

FILE REF: SHA/19958**12 December 2018**

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**DECISION MAKING BODY: NHS COMMISSIONING BOARD (LONDON REGION)
("NHS England")****GMS CONTRACTOR: DR ALMA SARAJLIC ("CONTRACTOR")****PREMISES: STAINES ROAD SURGERY
323-325 STAINES ROAD
TWICKENHAM
TW2 5AX****DISPUTE RESOLUTION: NHS (GENERAL MEDICAL SERVICES CONTRACTS)
REGULATIONS 2015****RE: APPEAL AGAINST REMEDIAL NOTICE**

1 INTRODUCTION

- 1.1 The Contractor has referred the dispute in relation to its General Medical Services Contract, dated 27 June 2006 ("the **GMS Contract**") for dispute resolution under Part 12, Regulation 83 of the National Health Service (General Medical Services Contract) Regulations 2015 ("the **2015 Regulations**").
- 1.2 The **GMS Contract** was made between Richmond and Twickenham Primary Care Trust and the Contractor. The NHS Commissioning Board became a successor commissioner of the Richmond and Twickenham Primary Care Trust following the abolition of Primary Care Trusts on 31 March 2013 pursuant to the Health and Social Care Act 2012.
- 1.3 In accordance with its statutory powers under section 13Z of the National Health Service Act 2006 (as amended), NHS England has delegated the exercise of certain specified primary care commissioning functions to NHS Richmond Clinical Commissioning Group (the "**CCG**"). Any references to the Commissioner are to be read as NHS England and the **CCG** as appropriate.

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- 1.4 The Secretary of State for Health has directed that NHS Resolution exercise the functions of dispute resolution on his behalf. I, as an authorised officer of NHS Resolution, have made this determination.

2 APPLICATION FOR DISPUTE RESOLUTION

- 2.1 By an undated letter received on 6 July 2018, the Contractor applied to NHS Resolution for dispute resolution. The exact nature of the dispute has been clarified by the Contractor since this first letter, by letters dated 31 July and 23 August 2018, following a number of requests for further information by me dated 6 July, 7 August and 17 August 2018.
- 2.2 The Contractor has appointed ##### to act on its behalf in this matter, as confirmed by letter dated 23 August 2018.
- 2.3 This dispute relates to issue of a remedial notice to the Contractor by the Commissioner under Regulation 115 of the 2004 Regulations, on 16 April 2018 (the "Remedial Notice").
- 2.4 I have had regard to the following documents made available to me in consideration of this matter (with their relevant enclosures):
 - 2.4.1 Letter from the Contractor, received on 6 July 2018;
 - 2.4.2 Letter from the Contractor dated 31 July 2018, with attachments;
 - 2.4.3 Email and letter from the Contractor dated 23 August 2018;
 - 2.4.4 General correspondence on procedure between NHS Resolution, Contractor and the Commissioner dates 7 September 2018;
 - 2.4.5 Letter from the Commissioner dated 28 September 2018 with attachments;
 - 2.4.6 Email from the Contractor dated 30 September 2018;
 - 2.4.7 General correspondence on procedure, including retrospective extensions of time between NHS Resolution, Contractor and the Commissioner - various dates between 4 October 2018 and 12 October 2018;
 - 2.4.8 Email from the Contractor dated 19 October 2018;
 - 2.4.9 Email including Letter from the Contractor dated 22 October 2018, with attachments;
 - 2.4.10 Copy of GMS Contract received 25 October 2018;
 - 2.4.11 General correspondence on procedure, including a request for an extension of time between NHS Resolution, Contractor and the Commissioner dated 26 October 2018;
 - 2.4.12 Letter from the Commissioner dated 30 October 2018;

2.4.13 General correspondence on procedure between NHS Resolution, Contractor and the Commissioner - various dates between 1 November 2018 and 12 November 2018; and

2.4.14 Email from the Contractor dated 3 December 2018.

3 PRELIMINARY POINTS

3.1 Before addressing the dispute between the parties, I considered a number of preliminary points as follows:

Identity of the Contractor

3.2 I note that the Contractor has provided a copy of its GMS Contract dated 1 March 2006. This document states that the contractor is Dr #####. I have also been provided with a copy of a letter dated 31 October 2006, notifying the Commissioner that the Contractor would be joining the GMS Contract from 1 November 2006.

3.3 On 4 October 2018, I requested confirmation that Dr Sarajlic is the sole contractor party to the GMS Contract with the Commissioner. A further request for confirmation was made on 3 December 2018. The Contractor provided confirmation on 3 December 2018 that Dr Sarajlic is the sole contractor party to the GMS Contract. I note that evidence of a contract variation dated 14 March 2008 addressed solely to Dr Sarajlic has been provided, alongside the Remedial Notice, also addressed to Dr Sarajlic alone. No dispute has been raised by the Commissioner that the appeal has been raised by Dr Sarajlic alone or that she is not the only contractor party to the GMS Contract. I am therefore sufficiently assured that the Contractor has the required authority to refer this dispute.

