertaken by Staveleigh Medical Centre to ensure timely compliance with Regulation 88 of the GMS contract moving forward.

3.67 We appreciate your attention to this request and look forward to resolving this issue expediently."

Representations

The Commissioner's representations

"Acknowledgement

3.68 Thank you for writing to me on 30th July 2024, following the application from Staveleigh Medical Centre for dispute resolution with regards to a Breach Notice – Friends and Family Test (FFT) issued on 15 March 2024.

3.69 We hope the below information provides assurances to NHS Resolution of the process undertaken by NHS Greater Manchester (The Commissioner) in relation to the Breach notice.

3.70 Firstly, NHS Greater Manchester acknowledges and apologises to Staveleigh Medical Centre for the addition of Mr Rowlands name included in the Breach Notice dated 15th March 2024. This was an oversight and NHS Greater Manchester is assured that only the intended recipients (contract holders) were included in the formal email communication.

Background

3.71 The Friends and Family Test (FFT) is an important feedback tool that supports the fundamental principle that people who use NHS services should have the opportunity to provide feedback on their experience. Since 1 December 2014, it has been a contractual requirement that all GP practices implement the NHS Friends and Family Test (FFT).

3.72 NHS Greater Manchester and its former constituent Clinical Commissioning Groups (CCGs) who held delegated responsibility from NHS England, have upheld compliance with the Regulatory and National Guidance in relation to FFT, since its launch in 2014.

3.73 The role of the Commissioner has been supportive to ensure we are influencing future behaviour in practices that are either not submitting data or submitting data that raises concerns to ensure compliance with Regulatory and National Policy. This has been managed through the issuing of first and second reminder notices to GP practices who fail to submit FFT each month. Furthermore, where a practice fails to submit for a third consecutive month, the issuing of a breach of contract notice.

3.74 Regular communications and support to GP practices, including National and local guidance on implementing FFT and submission timescales, have been made readily available through various sources such as NHS England, the ICB, and CQRS to support compliance since 2014.

Friends and Family Test (FFT) Submission

3.75 NHS England issued a communication to all GP Providers on 5 July 2022, to advise that the NHS Friends and Family Test (FFT) service had been re-launched in CQRS National. The service was suspended as one of the measures to reduce burden on general practice as part of the response to Covid-19.

3.76 On 2 November 2022 **(Appendix 1)** – NHS Greater Manchester communicated via email to all GP practices to reaffirm NHS England communication that the suspension of FFT ended on 31st March 2022.

3.77 GP Practices were advised that they should have started to make the FFT available to patients from April 2022 onwards, although there was no requirement to submit any data prior to July 2022. This was to give practices time to re-establish the FFT collection. The email included the NHS BSA Friends and Family Test (FFT) future submission dates.

3.78 Furthermore, a letter dated 17th March 2023 **(Appendix 2)**, was issued by NHS Greater Manchester to all GP practices to remind them of the statutory requirements for NHS Friends and Family Test (FFT) and that it will be recommencing the issue of reminder notices following the April 2023 submission data to GP Practice that do not comply with the FFT requirements. The letter explained that GP practice failure to submit for 3 consecutive months may be in breach of contract.

3.79 FFT submission requires manual data entry each month, data collections take place monthly with a deadline for GP practices to submit numerical FFT data for national

publication via CQRS, no later than 12 working days after month end. For e.g. March 2023 data must be submitted by 18 April 23.

3.80 The Calculating Quality Reporting Service (CQRS) is an approval, reporting and payments calculation system for GP practices. It helps practices to track, monitor and declare achievement. CQRS is the NHS England mandated system for GP practices to report monthly FFT data, it issues a task for manual entry on the 1st working day of the month to notify GP practices to submit their FFT data.

3.81 It is a contractual requirement for GP practices to make the Friends and Family Test (FFT) available to their patients, and to submit data to NHS England. Missing submissions and abnormalities are flagged in the data when it is published.

3.82 NHS Greater Manchester highlighted in its letter of the 17th of March 2023 to GP practices that they will be contacted where there are issues with data submission or to enquire if any assistance is required.

3.83 NHS Greater Manchester pursuant to applying contractual notices had regard to relevant Regulations which are outlined below.

Statutory and Regulatory Requirements

3.84 The Friends and Family Test was included in the GMS Contract Regulations on 1 December 2014 **(Appendix 3)**.

3.85 The National Health Service (General Medical Services Contracts) Regulations 2015 (legislation.gov.uk)

Insertion of new paragraph 76ZA into Schedule 6 to the GMS Contracts Regulations

3. In Schedule 6 to the GMS Contracts Regulations (other contractual terms) after paragraph 76 (practice leaflet) insert-

"Friends and Family Test

76ZA- A contractor must give all patients who use the contractors practice the opportunity to provide feedback about the service received from the practice through the Friends and Family test.

(2)The Contractor must-

(a)report the results of completed Friends and Family tests to the Board; and

(b) publish the results of the completed tests at local level .

In a manner approved by the Board(b)

(3)In this paragraph "Friends and Family test" means the arrangements that a contractor is required by the Board to implement to enable its patients to provide anonymous feedback about the patient experience at the Contractors practice".

3.86 For reference the Regulation pertaining to FFT is covered within the Standard General Medical Services Contract Part16, clause 16.7A.1

NHS England National Guidance - Advice about GP FFT for Commissioners

3.87 NHS England FFT Guidance **(Appendix 4)** includes an implementation checklist for providers and commissioners.

3.88 NHS England advice about GP FFT for Commissioners' states:

3.89 There are three key requirements of GP practices set out in the guidance:

3.89.1 to make the opportunity to provide feedback through the FFT available to all patients at any time;

3.89.2 to submit FFT data to the NHS England analytical team via the Calculating Quality Reporting Service (CQRS) each month; and

3.89.3 to publish the data locally.

3.90 If a practice fails to submit for a third month, commissioners should consider issuing a breach of contract notice.

FFT National Publication Delays

3.91 On the 1st of September 2023 **(Appendix 5)** NHS Greater Manchester further contacted all GP practices via email and following the communication issued to them in March 2023, to reaffirm GP practices should now be submitting their FFT data each month on CQRS.

3.92 The email noted that NHS GM was aware from the National data team there had been some challenges in the publication of 2023/24 FFT data and hence this had been delayed. NHS GM also noted that it had recently received the published June 2023 data, which indicated that 100 GP practices across Greater Manchester had not submitted data for that month.

3.93 NHS Greater Manchester further reminded GP practices that, it is a contractual requirement to make the Friends and Family Test (FFT) available to patients, and to submit this data to NHS England within the required timescales.

3.94 Due to the delays in publication of the FFT data, NHS Greater Manchester withheld issuing reminder notices and sought to monitor compliance following the October 2023 submission and issuing notices to GP practices that do not comply with the FFT requirements. Failure to submit for 3 consecutive months may be in breach of contract.

3.95 Submission guidance including submission deadlines was also attached to the email.

Further Communication to GP Practices

3.96 On 21 March 2023 **(Appendix 6)** – NHS Greater Manchester, Tameside Locality Leads reshared the FFT restart letter to all GP practices in their locality, reiterating the importance of submitting FFT each month. Tameside locality further included in their email the following advice:

3.97 "I particularly wanted to highlight the following section:

3.97.1 "*As you will be aware, it is a contractual requirement to make the Friends and Family Test (FFT) available to your patients, and to submit data to NHS England. Missing submissions and abnormalities will be flagged in the data when it is published. NHS Greater Manchester will contact practices where there are issues with data submission or to enquire if any assistance is required. NHS Greater Manchester will be issuing reminder notices following the April 2023 submission to GP Practice that do not comply with the FFT requirements, failure to submit for 3 consecutive months may be in breach of contract."*

3.98 “Please could you ensure that your practices submit FFT data each month, so that we can avoid the possibility of any Tameside practice being in breach of its contract.”

3.99 On 7 June 2023 **(Appendix 7)** – A further email reminder was issued to all GP Practices providing key message of the statutory requirement. Additionally, the email to all Practice Managers advised of the FFT submission deadline for May 2023 being the 19 June, which provided GP practice sufficient time to submit FFT data.

Staveleigh Medical Centre - Friends and Family Test Submission Data

3.100 The following table shows Staveleigh Medical Centre achievement submission data for FFT for the year 2023/24. This clearly identifies that no FFT submissions were made between the months of May 2023 – December 2023.

3.101 As per NHS Greater Manchester communications dated 1st September 2023, monitoring compliance would commence following the October 2023 submission and the issuing notices to GP practices that did not comply with the FFT requirements.

