NHS Resolution

9 July 2025

FILE REF: **SHA/26569**

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DECISION MAKING BODY: **NHS ENGLAND MIDLANDS (EAST) ("THE COMMISSIONER")**

GMS CONTRACTOR: **DANETRE MEDICAL CENTRE, LONDON ROAD, DAVENTRY, NORTHAMPTONSHIRE, NN11 4DY ("THE CONTRACTOR")**

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

RE: **NON PAYMENT FOR VACCINATIONS FOR 2023/2024**

1. Outcome

1.1 I am satisfied that the Commissioner can decline the claim for payments for September 2023 and October 2023 as the claims were submitted outside the 3 month timescale allowed from the date the vaccination dose was administered.

1.2 The Commissioner should make payments for the vaccination claims for 22 November 2023 to 31 December 2023 as the claims were submitted within the 3 month timescale allowed from the date the vaccination dose was administered.

1.3 I note that neither party has submitted a claim for interest. I make no determination in this regard.

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RE: **NON PAYMENT FOR VACCINATIONS FOR 2023/2024**

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 letter dated 11 March 2025 the Contractor applied to NHS Resolution, for dispute resolution.

2.2 I have had regard to the following documents made available to me in consideration of this matter to ensure the just, expeditious, economical and final determination of this dispute:

2.2.1 Email from the Contractor of 11 March 2025 enclosing the application for dispute resolution;

2.2.2 Email from the Contractor of 20 March 2025 with enclosures;

2.2.3 Email from the Contractor of 24 March 2025 with enclosures;

2.2.4 Email from the Contractor of 14 April 2025 with enclosures;

2.2.5 Email from the Commissioner of 24 April 2025 with enclosures;

2.2.6 Email from Contractor of 8 May 2025 with enclosures;

2.2.7 Email from the Commissioner of 2 July 2025 with enclosures; and

2.2.8 Email from the Contractor of 2 July 2025 with enclosures.

3. PARTIES SUBMISSIONS

The Contractor's application

In a letter dated 11 March 2025, the Contractor states:

3.1 "We would like to make a formal complaint about the nonpayment of monies for work undertaken in relation to vaccinations. Our request is:

3.1.1 that you review the process that is in place for the claiming of vaccinations

3.1.2 issue a payment to Danetre Medical Practice for the monies owed in relation to vaccinations given but not paid during the year 2023/24 - total of 591 vaccinations or £5,945.46

3.2 Since 28th February 2024 we have been in correspondence with the General Medical Advice and Support Team (GMAST). Unfortunately, resolution could not be found and in May 2024 we contacted the CEO [CS] of Northants LMC and [KL] Head of Primary Care at the NHS Northamptonshire Integrated Care Board to take up our case, but they also haven't been able to resolve the issue as this falls outside of the local ICBs control with the decision sitting with NHS England.

3.3 Having not been able to resolve this the practice would now like to raise a formal complaint by way of dispute resolution.

3.4 The issues as far as the Practice can see it are as follows:

3.5 (1) NHSE have not followed due process

3.6 The SFE allows for back claims to be made going back up to 6 years, unless stated otherwise for example within a Directed Enhanced Service. The Directed Enhanced Service states that claims must be made within three months however states that failure to do so may lead to monies being withheld.

3.7 The full wording on the 23/24 contract is

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

3.8 This clause relates back to a number of sub clauses not only payment. The contract seems to allow therefore for non-payment in the case of any type of breach (not just payment) but also the ability to reimburse withheld funds on the remedy of breach.

3.9 The commissioner on this occasion has not allowed the practice to remedy the breach or given prior warning (as this was the first occasion a claim has been made outside of the 3-month window).

3.10 The contract therefore seems to allow for remedy of a breach i.e. by making good the breach (processing the claim) but this opportunity has not been afforded to the practice.

3.11 (2) The Governance process is flawed

3.12 It is not clear what governance process (if any) is being followed by NHSE in managing these claims. From what I can tell there may have been a lot of variation between regions in the past and attempts have been made by NHSE to follow a more consistent approach (which ended up being zero tolerance to late claims). It is not therefore clear what committee at NHSE took the decision on the consistent approach to be taken or if any ICBs were included in the decision, my conversations with the local ICB would suggest there hasn't been engagement with them on the matter at any point.