Statutory Framework

3.4 I note the Regulations apply in this case. Regulation 83(1) of the Regulations, indicates with some exclusions, that the NHS dispute resolution procedure applies in the case of:

"a dispute arising out of, or in connection with, the contract which is referred to the Secretary of State in accordance with –

(a) section 9(6) of the Act (where the contract is an NHS contract); or

(b) regulation 82(1) (where the contract is not an NHS contract)."

3.5 I note that the Commissioner has applied regulation 115 of the National Health Service (General Medical Services Contract) Regulations 2004 (the "2004 Regulations") as the regulatory basis upon which to issue the Remedial Notice.

3.6 The Regulations came into force on 7 December 2015. The Regulations apply to any agreement to which the 2004 Regulations applied immediately before this date. The Contractor's GMS Contract is dated 1 March 2006 (although I note that it has been varied since this date). The Regulations apply to this dispute.

- 3.7 The Commissioner has applied the incorrect 2004 Regulations in the issue of the Remedial Notice and the Regulations should have been relied upon as the statutory basis upon which to issue the Remedial Notice. I consider, however, that no dispute has been raised by the Contractor regarding the strength of the statutory basis relied upon for issue of the Remedial Notice and both parties are in agreement that a Remedial Notice has been issued. I will therefore not provide any further comments in this regard.

Contractual Framework

- 3.8 I note that the Commissioner has issued the Remedial Notice in line with the contractual provision contained in Part 25 of the Contractor's GMS Contract. I note however that under the "Details of the Breach" section of the Remedial Notice, the Commissioner has relied on the contractual provisions contained in the Standard General Medical Services Contract 2017/2018.
- 3.9 I have received no evidence from either Party confirming any variation to the GMS Contract in alignment with the provisions of the 2017/2018 GMS contract. I note that there has been no comment from the Contractor in relation to the contractual provisions under which the Remedial Notice has been issued and assume therefore there is a common understanding between the parties that the Remedial Notice has been issued on the relevant contractual terms. I will therefore not provide any further comments on this area.

Local Dispute Resolution

- 3.10 My preliminary consideration is as to whether the parties have made reasonable efforts to communicate and co-operate with a view to resolving the dispute before referring the dispute for determination in accordance with the NHS dispute resolution procedure, which is an obligation on the parties under regulation 81(1) of the Regulations.
- 3.11 I note that that there has been no evidence provided to suggest that the Stage 1 process as described in the Primary Medical Care Policy and Guidance Manual (the "Primary Care Manual") has been entered into to date.
- 3.12 I note the position of the Contractor that it was not aware of any alternative route available to them to progress its complaint. Whilst the Contractor should be aware, itself, the information as regards local dispute resolution by the Commissioner should have been made available to the Contractor on request.
- 3.13 I have the jurisdiction to deal with this matter and therefore I will proceed to determine the issue in this instance.

4 CONSIDERATION

CONTRACTOR'S APPLICATION

- 4.1 The Contractor's letter of 31 July 2018 states the reasons for its application for dispute resolution as "*the CCG's action in issuing or causing the Remedial notice to be issued is excessive and unwarranted.*"