3.102 Table: CQRS National data -Staveleigh Medical Practice

Achievement date	Last updated
30/4/23	9/6/23
31/1/24	7/2/24
29/2/24	13/3/24
31/3/24	8/4/24

3.103 Therefore, Staveleigh Medical Centre consecutively failed to submit FFT data for the months of October, November, and December 2023. NHS Greater Manchester was not notified during this period of any technical challenges that the practice may have encountered submitting their FFT data.

3.104 On the 3rd of January 2024, **(Appendix 8)** NHS Greater Manchester wrote out to all GP practices via email, to notify them that NHS England did not receive their FFT data for October 2023. Practices were reminded of the contractual requirement to make the Friends and Family Test (FFT) available to their patients, and to submit data to NHS England. Submission timescales were also provided within the email communication.

3.105 On the 6th of February 2024, **(Appendix 9)** NHS Greater Manchester wrote out again to all GP practices that failed to submit FFT data for the months of October and November 2023. Practices were reminded that failure to submit for 3 consecutive months may result in a breach of contract.

3.106 These were notifications, were issued to the practice manager at Staveleigh Medical Centre via email.

NHS Greater Manchester Direct Commissioning Contracting Panel (DCCP)

3.107 NHS Greater Manchester has an established sub-committee of the Greater Manchester Primary Care Commissioning Committee (GMPCCC) which is known as the Direct Commissioning and Contracting Panel (DCCP). It has responsibility for Direct Commissioning and has the authority to undertake the activity within its terms of reference.

3.108 In accordance with NHS England's Standing Financial Instructions, Standing Orders and Scheme of Delegation, the Panel has delegated authority from the GMPCCC, to take decisions or make recommendations on matters relating to the development and management of contract delivery for health services across Greater Manchester, which are the responsibility of the Direct Commissioning Teams within Greater Manchester, NHS England

3.109 This includes services for:

3.109.1 Primary Medical Care – GMS, PMS, APMS and Directed Enhanced Services.

3.110 A paper was taken to the NHS Greater Manchester Direct Commissioning Contracting Panel on the 21st February 2024 **(Appendix 10)**.

3.111 The purpose of the paper was to: -

3.111.1 To highlight GP non submissions of the FFT.

3.111.2 To recommend contract breach action for non-compliance of those identified GP practices that failed to submit 3 consecutive FFT data submissions for Oct, Nov and Dec 2023/24.

3.112 The DCCP upheld the recommendation to issue contractual Breach notices to each of the identified GP practices that failed to submit 3 consecutive FFT data submissions for Oct, Nov and Dec 2023/24. **(Appendix 11)**.

3.113 Within the 'Breach Notice', Staveleigh Medical Centre was provided the opportunity to contact NHS Greater Manchester within 28 days of the notice being issued if they did not agree with our decision. If, after making every reasonable effort, we are unable to resolve the dispute, the provider was given details of how to refer the matter to the NHS dispute resolution.

3.114 NHS Greater Manchester has not received any formal communication from Staveleigh Medical Centre to dispute the breach notice under local resolution.

Breach Not Capable of Remedy

3.115 All GP Practices are required to submit their FFT data for the month to NHS England by the 12th working day of the following month.

3.116 Data submitted after the deadline is not included in the National published data. Where the FFT service requires an action to be done within a certain timescale and a contractor fails to do that action within that timescale, there is no action that the contractor can take in order to rectify that failure, if the timescale has passed.

3.117 In accordance with the Standard General Medical Services Contract, Part 26, Clause 26.13.5 – 26.13.8

> *26.13.5.- Where the Contractor's breach of the Contract is not one to which any of clauses 26.8.1 to 26.12.2(b) apply and the breach is not capable of remedy, the Commissioner may give notice in writing to the Contractor requiring the Contractor not to repeat the breach (a "breach notice").*

Conclusion

3.118 NHS Greater Manchester's role, as Commissioner, is to offer primary care providers support and guidance in order that they have the appropriate information to meet their contractual obligations. We believe NHS GM has robust processes in place of regular communication via NHS England, the ICB and CQRS. This is there to provide GP

practices with significant opportunity to ensure administrative processes and controls are in place, to enable timely submission of FFT and to notify the ICB of any issues in submitting their monthly data.

3.119 As described within the paper and the attached appendices, all GP Practices within GM are offered robust support, advice, and the opportunity to discuss any issues that may impact on late submissions.

3.120 Greater Manchester also believes that the 'Breach Notice' issued to Drs Shilhan, Long, and Choi on the 15th of March 2024 was issued correctly and in accordance with the National Health Service (General Medical Services Contracts) Regulations 2015."

The Contractor's representations

3.121 None were received

Observations

The Commissioner's observations

3.122 None were received.

The Contractor's observations

3.123 "Thank you for your later dated 04 September 2024, following the application for dispute resolution. No further representations were made as all relevant evidence was attained within the Application of Appeal. Thank you for providing representations received from the other party on the application. In response to the representations from the other party we would like to make the following observations and rebuttals. We have responded to the observations in chronological order, simultaneous to the representation letter, reference: P89007, emailed to you by NHS Greater Manchester on 19 August 2024.

Acknowledgement

3.124 Staveleigh Medical Centre acknowledges that the error in the named Contact Holders whom the Breach Notice dated 15th March 2024 was addressed to be an oversight. We accept the apology from NHS Greater Manchester and acknowledge all organisations can make unfortunate errors which often cause no harm.

Background

3.125 Staveleigh Medical Centre also acknowledges that The Friends and Family Test (FFT) is an important feedback tool that provides people who use NHS services and opportunity to provide feedback on their experience. We use the data collected each month to inform quality improvement within the practice operation and services that it provides, frequently achieving an above average score of over 96% of patients reporting they would recommend the practice.

a. Breach of Contract and Failure to Support

3.126 While it is acknowledged that remedial notices and breach of contract notices have been issued, it is vital to emphasise that the role of the Commissioner extends beyond mere enforcement of contractual obligations. Under the NHS Commissioning framework, the Commissioner is also obligated to offer support and guidance, particularly in instances where practices have communicated technical difficulties or challenges that may impact their ability to comply with certain data submission requirements.

3.127 In our practice's Application of Appeal, we specifically noted a history where this, and other practices, reached out to the Commissioners (referenced to paragraph 42 and Exhibit 8 within the Application of Appeal) to report technical issues regarding the submission of the FFT data. Despite these efforts, we did not receive any support, communication, or even acknowledgment of our concerns. This failure to respond or provide remedial action could be considered a breach of the implied duty of good faith that exists between Commissioners and GP practices, which is inherent in the NHS commissioning contracts.

b. Failure to Provide Adequate Training and Mitigative Support

3.128 The communication that has been provided by the Commissioners has primarily reiterated contractual requirements, offering little by way of practical guidance, training, or mitigative support when issues arise. Merely referring to national guidance and submission timelines without addressing the specific needs of practices facing genuine challenges is insufficient to fulfil the duty of care expected from the Commissioners. Under the NHS Standard Contract, the Commissioner is obligated to facilitate the delivery of services by providing adequate resources, training, and access to support systems.

3.129 The lack of proactive engagement and absence of practical assistance, particularly in response to our documented technical challenges, has placed our practice at a disadvantage, undermining the very purpose of the Commissioner's role in supporting compliance and continuous improvement.

c. Inadequacy of "Reminder Notices" as Support

3.130 The issuing of first and second remedial notices does not, in itself, constitute meaningful support. The NHS England Primary Medical Care Policy Guidance outlines that Commissioners should engage with GP practices in a manner that is supportive and developmental, rather than purely punitive. By only issuing reminders without offering substantive support or guidance in addressing the root causes of non-compliance (such as technical difficulties), the Commissioner has failed in its duty to act reasonably and proportionately in managing contractual relationships. The remedial notices, in this context, should have been accompanied by an offer of assistance, such as technical troubleshooting, additional training, or access to resources to rectify the issue.

d. Failure to Engage in Dialogue in Good Faith

3.131 Moreover, the lack of a response to our practice's attempts to engage with the Commissioner when technical difficulties were identified represents a failure of the Commissioner's duty to act in good faith. This principle is enshrined in public law and the legal obligations of NHS Commissioners, which include a duty to act reasonably and communicate effectively with providers, particularly when those providers are facing obstacles that hinder their ability to meet contractual obligations. The complete absence of dialogue or follow-up after we raised concerns constitutes a failure to meet this legal standard.

Friends and Family Test (FFT) Submissions

3.132 We acknowledge the communication regarding the re-launch and submission requirements of the Friends and Family Test (FFT), including the updates provided on 5 July 2022 and 2 November 2022, and the subsequent reminders sent on 17 March 2023. However, we would like to present several concerns and rebuttals regarding the nature of the support provided and the assertion of contractual compliance.

a. Lack of Meaningful Engagement Despite Acknowledged Technical Issues

3.133 While NHS Greater Manchester has claimed that multiple reminders were communicated to GP practices, the central issue in this matter remains the absence of effective support in addressing specific technical difficulties that were raised by our practice. As noted in previous communications and within our Application of Appeal, our practice previously proactively contacted the Commissioners, to report ongoing technical issues that directly impacted our ability to submit FFT data via CQRS. Despite this outreach, there was no response, follow-up, or offer of assistance from Commissioners to help resolve these issues.