3.13 It is also not clear if there is a committee that reviews claims on a case-by-case basis.

3.14 If there is a committee, is there clear criteria that they are following, is the committee clear on the grounds of their decision to flatly refuse to pay and in doing so not to allow the practice to remedy as is stated could be done within the contract. It is not clear on why the contract is so sternly imposed particularly with our final concern in mind.

3.15 (3) Custom and Practice

3.16 Finally, there have been occasions where the NHSE has not always renewed DES's in line with correct timelines and issued contracts late and our practice along with other practices have continued to deliver services by using a commonsense approach. Why then if the NHSE have missed deadlines themselves are they holding practices to standards that they don't keep themselves.

3.17 We have included within our letter the basis of our complaint and the outcome we would like and look forward to a positive response."

Representations

The Commissioner's representations

In a letter dated 24 April 2025, the Commissioner has provided representations on this matter which states:

3.18 "Thank you for your letter of 7 April 2025, concerning Danetre Medical Practice and an application for dispute resolution. Due to some technical issues, the correspondence was not received into the nominated NHS England email inbox until 10 April 2025.

3.19 The case submitted by Dantre [sic] Medical Practice highlights 3 main areas of dispute ; (1) NHSE have not followed due process, (2) The governance process is flawed, and (3) Custom and practice – I will attempt to address each of these in turn from an NHS England perspective.

3.20 (1) NHSE have not followed due process

3.21 The Seasonal Influenza Vaccination Programme Enhanced Service for 2023/24 states on page 12, paragraph 39: Claims for activity related to the administration of influenza vaccinations only must be submitted on the relevant system as soon as possible and

no later than **within three months** of the end of the month in which administration of the vaccine occurred. This time period may be extended by the Commissioner (NHSE) where it considers that exceptional circumstances apply. [emphasis added by Commissioner].

3.22 The submission made by the practice was reviewed and it was deemed did not demonstrate exceptional circumstances, therefore as the service requirement to submit activity claims within 3 months was not met the claim was not approved. To note this specific requirement to claim activity within a specified time has been in place for several years and has been and continues to be communicated to general practice. When signing up to an enhanced service it is the responsibility of the practice to be aware of the service requirements for the submission of claims and to adhere to these during the specified period.

3.23 (2) The Governance process is flawed

3.24 As the commissioner of the Seasonal Influenza Vaccination Programme, we review all claims submitted on a case-by-case basis. We ensure that each practice has the opportunity to submit all the required supportive information so that an informed decision can be made for each claim. The national Enhanced Service forms the criteria to assess each claim against as the practice has signed up to these requirements when delivering this service. We also consider any exceptional circumstances that may have prevented the practice from submitting within this specific time period. The current practice applied by NHS England regarding claims made outside of the 3 month window has been consistently applied across the Midlands region, this is in line with the Enhanced Service. If a practice does not agree with the decision made by NHS England we ensure that practices are aware of the option to contact NHS resolution should they wish for an independent review of the claim.

3.25 As ICBs are not the commissioners of the Seasonal influenza Vaccination Programme they are not involved within the claims review process, though we have made ICB's aware that NHS England are applying the claim window criteria in line with the relevant Enhanced Service.

3.26 (3) Custom and Practice

3.27 We are not aware of the occasions the practice is referring to and without any evidence to back up this statement, NHS England are unable to make a comment as to the validity or otherwise of this claim."

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

In an email of 14 April 2025, the Contractor has provided representations on this matter which states:

3.28 "Kindly note that the contract document we have provided is the up-to-date version of the contract as obtained from the Commissioner.