- 4.2 The Contractor goes on to state that *"The CQC inspection which triggered the Notice took place in August 2017, but the Notice was issued on 17 April 2018, some eight months afterwards. The following day, the Surgery was again inspected by the CQC and at the end of the day the senior inspector confirmed to the LMC representative we have invited to support us...that she was satisfied with what her Team had found"*.
- 4.3 The Contractor further states that *"We believe that the CQC advises the CCG responsible for the surgeries to be inspected in advance. Hence, Richmond CCG would have been aware that Staines Road Surgery was due to be re-inspected SHORTLY BEFORE they issued or caused the Notice to be issued"*.
- 4.4 With regards to the CQC inspection, the Contractor contends that *"We believe the CQC is in direct touch with the CCG responsible for the Surgeries that CQC has inspected and could very easily have passed on its initial reaction to the later inspection of our surgery... If they had done so I content there would have been no necessity to issue the Notice, saving considerable stress sand additional work in an already-pressed and pressured work environment"*.
- 4.5 In conclusion, the Contractor states *"If CCG had contacted CQC following the inspection in August 2017, they would have been told that the CQC was happy with the Action Plan and other information received from the Surgery as to what corrective actions it planned to take following the adverse Report."*
- 4.6 In the Contractor's further correspondence dated 23 August 2018, the Contractor confirms that *"the Warning Notice... [is to be.]... to be withdrawn on the grounds that it is harsh and unconscionable, was served some eight months after the events complained of had been put right and in the circumstances was an excessive abuse of power"*.
- 4.7 I note that the Contractor has provided a copy of its GMS Contract dated 1 March 2006 signed by Dr #####. I further note the names of the two partners of the GMS Contract listed at page 271, as Dr ##### and Dr Alma Sarajlic, as signed on 27 June 2006. I note that page 271 was signed again by Dr ##### and Dr Alma Sarajlic on the 26 February 2007. No evidence has been provided of the retirement of Dr ##### from the practice although I note correspondence has been provided by the Contractor on 3 December 2018, confirming Dr Sarajlic as the sole contracting party to the GMS Contract.
- 4.8 The Contractor confirms in its letter dated 23 August 2018 that it is *"not aware of any alternatives open to me to resolve the issue"*. I note I have been provided with no information, from either party, as to the level of local dispute resolution which has been undertaken in accordance with the NHS dispute resolution.
- 4.9 I note that the Contractor has not raised any dispute as to the contractual or regulatory grounds relied upon by the Commissioner for issue of the Remedial Notice. This dispute relates to the grounds upon which the Remedial Notice has been issued as being harsh and unconscionable, the Remedial Notice having been served eight months after the events complained of had been rectified, and that in the circumstances, the issue of the Remedial Notice was an excessive abuse of power.

CONTRACTOR'S REPRESENTATIONS

- 4.10 The Contractor states in its representations dated 30 September 2018, that "[2] *It occurs to me that CCG/NHSE have never heard our side of the story. They have based this prosecution solely on the findings contained in the CQC Report, which has of course, been superseded by a later (satisfactory) report. We have not seen any evidence that the CCG itself has found to support the alleged breached, or if they have any we have yet to see it.*"
- 4.11 I note that in its representations, the Contractor has raised an additional point of concern, which was not raised in its application for dispute resolution in its letter received 6, July 2018 and dated 31 July 2018 and 23 August 2018.
- 4.12 Representations provided by the disputing party should be limited to the party's expansion of the issues raised in the application for dispute resolution and not as a means of raising additional points of complaint. I have however taken into consideration the additional point raised in the Contractor representations in this instance. I am satisfied that the Commissioner has had sight of the representations and has been provided with the opportunity to provide its observations on these.

NHS ENGLAND'S REPRESENTATIONS

- 4.13 The Commissioner's representations, dated 28 September 2018, contends that the Contractor has not specifically made reference to the Regulations having not being followed or any part of the Regulations having been breached.
- 4.14 The Commissioner has provided its reasoning behind the issue of the Remedial Notice which I note it consider has been issued in accordance with clause 26 of the 2017/2018 GMS Contract. We note that these clauses reflect those contained in clauses 566 and 567 of the Contractor's GMS Contract, and are as follows:

"26.13. Termination by the Board: remedial notices and breach notices

26.13.1. Where the Contractor's breach of the Contract is not one to which clauses 26.8.1 to 26.12.2(b) apply and that breach is capable of remedy, the Board must, before taking any action it is otherwise entitled to take by virtue of the Contract, give notice in writing to the Contractor requiring it to remedy the breach (a "remedial notice").

26.13.2. A remedial notice must specify:

- (a) details of the breach;*
- (b) the steps that the Contractor must take to the satisfaction of the Board in order to remedy the breach; and*
- (c) the period during which those steps must be taken (the "notice period")."*

- 4.15 Specifically, the Commissioner state:

"The fact that the wording of these clauses has been followed in its entirety can be shown by considering each element as follows:

- Had the contractor breached the contract other than as specified in clauses 26.8.1 to 26.12.2(b)? Yes - the contractor was in breach of clauses in Parts 20 and 23 of their GMS contract, as set out in the remedial notice (Appendix - Page 3). This does not appear to be disputed by the contractor.

Was the breach capable of remedy? Yes - the action plan that was appended to the remedial notice (Appendix – Page 5) set out the remedial actions that were required. Following receipt of the remedial notice the contractor submitted a completed action plan, and the contractor was informed on 28 August 2018 that the contractual breaches had been remedied (Appendix – Page 8).