3.134 This lack of engagement stands in contradiction to the Commissioner's duty to provide reasonable support under the terms of the NHS Standard Contract and the implied duty of good faith in public law. Failure to respond to technical issues or provide assistance when contacted goes beyond simple non-compliance by the practice; it highlights a significant shortcoming in the Commissioner's duty to support the fulfilment of contractual obligations.

3.135 The reliance on reissuing contractual requirements and reminders cannot substitute for the practical support that should have been provided in these instances. The references to having regard to relevant regulations and the assertion of statutory requirements are acknowledged. However, it is vital to underline that compliance with statutory requirements is a two-way obligation. The Commissioner must provide reasonable support and engagement to enable practices to meet these requirements, particularly when practices have demonstrated good faith efforts in flagging operational challenges.

3.136 While NHS Greater Manchester has issued reminders regarding contractual requirements and submission deadlines, these communications appear to serve more as enforcement notices rather than offering any substantive support to GP practices that may be facing difficulties. The 21st March 2023 letter, which reiterated that reminders would be issued for non-compliance, did not engage meaningfully with the specific needs or challenges faced by individual practices. Issuing reminders and contractual notices without addressing underlying technical issues or offering hands-on assistance falls short of the Commissioner's obligation to facilitate the successful implementation of FFT by practices.

3.137 Furthermore, although the letter claimed that NHS Greater Manchester would contact practices where issues with data submission arise, this has not occurred in practice. As previously mentioned, despite our attempts to seek support, there was no follow-up communication offering the technical or operational assistance that the March 2023 letter suggests would be provided.

Statutory and Regulatory Requirements

3.138 We acknowledge the statement regarding the requirement for GP practices to make the Friends and Family Test (FFT) available to all registered patients. However, we would like to clarify the following:

a. Compliance with Offering FFT to Registered Patients

3.139 Our practice has consistently offered all it's registered patients the opportunity to complete the FFT, in full compliance with the contractual requirements. At no point was this aspect of the contract breached. We have made the FFT available through multiple channels, ensuring that every registered patient had access to provide their feedback. Any suggestion of non-compliance on this front is incorrect, as we have fulfilled our obligations in making the FFT accessible to our patient population.

b. Issue Relates to Data Submission, Not Availability

3.140 The crux of the issue lies not in the offering of the FFT to patients but in the technical challenges related to data submission via the CQRS system, which is historically

flawed and such issues had been previously raised to the Commissioner. Despite making the FFT available to patients, technical issues beyond our control have impacted our ability to submit the data consistently. As outlined in our prior application, these technical difficulties were not adequately addressed by the Commissioner, despite our efforts to seek assistance. However, Staveleigh Medical Centre did offer the Commissioner's FFT data via email as an alternative method of reporting, and FFT was available locally inline with the contractual requirements.

c. Breach of Contract Is Mischaracterised

3.141 Any claim of breach of contract based on the alleged failure to offer the FFT to patients is mischaracterised. The practice has demonstrated compliance with the key requirement of making the FFT available. The submission challenges should not be conflated with a failure to offer the test itself. These are separate issues, and we urge NHS Greater Manchester to distinguish between the two. We respectfully request that this distinction be taken into account in any further considerations.

NHS England National Guidance – Advice about GP FFT for Commissioners

3.142 We acknowledge the reference to NHS England's FFT guidance, which sets out three key requirements for GP practices regarding FFT implementation and data submission. However, we would like to address specific elements of this guidance in the context of our practice's compliance and clarify several points that may have been misinterpreted:

a. Compliance with Making FFT Available to All Patients

3.143 Our practice has consistently fulfilled the first requirement of making the FFT available to all patients at any time, as stipulated in the guidance. We have ensured that every registered patient has been given the opportunity to provide feedback through various accessible means. There has been no breach in this respect, and any suggestion that the practice has failed in its obligation to make FFT available is factually incorrect. The issue at hand relates solely to data submission challenges, not to the availability of the FFT to patients.

b. Data Submission Difficulties Related to Technical Challenges

3.144 While the second requirement mandates submission of FFT data to NHS England via the CQRS each month, our practice has encountered significant technical difficulties in fulfilling this obligation. Challenges with reporting FFT data through the CQRS system were previously reported to Commissioners, yet no support or guidance was provided to resolve the technical issues we were facing. The lack of technical support from the Commissioner hindered our ability to comply with this requirement, despite our best efforts to do so. Based on previous experiences of lack of support the practice did not feel it was worth continuing to raise such issues repeated or approach Commissioners.

3.145 As such, the failure to submit data on certain occasions should not be considered a breach of contract due to technical issues outside of our control, which were compounded by a history of a lack of response from the Commissioner when we had previously sought assistance. NHS England's guidance does not account for situations where technical barriers prevent compliance, and the onus should be on the Commissioner to provide necessary support in these instances, which did not occur.

c. Local Publication of FFT Data

3.146 With regard to the third requirement to publish data locally, our practice has consistently endeavoured to comply and has made FFT results available to relevant stakeholders and publicly. Where technical issues prevent FFT data being submitted via CQRS, Commissioners could have reached out to practices and made an effort to obtain data via an alternative reporting method or could have accessed data published locally.

d. Issuing a Breach of Contract Notice

3.147 In NHS England's guidance advising Commissioners to consider issuing a breach of contract notice after three consecutive months of non-submission, it is critical to highlight that this guidance assumes non-compliance due to neglect or failure on the part of the practice. In our case, the non-submission was the result of technical difficulties. Issuing a breach notice in these circumstances, without having provided adequate support to address the reported issues, would be both unreasonable and disproportionate. In any case any remedy or indeed breach of contract notices should be issued in compliance and equity set forth within the General Medical Servies Contract.

FFT National Publication Delays

3.148 We acknowledge communication on 1 September 2023 regarding FFT submissions and the reaffirmation of the contractual requirement to submit FFT data via the CQRS system. However, we must raise several points in rebuttal regarding the challenges with the CQRS system, the inequitable timing for assessing breaches, and the broader issue of non-submissions across Greater Manchester.

a. Admittance of CQRS System Flaws and Widespread Non-Complian

3.149 It is significant to note that NHS Greater Manchester, in their representation, has acknowledged that there have been challenges with the CQRS system historically. This aligns with our own experience and those of many other GP practices, who have consistently faced technical difficulties when attempting to submit FFT data. The fact that 100 GP practices across Greater Manchester (approximately one in four) failed to submit their data for June 2023 is clear evidence that the problem is not isolated but rather systemic.

3.150 Such widespread non-compliance suggests an underlying issue with the CQRS system itself, which should have been addressed by the Commissioner with proactive support, guidance, system improvements, or a contingency method for practices to report FFT data. Given the scale of the problem, it is inappropriate to place the sole responsibility for non-submissions on individual practices without first resolving these known flaws in the CQRS system.

b. Inequitable Selection of October, November, and December 2023 for Breach Assessment

3.151 We must also challenge the timing of the decision to monitor compliance from the October 2023 submission onwards. NHS Greater Manchester has indicated that there were delays in the publication of FFT data for 2023/24, which clearly affected earlier submissions. Given that challenges with the CQRS system and delays in data publication have been acknowledged, it is inequitable and unjust to suddenly use the months of October, November, and December 2023 as a benchmark for issuing breach notices.

3.152 NHS Greater Manchester has not explained why it chose to monitor compliance specifically from October 2023 onwards, despite acknowledging that previous periods also showed significant non-compliance due to ongoing technical difficulties. This approach appears selective and unfair, particularly when other periods where practices also faced similar issues were disregarded for enforcement. This arbitrary selection of the three-month period does not reflect a fair or reasonable assessment of compliance and fails to account for the historical challenges that have persisted with the CQRS system.

c. Lack of Proactive Support and Communication During the Delays

3.153 Additionally, while NHS Greater Manchester cites the withholding of reminder notices due to the delay in the publication of data, it is important to recognise that merely withholding reminders without providing any additional support to address the underlying technical issues is not sufficient. The acknowledgment of publication delays points to a broader breakdown in the system, and practices that have faced consistent challenges should have been offered more proactive support and communication from the Commissioner during this period. In practical terms, had NHS Greater Manchester offered support to Staveleigh Medical Centre before or during the selected months of October-December 2023, the practice may have been in a position to be supported in resolving any current technical issues and mitigate against any hurdles of submitting FFT data in the proceeding months after.