3.29 I have also attached the following documents as proof of work done:

3.29.1 CQRS Amendment Screenshots (Obtained from the clinical system)

3.29.2 CQRS Amendment Sep-Dec 2023."

Observations

The Contractor's observations

In a letter dated 8 May 2025, the Contractor has provided observations on this matter which states:

3.30 "Rebuttal Statement: Response to NHSE Claims Regarding the 2023/24 Seasonal Influenza Vaccination Programme

3.31 We respectfully challenge the assertions made by NHS England (NHSE) in their recent response, and wish to address the three core points raised:

3.32 1. Due Process and Exceptional Circumstances

3.33 While NHSE references paragraph 39 of the Enhanced Service specification-which states that claims must be submitted within three months of administration and that extensions may be granted in "exceptional circumstances" – we submit that our situation clearly met this criterion.

3.34 A key piece of evidence supporting this is the practice's flawless compliance record over the past thirteen years under the leadership of Managing Partner [JG]. In that entire period, the practice has never once submitted a late claim for any enhanced service, including the Seasonal Influenza Programme. This unprecedented deviation is, in and of itself, clear evidence that the situation was exceptional and not part of a pattern of non-compliance. To disregard such a consistent track record undermines both the credibility of the exceptional circumstances clause and the principle of proportionality in decision-making.

3.35 The blanket rejection of our submission, without fully accounting for this unique context, suggests an overly rigid interpretation of policy that contradicts both the letter and the spirit of the Enhanced Service specification. NHS has not addressed the question of breach and remedy particularly the point made that the wording in the contract suggest monies 'may be withheld' and the lack of opportunity to remedy the breach - it is our belief paragraph 39 should be considered within the context of the clauses referenced previously.

3.36 2. Governance Process

3.37 The governance process, as described, purports to be fair and consistent, yet lacks a defined, transparent mechanism for appeal or external oversight beyond a general reference to NHS Resolution. Practices are not provided with a detailed rationale or specific feedback on why submitted evidence of exceptional circumstances was deemed inadequate. This lack of transparency hinders the ability of practices to understand or rectify the issue and perpetuates a governance approach that is opaque and potentially arbitrary.

3.38 Additionally, the exclusion of ICBs--our local commissioners-from the claims review process further disconnects decision-making from the realities and contexts in which practices operate. This centralised model does not reflect the nuanced understanding that local commissioners may have of exceptional practice-level pressures and risks, nor does this acknowledge this contract as an addendum to the GMS contract that we hold with Northamptonshire ICB (through delegated authority).

3.39 The comments back from NHSE refer to "current practice applied by NHSE" not policy. For avoidance of doubt without specific detail on the committee that takes these

decisions or the criteria that is followed including how exceptionality is defined and how breach and remedy is included within this, we don't believe this point has been addressed.

3.40 3. Custom and Practice

3.41 The reference to a lack of evidence regarding previous instances of late claims being accepted under similar circumstances misses the point. The reliance on precedent and consistency is critical here. If NHSE has, in the past, approved similar claims based on exceptional circumstances-particularly from this practice or in the region-then transparency in acknowledging this is necessary. We note that NHSE has not indicated whether a record of such precedents is maintained or reviewed during decision-making, which raises concerns about selective enforcement and inconsistent application of policy.

3.42 Conclusion

3.43 In summary, we believe NHSE has not adequately exercised the discretionary flexibility allowed within the Enhanced Service specification, has applied a governance process lacking in transparency and accountability, and has failed to acknowledge the implications of prior practice in determining consistency. We respectfully request a re-evaluation of our claim with greater clarity on the evidentiary threshold for exceptional circumstances, and transparency regarding the application of similar decisions across other practices."

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. This was provided and has not been disputed by the Commissioner.

4.2 From the information provided to me I am satisfied that the application for dispute resolution has been made within the time limits as set out in the Regulations.

4.3 The Contractor, in its application states:

"Since 28th February 2024 we have been in correspondence with the General Medical Advice and Support Team (GMAST). Unfortunately, resolution could not be found and in May 2024 we contacted the CEO [CS] of Northants LMC and [KL] Head of Primary Care at the NHS Northamptonshire Integrated Care Board to take up our case, but they also haven't been able to resolve the issue as this falls outside of the local ICBs control with the decision sitting with NHS England.

Having not been able to resolve this the practice would now like to raise a formal complaint by way of dispute resolution."