3.154 Given that many practices have encountered technical barriers with CQRS, it was incumbent on NHS Greater Manchester to take a more collaborative approach to resolve these issues before considering breach notices. The lack of such support only exacerbates the inequity of issuing breach notices for non-compliance during the specified three-month period.

Further Guidance to GP Practices

3.155 We appreciate the efforts to ensure compliance with FFT submissions but would like to rebut several points made in the communication regarding the alleged failures by Staveleigh Medical Centre, and the surrounding circumstances.

a. Failure to Enquire if Assistance Was Required

3.156 Despite the repeated assurances by NHS Greater Manchester that practices would be contacted to enquire if any assistance was required where there were issues with data submission, no such communication or inquiry was ever made to Staveleigh Medical Centre. This failure is significant, as the lack of support and guidance left the practice without the necessary tools to resolve the issues at hand. Given the complexities around the FFT data submission process and the national challenges faced, NHS Greater Manchester had a duty to engage proactively with practices, especially when problems were evident. This duty was not fulfilled.

b. Technical Faults in National Data Publication

3.157 The representation from NHS Greater Manchester stated that missing submissions would be flagged when the data was published, yet NHS Greater Manchester has acknowledged that technical faults at a national level delayed the publication of FFT data. This critical issue meant that missing submissions were not flagged in a timely manner, which directly undermined the ability of Staveleigh Medical Centre to identify and rectify any issues with their submissions. It is unreasonable to hold the practice accountable for failing to respond to missing submissions when the system designed to flag such issues was malfunctioning. This systemic fault should have been considered, and earlier communication or assistance offered to affected practices, which did not occur.

c. Failure to Issue Reminder Notices in a Timely Manner

3.158 Paragraphs 12-18 in the practice's Appeal of Application sets out how the remedial notices issued by NHS Greater Manchester were inadequate and contractually and procedurally flawed. Additionally NHS Greater Manchester indicated that reminder notices would be issued following the April 2023 submissions for any practice failing to comply with FFT requirements. As highlighted in the practice's Appeal of Application, clauses 1.3.9.6 and 1.3.9.5 of The Primary Medical Care Policy Guidance Manual (PGM), under the General Medical Services Contract, highlights context that the Commissioners were required to provide Staveleigh Medical Centre an opportunity to explain circumstances of the breach as quickly as possible, or accept that a delay

waives the Commissioner's right to take action. We attain that the Commissioner's should have respectfully waived any intended action as there was a significant delay.

3.159 Despite this commitment, Staveleigh Medical Centre did not receive any direct communication regarding missed submissions until February 2024, almost 10 monthsafter NHS Greater Manchester claimed to have a support system in place. This extensive delay in issuing notices is a clear deviation from the stated process and further exacerbated the practice's inability to address any non-compliance issues. Had these reminder notices been issued in a timely manner, as promised and contractually required, the practice would have been able to rectify the situation much earlier. As it happens notices and communication was sent to the practice when, according to NHS Greater Manchester deadlines, it was too late to rectify. The failure to follow through on this promise contributed significantly to the situation at hand.

d. Inconsistent Communication and Delayed Reminders

3.160 While there was communication on 21 March 2023 and 7 June 2023 reiterating the importance of FFT submission, these generic reminders, while helpful for general compliance, did not constitute direct support or inquiry into assistance for our practice. Furthermore, the remedial notices that were promised following April 2023 were not issued until it was too late for the practice able to submit data for the months of October 2023, November 2023 and December 2023 once technical issues had been resolved. Had the process outlined by NHS Greater Manchester been followed correctly, we would not be in this position.

e. Impact of Lack of Timely Support

3.161 The combination of the national technical fault, the failure to flag missing submissions and offer support in a timely manner, and the delayed reminder notices significantly hindered the practice's ability to overcome technical challenges and submit FFT results. NHS Greater Manchester's inaction during these critical months meant that Staveleigh Medical Centre was not given the opportunity to correct any submission errors. The ultimate communication received in February 2024 came far too late to address the earlier submission gaps and placed the practice in a position where rectifying the situation became more difficult, especially given the procedural gaps on the part of NHS Greater Manchester.

Staveleigh Medical Centre - Friends and Family Test Submission Data

3.162 We acknowledge the claims outlined regarding Staveleigh Medical Centre's alleged failure to submit FFT data for October, November, and December 2023. However, we must respectfully rebut these assertions, as there are several procedural and factual inaccuracies that need to be addressed.

a. Failure to Receive Email on 3rd January 2024

3.163 The assertion that an email was sent to Staveleigh Medical Centre on 3rd January 2024 notifying the practice of missed FFT submissions is incorrect. Our practice never received such communication. If this notice had been issued appropriately, we could have taken action to rectify the situation earlier. Furthermore, the correct procedure for delivering a remedial notice, as outlined in the Standard General Medical Services (GMS) contract, specifies that such notices should be delivered in person or sent via post to the contract holders, not just via email. This procedural failure by NHS Greater Manchester has directly impacted the ability of our practice to comply with the submission requirements. The contract mandates that delivery of remedial notices should not be via email, as there is no guarantee of an email being received. We request form NHS Greater Manchester if they have confirmation that the email sent to the practice on 3rd January 2024 was received, such as a delivery report or read receipt. Emails may not be received by the recipient, even if sent by the sender, for a number of reasons, including data storage limits, when a user's NHSmail inbox is full,

rejected by spam filters, the email didn't pass authentications checks, rejected by DMARC policy or an issue with either the sender's or recipient's IP address.

b. Incorrect Process for Issuing Remedial Notices

3.164 When issuing a remedial notice, the Commissioner is required to meet with the practice, collaborate on an action plan, and provide 28 days for the actions to be put in place and reviewed. In this instance, no such meeting or collaboration took place. Our practice only received a remedial notice on 6th February 2024, and immediate action was taken the following day, with the FFT data being submitted via CQRS on 7th February 2024. This demonstrates our willingness to comply and resolve the issue promptly, despite the lack of support from the Commissioner.

c. Compliance with Instructions to Submit the "Next Month"

3.165 The letter received on 6th February 2024 directed the practice to "submit the next month" of FFT data. We complied fully with this instruction, submitting the data for January 2024, which was the next available month. The Commissioner did not specify in the letter which month needed to be submitted, and given that the deadline for December 2023 data had already passed on the CQRS system by the time the letter was received, it was impossible for us to submit December 2023 data. As such, the practice acted in good faith and within the parameters of the instructions provided. Any suggestion that we should have submitted for a different month is unfounded, as the Commissioner's directive was vague and did not offer specific guidance.

d. Failure to Issue Remedial Notices in a Timely Manner

3.166 The Commissioner should have issued remedial notices at an earlier stage rather than allowing the situation to escalate to three months of non-submission. According to the contract, remedial notices are intended to provide an opportunity to remedy an issue. By waiting until 6th February 2024, when it was already too late to submit December 2023 data, NHS Greater Manchester effectively prevented the practice from complying with the requirement for that period. Issuing a remedial notice after the window for submission had closed is procedurally flawed and undermines the very purpose of remedial notices, which is to allow the practice time to take corrective action.

e. Clarification on Remedial vs. Reminder Notices

3.167 While NHS Greater Manchester may argue that the communications issued on 3rd January 2024 (which was not received since it was not sent correctly) and 6th February 2024 were reminder notices, the content and tone of these communications appeared to take the form of remedial notices. Under the Standard General Medical Services Contract, Part 26, Clause 26.23.5-26.23.8, failing to provide NHS England with information (by which submitting FFT data is interpreted as proving NHS England with information) is an issue that is capable of remedy. The suggestion that failure to report FFT data is not capable of remedy is flawed and inconsistent with the contractual obligations.

3.168 As a practice, we have shown that we are fully capable of remedying the issue once notified properly, as evidenced by our submission of January 2024 data immediately following the receipt of the letter on 6th February 2024. If the Commissioner had intended these to be reminder notices, a more appropriate course of action would have been to issue remedial notices earlier and work collaboratively with the practice, in line with contractual obligations.

NHS Greater Manchester Direct Commissioning Contracting Panel (DCCP)

3.169 We acknowledge the terms of reference of the Direct Commissioning and Contracting Panel (DCCP). However, we wish to formally rebut the decision taken to issue Staveleigh Medical Centre a Breach of Contract notice dated 15th March 2024. The

reasons for the rebuttal have been explained in this letter, and within our Application of Appeal. However, we wish to add the following comments:

a. Immediate Communication Following Breach Notice

3.170 Upon receipt of the breach notice on 15th March 2024, Staveleigh Medical Centre immediately contacted the commissioners to present mitigating factors and offer an explanation regarding the non-submission of FFT data for October, November, and December 2023 (attached as Exhibit 5 to the Application for Appeal). The practice further challenged the notice again on 30th May 2024 (attached as Exhibit to the Application of Appeal). The practice's effort to engage with NHS Greater Manchester was done in good faith to address the issue and seek guidance. Despite this, no meaningful support or assistance was provided. Instead, we were told that the issue was not capable of remedy, which is inconsistent with the principles outlined in the Standard General Medical Services Contract, Part 26, Clause 26.23.5-26.23.8, which outlines that not providing information is an act capable of remedy, which suggests that reporting failure accusations are capable of remedy. The very fact that Staveleigh Medical Centre remedied the situation the day after being noticed in February displays that not reporting FFT is an act capable and remedy, and thus any compliance should qualify for proper procedural remedy opportunities, not just be issued with a breach notice.

b. Repeated Attempts to Report FFT Data

3.171 Staveleigh Medical Centre also made a subsequent effort to report the missing FFT data immediately to commissioners by email since the CQRS was not allowing the practice to report the months of October 2023, November 2023 and December 2023, demonstrating compliance with the reporting requirements despite the previous submission failures. However, reporting these results direct to commissioners was not acknowledged and no support was provided by NHS Greater Manchester, nor was any guidance offered to help rectify the situation moving forward. These actions by the practice show a clear willingness to comply with the contractual obligations, yet the response from the commissioners was dismissive and unhelpful.

c. Failure to Offer Support or Collaboration

3.172 NHS Greater Manchester has consistently stated that support and guidance would be provided to practices facing difficulties with FFT submissions. Despite Staveleigh Medical Centre's repeated efforts to communicate and rectify the issue, no support was offered, and no collaborative action plan was put in place to assist the practice in overcoming these challenges. In fact within our application (referenced in paragraphs 42-46 in the Application of Appeal), we have referenced previous attempts whereby the practice has reached out to Commissioners directly for support but a reply has never received. The breach notice issued to the practice did not result in any constructive engagement from the commissioners, which is contrary to the commitments made by NHS Greater Manchester to work with practices to resolve issues.

d. Breach Notice Issued Without Proper Opportunity for Remedy

3.173 The breach notice issued to Staveleigh Medical Centre stated that the issue was not capable of remedy, which is factually incorrect. As mentioned in our communication, we submitted the FFT data as requested for the next available month following the breach notice. The commissioner failed to provide clear guidance on which specific month the submission was required for, but the practice complied with the instructions as they were understood. Had NHS Greater Manchester clarified the requirements or offered earlier support, this situation could have been avoided. Had Greater Manchester intended for their notices to ask practices to ask to FFT submission for the months of October 2023, November 2023 and December 2023, they did not send notices in time for actions to be implemented.

e. No Formal Resolution Process Offered

3.174 While the breach notice provided the opportunity to contact NHS Greater Manchester within 28 days, it is important to note that Staveleigh Medical Centre did engage immediately following the breach notice to present mitigating factors and seek resolution. The fact that NHS Greater Manchester claims no formal communication was received for dispute resolution does not negate the earlier attempts made by the practice to address the issue. The lack of formal dispute submission reflects the practice's expectation of receiving support and resolution following the initial communications, which were ultimately unacknowledged.

f. Delays and Procedural Failings

3.175 The failure to issue timely reminders after April 2023, the admission of technical faults in publishing the FFT data, and the extended delay in communication until February 2024 are all significant factors that contributed to the non-submission issue. The practice's repeated attempts to communicate these challenges were ignored, and instead, a breach notice was issued without the support or collaborative approach that was promised.

Breach Not Capable of Remedy

3.176 We respectfully submit the following rebuttal in response to NHS Greater Manchester's claim regarding the non-submission of Friends and Family Test (FFT) data and the application of breach notices under the Standard General Medical Services Contract (GMS).

a. Failure to Issue Remedial Notices

3.177 The GMS contract, Part 26, Clauses 26.13.5 – 26.13.8, clearly stipulates that not providing information to NHS England is an example of a breach capable of remedy. This applies directly to the failure to submit FFT data, which is a situation explicitly capable of remedy through submission of the data within a remedial timeframe. The GMS contract does not treat non-submission as a permanent and irremediable breach, but rather as a failure that can be rectified, provided proper steps are taken.

3.178 As per the contract, in instances where a breach is capable of remedy, the commissioner is required to issue a remedial notice, giving the practice 28 days to remedy the breach. NHS Greater Manchester failed to issue remedial notices in line with contractual requirements, depriving Staveleigh Medical Centre of the contractual right to remedy the breach within the appropriate timeframe.

b. Reminder Notices vs. Remedial Notices

3.179 NHS Greater Manchester has claimed that reminder notices were issued, rather than remedial notices. However, if these notices were intended to serve as reminders, they do not satisfy the requirements for formal remedial notices under the contract. Given that this situation is explicitly capable of remedy under the terms of the GMS contract, the failure to issue proper remedial notices is a breach of process on the part of NHS Greater Manchester. Hence should NHS Greater Manchester maintain they have not issued remedial notices, the issuing of a breach of contract is invalid without offering proper remedy opportunity as set forth within the contractual regulations.

3.180 Furthermore, if NHS Greater Manchester now suggests that these reminder notices were indeed intended to serve as remedial notices, they were not delivered correctly or within the contractual timeframes that would have allowed the practice a reasonable opportunity to take remedial action. The timing of the reminder notices and subsequent communication failures left Staveleigh Medical Centre without the required notice or time to comply, making the enforcement of a breach notice inequitable.

c. Remedy Was Possible but Denied

3.181 Contrary to NHS Greater Manchester's assertion that the breach was not capable of remedy because the FFT submission window had closed, the contract clearly provides for remedial actions in such cases. The failure to submit FFT data within the given timeframe should have resulted in a remedial notice, allowing Staveleigh Medical Centre a formal opportunity to rectify the issue within 28 days, as required under the contract. This right to remedy was not granted.

3.182 In fact, upon receiving the eventual breach notice, Staveleigh Medical Centre immediately took steps to report the data and comply with the requirements, further demonstrating that remedy was possible. The practice was willing to submit FFT data and took action, but due to delays and inadequate notice from NHS Greater Manchester, was unable to do so within the original deadline. In other words, the practice was reminded to submit FFT in February 2024, which we did the following day, yet a breach notice still followed in March 2024.

d. Failure to Follow Contractual Procedures

3.183 Had proper remedial notices been issued, the practice would have had the opportunity to address the situation. The GMS contract mandates that remedial notices be issued in person or via post to the contract holders, not simply through general email communications. Furthermore, remedial notices must allow for collaborative action planning and support from the commissioner, which was also not provided in this instance.

Conclusion

3.184 While NHS Greater Manchester asserts that its role is to provide support and guidance to GP practices to ensure compliance with contractual obligations, Staveleigh Medical Centre has not received adequate or timely support during this process, despite repeated attempts to reach out to the commissioners.

3.185 Staveleigh Medical Centre maintains that NHS Greater Manchester has not, within their representation, been able to successfully rebut the appeal conditions set out in paragraphs 3-53 in the Application of Appeal.

3.186 Summary of rebuttal:

3.187 **Mitigating Circumstances and Technical Faults**: It is important to recognise that CQRS (Calculating Quality Reporting Service) has a history of technical issues that have impacted the ability of practices to submit data. NHS Greater Manchester themselves admitted that there were technical issues nationally that delayed the publication of data. This directly impacted practices like Staveleigh Medical Centre, and NHS Greater Manchester did not inquire whether any assistance was required, despite the Commissioners' previous communications indicating they would.

3.188 **Previous Communication Failures**: Staveleigh Medical Centre had previously reached out to the Commissioners regarding technical difficulties with submitting FFT data through CQRS and received no reply. This created a reasonable expectation that the commissioners were unlikely to respond to any further communication in October, submission.

3.189 **Remedial and Reminder Notices Not Delivered Properly**: The reminder/remedial notices allegedly sent on 3rd January 2024 were never received by Staveleigh Medical Centre, and it appears that these notices were not delivered correctly in accordance with the contractual requirements for such notices. NHS Greater Manchester failed to provide proper remedial notices as required by the National Health Service (General Medical Services Contracts) Regulations 2015, which specify that remedial notices should be delivered in person or by post to the contract holders.

3.190 **Timing of Notices Did Not Allow Corrective Action**: The first notice received by the practice was on 6th February 2024, at which point the deadline to submit the FFT data for the previous months had already passed. Despite this, Staveleigh Medical Centre complied with the notice by submitting data for the “next month” (which on CQRS was January 2024) the very next day, as instructed. However, the February notice was issued far too late for any remedial action to be effective for the missed October-December submissions, even if Staveleigh Medical Centre was sent a notice in January 2023, which we retain we were not. Even so the practice acted immediately on the receipt of NHS Greater Manchester’s reminder notice in February, yet a breach was still issued in March 2024.