4.4 Whilst I have not been provided with any further information regarding local dispute resolution, I note that there is no dispute between the parties that local dispute resolution has been exhausted which has resulted in the Contractor making an application to NHS Resolution. Based on the information before me, I am content that local dispute resolution has been completed.

4.5 The application for dispute resolution relates to the non-payment for seasonal influenza vaccines for the financial year 2023/24. I note that a copy of the Enhanced Service Specification "Seasonal influenza vaccination programme 2023/24" ("the

Specification") was requested from the Commissioner and a copy was provided by both the Commissioner and the Contractor. The contents of the Specification and the application of it has not been disputed by the Contractor.

4.6 I note that the period in question, the year 2023/24, is covered by the above specification.

4.7 There is no dispute between the parties that the Contractor signed up to provide the Enhanced Service. Further there is no dispute that the Contractor provided the vaccinations. The dispute centres around whether or not the Contractor is entitled to payment for the provision of these vaccinations in accordance with the Specification.

4.8 The Contractor has sought to apply for dispute resolution in respect of three main points which are:

4.8.1 "NHSE have not followed due process;

4.8.2 The Governance process is flawed; and

4.8.3 Custom and practice."

4.9 I note that the Commissioner makes specific reference to page 12, paragraph 39 of the Specification and quotes:

> *"Claims for activity related to the administration of influenza vaccinations only must be submitted on the relevant system as soon as possible and no later than **within three months** of the end of the month in which administration of the vaccine occurred. This time period may be extended by the Commissioner (NHSE) where it considers that exceptional circumstances apply. [emphasis added by Commissioner]."*

4.10 However I note that there is no paragraph 39 contained within the Specification I have been provided with. I note that page 12 of the Specification is a continuation of Section 9 "Service Delivery Specification" which sets out who the eligible patients are.

4.11 Payment for claims is contained within the Specification at Section 11 "Payment and Validation" which states:

"11.1 Subject to compliance with this ES, a payment of £10.06 shall be payable to the Practice for the administration of each influenza vaccination to Patients.

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

11.2.1 The Patient who received the vaccination(s) was a Patient at the time the vaccine was administered, and all of the following apply:

(a) the Practice has only used the specified vaccines recommended in this ES and/or Commissioner (NHSE) guidance;

(b) the Patient in respect of whom payment is being claimed was within an announced and authorised cohort at the time the vaccine was administered, unless exceptional circumstances apply as set out at paragraph 9.7 and the vaccination was administered after the announced and authorised date for the vaccinations to take place;

(c) the Practice has not received and does not expect to receive any payment from any other source in respect of the delivery of the influenza vaccination. Practices may claim a dispensing fee as set out in paragraph 16(2) and 16(3) of the NHS General Medical Services Statement of Financial Entitlements Direction 2023 for influenza vaccinations administered to Patients. Where any vaccine is centrally supplied, no claim for reimbursement of vaccine costs or personal administration fee apply to those vaccinations delivered to Patients. The vaccines reimbursed as part of the NHS Seasonal Influenza Immunisation Programme 2023/24 are outlined in the Flu Letter. During the influenza season there may be additional advice from the Commissioner (NHSE) or UKHSA if there are issues with vaccine supply.

11.2.2 the Patient's influenza vaccinations have been administered by the Practice.

11.2.3. Practices submitting claims to the Commissioner (NHSE) for payment monthly wherever possible and Practices must:

(a) validate and submit a claim to the Commissioner (NHSE) for payment within 3 months of the date of the administration of the completing dose of the vaccine; and

(b) ensure that claims submission are validated to enable the Commissioner (NHSE) to correctly calculate the payment.

11.3 Payment will be made in respect of claims submitted by the last day of the month following the month the submitted claims are validated by the Practice."

4.12 I am of the view that the Contractor must submit claims monthly, however there is a 3 month period in which claims can be submitted for payment.