3.191 **Capability of Remedy**: NHS Greater Manchester’s position that the breach is not capable of remedy is flawed. Not providing FFT data is a breach capable of remedy, as clearly stated in the Standard General Medical Services Contract that not providing NHS England with information is as act capable of remedy. Remedial notices should have been issued, giving the practice 28 days to correct the issue. If the reminder notices were not intended as remedial notices, then the practice has been denied its contractual right to a remedial notice period and the opportunity to take corrective action.

3.192 **Breach Notice Was Premature**: Even if NHS Greater Manchester asserts that a reminder notice was issued in January 2024, this would not have allowed sufficient time to remedy the situation before the breach notice issued in March. Furthermore, the February 2024 notice was also issued too late to address the October-December data.

Summary of Rebuttal:

3.193 In conclusion, Staveleigh Medical Centre has faced mitigating circumstances that were not sufficiently addressed by NHS Greater Manchester. These include technical issues with the CQRS system, a lack of timely support from the commissioners despite multiple attempts to reach out, and inadequate delivery of remedial notices. The notices that were sent were either not received or issued too late for corrective action to be taken. The practice complied promptly when it received its first proper notice, but by then, the opportunity to rectify the earlier non-submissions had already passed. Finally, NHS Greater Manchester's claim that the breach is not capable of remedy is contradicted by the contract, which requires a remedial notice and the opportunity for the practice to address the issue within 28 days. The practice has been denied this opportunity, and as such, the breach notice was issued prematurely and inappropriately.

3.194 To reiterate, Staveleigh Medical Centre has no desire to create any negative perceptions, foster ill will, or incur any prejudice with NHS Greater Manchester as a result of its appeal to NHS Greater Manchester or the practice’s appeal to NHS Resolutions. We greatly value the work undertaken by the commissioners and believe this process will only serve to strengthen our relationship. Our intention is to demonstrate that we are committed to efficiency transparency, and accountability in delivering high-quality services, while advocating for the best interests of our patient population.”

4. CONSIDERATION

4.1 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. I note that the Contractor has provided a copy ‘NHS Standard General Medical Services (GMS) Contract 2017/18' (and confirmed separately that the Contract is GMS). Page 170 shows that the Contract is between NHS Commissioning Board, NHS England Greater Manchester, 4th Floor, Three Piccadilly Place, Manchester, M1 3BN and Drs J L Doldon, V A Long and J Shilham of Staveleigh Medical Centre carrying on business at Staveleigh Medical Centre, King Street, Stalybridge, Cheshire SK15 2AE. The Contractor has provided a copy page signed on

behalf of NHS Tameside and Glossop CCG (the then NHS Commissioner) and on 21 August 2018 by the above doctors with the addition of Dr Choi. The Contract has not been disputed by the Commissioner. I have therefore assumed that the Contract between the parties reflects the provisions of the relevant Regulations in force at the relevant time and proceed to determine the dispute on that basis.

4.2 I note that there has been local dispute resolution between the parties although this was unsuccessful in resolving the dispute. The Contractor's application for dispute resolution includes; *"We can confirm that the appeal has been escalated as attempts for local resolution have been unsuccessful."* I also note that the Breach Notice includes the right of appeal to NHS Resolution.

4.3 There is no dispute that the Contractor has made its application for dispute resolution within 30 days of the Commissioner's decision letter having been sent to it.

4.4 I note that the Commissioner's decision letter to the Contractor dated 15 March 2024 (the "Breach Notice") states:

4.5 ***"BREACH NOTICE - Friends and Family Test (FFT)***

4.6 *In consideration of the recent Friends and Family Test (FFT) non-submissions for October, November and December 2023, it is evident that your practice failed to submit the requested data for these months by the published deadlines. Due to this omission, we hereby serve notice that we consider that you are in breach of your GMS Agreement dated 1 April 2018.*

4.7 *We consider that you have breached Clause 16.7A of the Agreement. This states,*

4.7.1 16.7A Friends and Family Test

4.7.2 16.7A.1The Contractor must give all patients who use the Contractor's practice the opportunity to provide feedback about the service received from the practice through the Friends and Family test.

4.7.3 16.7A.2The Contractor must-

4.7.3.1 16.7A.2.1report the results of completed Friends and Family tests to the Board; and

4.7.3.2 16.7A.2.2publish the results of such completed Tests.

4.8 *One of the key requirements that practices must submit their results to NHS England each month through the Calculating Quality Reporting System (CQRS). The FFT results for every practice In England are then published nationally on the NHS England and NHS Websites.*

4.9 *We consider that you have breached this clause because the practice failed to submit the requested FFT data to CQRS within the published submission windows for three consecutive months.*

4.10 *We require that you do not repeat this breach. If you repeat this breach or otherwise or otherwise breach the Contract which results in a Remedial Notice or a further Breach Notice, we may takes steps terminate your Contract or consider the imposition of a Contract Sanction.*

4.11 *If you do not agree with our decision to issue this Breach Notice, you should contact us within 28 days of this notice. If, after making every reasonable effort,*

we are unable to resolve the dispute, you may wish to refer the matter to the NHS dispute resolution procedure by sending a written request to:

NHS Litigation Authority
FHS Appeal Unit
1 Trevelyan Square
Leeds
LS1 6AE"

4.12 I note the Contractor's comments that the issuance of the Breach Notice to Staveleigh Medical Centre has unjustly tarnished the reputation of a practice that has otherwise demonstrated consistent success and efficacy in fulfilling its obligations.

4.13 I note that the Commissioner had, in making representations on appeal, apologised for using the name of a 'Mr Rowlands' [referred to amongst the named intended recipients on the letter] on the Breach Notice to the Contractor. In its observations on the Commissioner's representations, the Contractor accepted that this was an administrative oversight.

4.14 I note that it is not disputed that the Contractor failed to upload their FFT data for the months of October, November and December 2023. As per the Contractor's position, there are four matters in dispute:

4.14.1 Whether the Commissioner has correctly determined that a breach notice was appropriate in this instance for the non-submission of Friends and Family Test ("FFT") data for October, November and December 2023;

4.14.2 Whether or not the level of support provided to the Contractor by the Commissioner was sufficient;

4.14.3 Whether the Contractor's ability to submit FFT data was hampered by IT issues beyond their control so that a breach notice should not have been issued; and

4.14.4 Whether the process used by the Commissioner leading up to and including issuing of the Breach Notice was in accordance with the relevant Regulations and guidance.

4.15 I firstly considered the background to the FFT. I note the Commissioner's comment that *the "Friends and Family Test (FFT) is an important feedback tool that supports the fundamental principle that people who use NHS services should have the opportunity to provide feedback on their experience. Since 1 December 2014, it has been a contractual requirement that all GP practices implement the NHS Friends and Family Test (FFT)."* In their observations the Contractor also acknowledged the importance of the FFT.

4.16 I further note the Contractor's comment that it has *"consistently offered all it's registered patients the opportunity to complete the FFT, in full compliance with the contractual requirements. At no point was this aspect of the contract breached. We have made the FFT available through multiple channels, ensuring that every registered patient had access to provide their feedback."*

4.17 I note the Commissioner's comments in its representations that the FFT requires manual data input no later than 12 working days after month end, e.g. March 2023 data must be submitted by 18 April 2023.

4.18 I note the Commissioner's comment that Calculating Quality Reporting Service ("CQRS") is the NHS mandated system for GP practices to report FFT monthly data and that it issues a task for manual entry on the 1st working day of the month which notifies GP practices to submit their FFT data.

4.19 Based upon the information provided by both parties, I note the following sequence of events:

4.19.1 31 March 2022 - having been temporarily suspended (due to Covid-19) the FFT service was relaunched.

4.19.2 5 July 2022 - Practices were again required to submit data.

4.19.3 2 November 2022 – by email the Commissioner reaffirmed to all GP practices that suspension of FFT ended on 31 March 2022. GP practices were advised that they should have started to make FFT available to parties from April 2022 onwards although there was no requirements to submit data until July 2022. I note the Commissioner's comment that the email included the NHS BSA FFT future submission dates and guidance on FFT submission.

4.19.4 17 March 2023 – by letter, the Commissioner reminded all GP practices of the statutory requirements for the FFT and informed them that reminder notices would be recommenced, following the April 2023 submission data, to GP practices that did not comply with the FFT requirements. The letter also explained that failure to provide FFT data for three consecutive months might result in the GP practice having breached its contract. The letter included how to find advice on implementing FFT and referenced the NHS England guidance on the FFT process.

4.19.5 21 March 2023 – the Tameside Locality reshared the information regarding the FFT restart with GP practices in their locality, including the Contractor. This specifically highlighted that a breach notice may be issued and the importance of submitting the data.

4.19.6 7 June 2023 – a further email reminder was issued. This again referenced that missing three months of data may result in a breach of contract.

4.19.7 1 September 2023 - by email the Commissioner contacted all GP practices to reaffirm that they should now be submitting their FFT data each month on CQRS. The Commissioner also stated that it was aware from the National Data Team that there had been some challenges in the publication of the 2023/2024 FFT data which has caused a delay. The Commissioner stated that it had published the June 2023 data. The Commissioner reminded all GP practices of their contractual obligations to make FFT data available to patients and to submit it to NHS England within the required timescales. Due to the delays in the publication of the FFT data, the Commissioner withheld issuing reminder notices and sought to monitor compliance following the October 2023 submission and issuing notices to GP practices that did not comply with FFT requirements. I note that the Commissioner enclosed within its email, submission guidance, including submission deadlines.

4.19.8 3 January 2024 – the Commissioner emailed the Contractor's Practice Manager to notify them that the FFT data for October 2023 had not been received. A reminder was included regarding the contractual requirement to do so along with the submission guidelines.

4.19.9 6 February 2024 – the Commissioner emailed the Contractor's Practice Manager again indicating that they had failed to submit FFT data for the months of October and November. I have had regard to this letter and note that it contains multiple resources to support or advise on the implementation of FFT.

4.19.10 7 February 2024 - the Contractor logged into CQRS to submit the missing FFT results. No option existed to submit previous FFT results for October, November and December 2023. The system only permitted the submission of FFT results for January 2024, which the Contractor submitted.

4.19.11 13 March 2024 - the Contractor successfully reported results of the FFT for February 2024 via the CQRS system. On 8th April 2024, the Contractor reported the results for March 2024.

4.19.12 15 March 2024 - an email with the subject heading “P89007 Friends and Family Test – Breach Notice” was sent from NHS Greater Manchester Integrated Care to the Contractor, with the Practice Manager copied in. It stated the Contractor had not submitted FFT data for three consecutive months (October, November, and December 2023). Upon receiving the Breach Notice, the Contractor replied by email to challenge the Notice based on technical mitigating circumstances, highlighting the lack of received warning letters and offering an alternative submission route for the missing data.

4.19.13 18 March 2024 - The response from the Commissioner stated that non-submission notices were sent to the Practice Manager on 3 January 2024 and 6 February 2024, although, I note that the Contractor contends that only the 6 February 2024 notice was received.

4.19.14 30 May 2024 - the Contractor again contested the Breach Notice via email to the Commissioner. In this communication, the Contractor asserted that no opportunity for remedial action had been provided to the Contractor, thereby contravening contractual procedures. Furthermore, the Contractor sought clarification regarding the duration for which the Breach Notice would remain active against the Contractor's record. In their response, the Commissioner stated that the Breach Notice had been issued on the basis that no remedy was feasible due to the closure of the reporting window on CQRS. The Commissioner further clarified that there was no expiration date associated with the Breach Notice.

4.20 I note that the Contractor has stated in its application for dispute resolution that its failure to provide FFT information constitutes an action for which a remedial period is possible, and hence the Commissioner should have issued a remedial notice, rather than a breach notice. I note the Contractor's reference to Clause 1.3.6 of the Primary Medical Care Policy and Guidance Manual ("PGM") which states that "*The Commissioner must issue a remedial Notice.. except where the breach relates to the rights of termination*". The Contractor then goes on to explain the "*rights of termination*". The Contractor states that failure to submit FFT data does not qualify as the type of breach for which termination rights arise. I consider that this represents a misunderstanding of Clause 1.3.6. I note that the Contractor has omitted the wording of Clause 1.3.21 which plainly states that a breach notice may be served where that breach "is not capable of remedy". It does not mention the "serious nature" referred to by the Contractor. I consider that the Contractor is conflating two separate criteria, if the breach is capable of remedy, yet serious enough, then a breach notice may be appropriate. However, if the breach is not capable of remedy, then a breach notice is the only appropriate notice.

4.21 I also note that the Contractor's Contract, as stated by the Commissioner, provides at Clause 26.13.5 that a breach notice may be made where the breach if not capable of remedy. I consider that the appropriate question is simply whether the Contractor's failure to provide FFT data for October, November, or December 2023 was, in fact, capable of remedy, and only if it is should the seriousness of the breach be considered.

4.22 I note that the Contractor has stated that the actions of the Commissioner demonstrate that the breach was capable of remedy due to its issuing of remedial notices. The Contractor alleges that the email received on 6 February 2024, and the communication issued on 3 January 2024 were, remedial notices, rather than reminders. The reasons for this, as set out in the Contractor's observations, is due to "*the content and tone*" of the communications. I note that both the GMS contract and the PGM set out the content to be included in a remedial note. I note that I have been provided a copy of the email of 6 February 2024 and the attached letter dated 22 January 2024. Notably, it does not

refer to itself as a remedial notice, nor has the Commissioner done so at any point. As per clause 1.3.9 of the PGM a remedial notice must specify:

4.22.1 "*details of the breach, which led to the remedial notice being issued and any evidence gathered in respect of the breach;*

4.22.2 the steps the Contractor must take in order to remedy the breach to the Commissioner's satisfaction;

4.22.3 the period in which the steps must be taken;

4.22.4 any arrangements for reviewing the matter to ensure that the requirements of the remedial notice have been met; and

4.22.5 *the actions that the commissioner shall take if the contractor fails to satisfactorily remedy the breach*"

4.23 I note that neither the email nor the attached letter provide for any of these things. I specifically consider the language "*failure to submit for 3 consecutive months may result in a breach of contract*" as relevant. If this were, as the Contractor states, to be taken as a remedial notice it would already be a breach of contract. The fact that the letter states that there "*may*" be a breach, is in direct contradiction to this. The Contractor has not elaborated on what element of the content suggests that the Commissioner intended for these communications to be remedial notices. I also note that "tone" is subjective and cannot be said to be definitive of the nature of a document.

4.24 Further, I note that the Contractor itself has identified that the "*remedial notices*" had several deficiencies. I consider that, given that these communications are not labelled as remedial notices, they do not conform to the requirements of remedial notices, they are not in the template form provided for in the PGM for remedial notices, and that the Commissioner has never referred to them as remedial notices, the emails and attachments of 3 January and 6 February 2024, were not and cannot said to be, remedial notices.

4.25 In consequence of this, I will not consider any of the Contractor's further comments on these communications regarding whether they were valid remedial notices (i.e. if they did not provide for an appropriate remedial period, whether they were issued too late, whether they were too vague, whether they were delivered correctly, or whether they were followed up on).

4.26 I shall, therefore, return to the question as to whether a breach notice was appropriate in these circumstances. As the Commissioner did not issue a remedial notice, there are no actions of the Commissioner to suggest that it, at any point, thought the breach capable of remedy. I note specifically the correspondence provided by the Contractor to the contrary, and the Commissioner's representations. I do not consider that the Commissioner was in any way inconsistent as stated by the Contractor.

4.27 The next proposition put forward by the Contractor is that at Clause 1.3.7 of the PGM "*failure to provide information to the Commissioner*" is provided as an example of a breach capable of remedy. However, I do not consider this to be as conclusive as the Contractor has suggested. This is because the quote provided by the Contractor omits the preceding language in the PGM which specifically states *"Examples of breaches that **may** be capable of remedy* [my emphasis]". Conversely, the Contractor has definitively described the clause as examples where a breach "***is** capable of remedy* [my emphasis]". I do not consider this to be the case. As such, at best this clause provides a starting point that information to be provided to the Commissioner may be capable of remedy, but I do not consider it in anyway definitive.

4.28 I note that the Contractor has stated that "*Clause 26.23.5-26.23.8* [of the Contract]*, failing to provide NHS England with information… is an issue capable of remedy*."

However, I have been unable to identify any such clauses within the provided Contract. The provisions regarding remedial notices make no reference to providing information, only that the breach must be capable of remedy. I must, therefore, turn my attention to the precise language of the underlying clause which the Contractor is alleged to be in breach of.

4.29 The relevant clause for the submission of FFT is:

"*16.7A.2 The Contractor must-*

> *16.7A.2.1 report the results of completed Friends and Family tests to the Board;…*"

As such, there is no overt time period by which this information must be submitted and no prescribed methodology. However, I note that FFT is defined under the Contract as:

"*the arrangements that the Contractor is required by the Board to implement to enable its patients to provide anonymous feedback about the patient experience at the Contractor's practice*".

Due to the Contract being silent on what arrangements the Commissioner requires the Contractor to implement I must, therefore, have regard to the published guidance. The Contractor is required to have regard to this guidance under clause 23.1.1 of the Contract.