4.13 The Commissioner states that the Contractor did not submit the claims within the relevant 3 month period and further that "*this specific requirement to claim activity within a specified time has been in place for several years and has been and continues to be communicated to general practice. When signing up to an enhanced service it is the responsibility of the practice to be aware of the service requirements for the submission of claims and to adhere to these during the specified period."*

4.14 I have been provided with two screenshots from the Contractor entitled "CQRS Amendment screenshots.pdf" and "CQRS Amendment Sep-Dec 2023.xlsx" as "*proof of work done*". I note that the 'date submitted' for the months of September, October, November and December 2023 is 22 February 2024.

4.15 The data does not assist because it is not specific enough but in principle, I am of the view that any claims from 22 November 2023 and throughout December 2023, which were submitted on 22 February 2024 were within 3 months of the date of the administration of the completing does of the vaccine and therefore the Contractor is entitled to payment for these months.

4.16 I am of the view that the claims for September 2023 and October 2023, which were also made on 22 February 2024 were made outside of the 3 month window and therefore there is no payment due for these late claims.

4.17 I have next gone on to consider the comments from the Contractor with regard to "exceptional circumstances" for the claims made for the months of September 2023 and October 2023.

4.18 The Contractor seeks to argue that its "*flawless compliance record over the past thirteen years*" and "*in that entire period the practice has never once submitted a late claim for any enhanced service, including the Seasonal Influenza Programme*" is "*clear evidence that the situation was exceptional*".

4.19 The Commissioner states in response that "*the submission made by the practice was reviewed and it was deemed did not demonstrate exceptional circumstances."*

4.20 The Specification at 9.7 states:

"9.7 Practices will not be eligible for payment for the administration of influenza vaccinations outside the announced and authorised cohorts unless they are able to evidence exceptional clinical circumstances requiring influenza vaccination to be administered at the request of the Commissioner (NHSE)."

4.21 I am mindful that the exceptional circumstances as set out in the Specification are with regard to the relevant cohorts of those who should be receiving the vaccinations and further that this is with regard to exceptional clinical circumstances. Apart from the statements above from the Contractor, I have not been provided with any further information as to what the exceptional circumstances were that led to the claims not being submitted within the relevant period and whether these were or were not clinical in nature as set out in the Specification.

4.22 Based on the information that the Contractor has provided, I am of the view that the reasons given for the late submission of claims are not exceptional as set out in the Specification.

4.23 The Contractor states that the "Governance process is flawed" and further that there has been no engagement with the local ICB and further that the local ICB were not included in the decision. I note the response from the Commissioner that as ICBs are not the commissioner of the seasonal influenza vaccination programme they are not involved in the claims process although an ICB may be aware of the criteria that NHS England, as the commissioner of the service, are applying. I further note the comments from the Commissioner that the process that has been applied is consistent.

4.24 I am mindful that the Contractor was provided with the opportunity to apply for dispute resolution to NHS Resolution if it was unhappy with the decision reached by the Commissioner and that it has exercised this right. I am of the view that the process followed by the Commissioner is not a matter to which I can have regard, however I note the confirmation from the Commissioner that "*current practice applied by NHS England regarding claims made outside of the 3 month window has been consistently applied across the Midlands region*". I have nothing before me to demonstrate that the Commissioner has not been consistent in its approach. In any event, the Contractor has been able to apply for dispute resolution so any perceived procedural irregularity has been negated by the application of and consideration of this dispute.

4.25 I note the comments from the Contractor with regard to "custom and practice" however nothing further has been provided to expand upon the generalisations contained within the Contractor's application for dispute resolution. Given that no further information has been provided, I have not taken these statements into account and take no view on whether the Commissioner has or has not complied with the relevant timelines for issuing contracts.

5. **DECISION**

5.1 I am satisfied that the Commissioner can decline the claim for payments for September 2023 and October 2023 as the claims were submitted outside the 3 month timescale allowed from the date the vaccination dose was administered.

5.2 The Commissioner should make payments for the vaccination claims for 22 November 2023 to 31 December 2023 as the claims were submitted within the 3 month timescale allowed from the date the vaccination dose was administered.

5.3 I note that neither party has submitted a claim for interest. I make no determination in this regard.

Head of Appeals
NHS Resolution