4.30 I note that the Commissioner has provided me a copy of the document entitled "*Guidance on the submission of GP practice Friends and Family Test data*". I also note that the Contractor was made aware of this document during the correspondence prior to the alleged breach. This document sets out that the Contractor is required to submit specific data each month, and that it has 12 working days after the month end to do so. As the Contract itself is silent on what the arrangements the Contractor is required by the Commissioner to make, in relation to FFT, I consider the guidance to be the definitive explanation, thus I consider it to be a contractual requirement that the Contractor was to submit the previous months FFT data by the twelfth working day of each month.

4.31 I note that the Contractor has not contested that it was a contractual requirement to submit the FFT data, nor has it stated that it was not required to do so monthly. I have already addressed the Contractor's statements regarding the provision of information being inherently remedial, and that I consider this not to be the case. I note the statements by the Commissioner that "*data submitted after the deadline is not included in the National published data*". Therefore, I consider that providing the information late does not remedy the issue, as the data cannot be published. I note that under 16.7A.2.2 is a requirement that the results of the FFT are published. Therefore, where 16.7A.2.1 is breached, so is 16.7A.2.2, and I consider that, as per the Commissioner, both are incapable of remedy.

4.32 Further to this, I note that the Contractor has not provided any explanation as to how late submission would in actuality remedy the breach. I note its statements that the Contract provides for remedial actions in this case, however, the Contractor has not stated where in the Contract such an assertion is made, and I have not found it myself. In fact, as I have considered, the Contract appears to state the opposite. I note the Contractor's comments regarding its willingness to submit the FFT data following the notice, however, as I have noted, once the deadline was passed it was not possible to provide the data in a useful or meaningful way. In the absence of an explanation as to how late submission sufficiently remedies the breach, and where I have dismissed the other reasoning put forth by the Contractor, I consider that, for the purposes of Clause 26.13.5 of the Contract the Contractor's failure to provide the FFT data during the months of October, November, and December 2023 constitutes a breach which is not

capable of remedy. Therefore, the Commissioner was correct to issue the Breach Notice in these circumstances.

4.33 I note the Contractor's comments in its observations regarding if the Commissioner had breached its obligations to provide support and guidance. I note that, as indicated in the evidence provided by the parties, and I have alluded to in my summary of the sequence of events, the Commissioner provided several email notifications prior to the Breach Notice that the FFT data would be monitored and potential breach notices issued. As I have noted, most of these notifications provided copies of relevant guidance or made reference to how advice and help could be sought out. I note the Contractor's contention that due to its previous attempts to seek help not being responded to it had a reasonable expectation that the same would occur this time. I have had regard to the Contractor's evidence relating to these prior issues.

4.34 The first evidence is dated May 2021, it details the Contractor's issues locating the FFT submission on CQRS. As per the summary sequence of events, I note that this predates the relaunch of the FFT data upload via CQRS by almost a year. I also note that this email was not addressed to any of the email addresses for seeking assistance provided by the Commissioner in the subsequent communications, which I have referenced in the summary. Instead it is addressed to a specific individual. It also does not detail technical issues with the CQRS portal but that the option to upload FFT data was simply not available. Given the correspondence starting in June 2022 which indicates that the service was no longer suspended, I do not consider this email to be evidence of a failure to provide support by the Commissioner in regard to the re-launched service.

4.35 The second piece of evidence is dated 22 June 2022, in which the Contractor is still unable to find the FFT submission section on CQRS. I note the specific language in the email dated 2 November 2022 from the Commissioner which indicated that there was no requirement to submit FFT until July 2022. I again note that this email was not sent to the specific email addresses provided by the Commissioner for seeking advice on the service but was, again, sent to a specific individual. I also note that this email chain specifically provided access to guidance on the FFT which itself linked to a variety of further support.

4.36 Given the plethora of guides and communication avenues available I do not consider that the Commissioner failed to provide suitable support and guidance. I also note that the Contractor did not actively engage with the Commissioner in relation to the alleged inability to submit the data in October, November or December 2023. I do not consider that the Commissioner was obligated to provide guidance on every possible issue or challenge that a contractor might face. Having regard to the guidance and resources available, they are substantive. The two email addresses provided to the Contractor to seek further advice went unused. I do not consider that the Commissioner has breached its duty of good faith in this regard.

4.37 I note the application for dispute resolution states that on the 6 February 2023 the Contractor's representative at the local Practice Managers Forum noted the following from a representative of the Commissioner: *"Discussions acknowledged historical technical difficulties with the CQRS system and confusion around submission dates due to paused and restarted contractual requirements."*

4.38 I note however that the reference was non-specific and referred to historical events. I further note that the Contractor was able to successfully submit data for both April 2023 and January 2024. I am also mindful that the service was relaunched, as per the Commissioner, and, as such, historical issues prior to the relaunch carry little weight on the service provided from 2022 onward.

4.39 I note the Contractor has made further reference to technical issues later in its application for dispute resolution: *"The CQRS reporting system has exhibited a documented history of technical deficiencies in the months and years preceding the*

alleged breaches. Particularly during the COVID-19 pandemic, the contractual obligations for Contractors to report FFT results via CQRS were temporarily suspended. Subsequent to the reinstatement of this requirement, significant delays were encountered in restoring full functionality to the CQRS system, affecting Contractors' ability to comply in a timely manner."

4.40 I similarly note that these reported issues with CQRS are historical, having specific regard to the references made to the period of the Covid-19 pandemic. The delays in restoring the CQRS are not disputed by the Commissioner. I consider that the key question for this determination is whether issues with the CQRS system impacted the Contractor's ability to submit FFT data during the months of October, November and December of 2023, rather than if the CQRS had historic issues.

4.41 To that end I note that the original issues the Contractor was facing was that FFT was not appearing on CQRS. However, as provided by the Commissioner, the Contractor was able to submit FFT data on 30 April 2023, which I consider indicates said problem was resolved. The reason why the FFT data for the three months in 2023 was not submitted was stated as being:

"*due to technical difficulties arising from changes in the sign-in procedures for CQRS, specifically transitioning to a two-factor authentication method*."

4.42 I consider that this is a wholly different issue to those that were reported to the Commissioner in 2022. I also note that this issue does not appear to be with the submission of FFT but with CQRS more generally. I note that the Contractor has stated that it did not report these issues to the Commissioner due to a lack of previous response. I note that the Contractor states that these two issues are "similar" however, I consider that they are wholly separate in nature. Two-factor authentication has little to do with any specific service appearing on a platform. Two-factor authentication generally relates to the ability to login to a service, and I note that CQRS has its own specific support helpdesk to which the Contractor could have sought recourse. I also note that the Contractor has not stated how it resolved this issue, only that in February 2024 it was able to submit data.

4.43 I consider that, even if the Commissioner offered no solution, or response, it was the Contractor's obligation to contact the Commissioner to inform them of the issue. Given the extent of communication from the Commissioner which made reference to breach notices, and monitoring compliance from October 2023, it should have been obvious to the Contractor that if it did not wish to incur a breach notice it should inform the Commissioner of any mitigating factors in advance of the submission deadline. In such circumstances notification to the Commissioner may prevent a breach notice being issued.

4.44 Further, I note that in the Contractor's "Exhibit 10" there is an awareness of the impact of making contact with the Commissioner even if no response is forthcoming on the basis of the protection that it provides to the practice should a complaint about its inaction be made. I do not consider that a lack of response to two previous emails from a single individual should grant the Contractor the ability to never inform the Commissioner of any issue affecting its submission. Consequently, due to the lack of notification to the Commissioner, and the refusal to engage any form of aid which might have expedited whatever was done to resolve the issue, I do not consider that the issues faced by the Contractor in relation to accessing CQRS provide such mitigating circumstances as to invalidate the issuing of the Breach Notice.

4.45 I note that the Contractor states that the PGM indicates that any notices should have been provided via post. Having regard to the notice provisions of the Contract, I note that under Clause 27.7.1 d) electronic mail is permitted for the delivering of notices under the Contract. I note that the emails of 2 January, 6 February and the Breach Notice were notified to the Contractor in this manner. Consequently, I do not consider that the Contractor was improperly notified by the Commissioner of the breach.

4.46 To summarise, I do not consider that the mitigating factors indicated by the Contractor were such that the Breach Notice should not have been issued. I do not consider that any remedial notices were provided to the Contractor. I do not consider that the breach was capable of remedy.

5. DECISION

5.1 Pursuant to regulation 83(15) of the Regulations I confirm the decision of the Commissioner to issue the Breach Notice.

5.2 There are no disputes between the parties as regards interest and I determine that no interest shall be payable in relation to this dispute.

Head of Appeals
NHS Resolution