- Did the notice set out the details of the breach, the steps they had to take and the period during which the steps must be taken? Yes - the remedial notice clearly set out the parts of the contract that had been breached and the remedial actions that were required. (Appendix - Page 3)"

- 4.16 In addition to providing a view as to the contractual basis for issuing the Remedial Notice, the Commissioner highlighted the focus on the seriousness of concerns raised by the CQC inspection on 15 August 2017, and has provided a copy of the CQC report issued on 16 November 2018 (the "**CQC Report**").
- 4.17 In addressing the need for issue of the Remedial Notice, the Commissioner states that "*the seriousness of the concerns raised, the potential impact on patients and the need to ensure contractual compliance made issuing a remedial notice appropriate in this case, overriding other factors.*"
- 4.18 With regard to the governance process associated with issuing a Remedial Notice, the Commissioner clarified that "*the decision as to whether to issue the remedial notice went through the correct governance procedures. It was considered by the Richmond Primary Care Commissioning Working Group Meetings on 23 January and 20 March 2018, and a recommendation to issue the remedial notice was approved at the Primary Care Commissioning Committee (Part 2) meeting on 3 April 2018. Relevant sections of the minutes from these meetings are attached to this letter. (Appendix – Page 11)*"
- 4.19 In conclusion, the Commissioner further responded to the three main strands of the Contractor's application, as follows:
- 4.19.1 **"- The CCG would have been aware that the practice was due to be visited by the CQC and if they had waited until after the visit, it would not have been necessary to issue the remedial notice.**

Re-visiting GP practices with an overall rating of requires improvement within a year is the standard process for the CQC. While the second visit clearly would have been of interest to the CCG, issuing a remedial notice remained the appropriate course of action to take given the seriousness of the concerns raised in the CQC report, the clear breach of contract and the need to maintain good contract management processes. As set out above the regulations were followed in their entirety.

4.19.2 - The CCG could not have been aware of the CQC's response to the action plan submitted to the CQC following the visit – the remedial notice would not otherwise have been issued.

While the action plan was taken into account in the decision as to whether to issue a remedial notice, the very serious issues raised in the CQC report and the clear breach of the contract meant that issuing a remedial notice was proportionate and appropriate. As above, the regulations relating to the contract were followed in their entirety.

4.19.3 - There was too long a period of time between the CQC visit and the issuing of the remedial notice.

We understand the concerns raised about the time taken between the CQC visit and the issuing of the remedial notice. It is important to note here the three month gap between the CQC visit (15 August 2017) and issuing of the CQC report (16 November 2017); it is not possible to begin the formal process of deciding on appropriate contractual action until after the publication of the report when the outcome of a CQC visit is completely confirmed. There is also a need to follow proper governance processes following the publication of CQC reports, given that action taken by the CQC and contractual action is covered by two different authorities. This does necessitate some delay between a report's publication and the issuing of a remedial notice.

Nonetheless, we do accept that the remedial notice could have been issued in a more timely manner and apologise for this. We would contend, however, that this makes no material difference to the appropriateness of issuing the remedial notice according to the relevant regulations, given the clear contractual breach and seriousness of concerns raised in the CQC report."

4.20 The Commissioner has submitted a copy of its Remedial Notice and cover letter dated 16 April 2018, a copy of its response to the Contractor's submission of its remedial action plan dated 24 August 2018, and the relevant extracts of the CCG meetings dated 23 January 2018, 20 March 2018 and 3 April 2018, in which the decision to issue the Remedial Notice was discussed and confirmed.

5 CONTRACTOR'S OBSERVATIONS

5.1 The Contractor's initial observations dated 19 October 2018 reiterate the Contractor's position that the CCG's decision to issue the Remedial Notice is based on the findings of the CQC Report. The Contractor states "*The CCG clearly made their judgement ONLY on the basis of the CQC Reports. You/they are/ should be aware that an aggrieved "inspected" can make representations to CQC but it is clear CCG/NHSE did not read/ignore these before taking the decision to issue the Remedial Notice.*"

5.2 The Contractor also addresses the lack of notice received from the CCG prior to issue of the Remedial notice as follows: "*A representative of the Surgery was not invited to put "their side of the story" to the committee before they took that decision.*"

Most importantly, they heard NOTHING from the Surgery before imposing the Notice on our record. I repeat that they have seen/heard only one side of the story."

- 5.3 The Contractor provided copies of the representations made to the CQC in response to the findings contained in the CQC Report on 22 October 2017. These representations included a copy of the completed action plan issued to the CQC on 28 November 2017 alongside two letters from the Practice Manager and the Contractor, providing a response to the warning notice issued by the CQC on 6 September 2017.
- 5.4 I consider that the submissions dated both 19 October and 22 October together constitute the Contractor's full observations.
- 5.5 I note that the Contractor's observations do not refute any of the Commissioner's statements provided in its representations dated 28 September 2018. The observations do, however, raise an additional concern regarding a lack of notice provided by the CCG's to the Contractor, prior to issue of the Remedial notice.
- 5.6 When providing observations, a party's response should be limited to its response to the representations provided by the opposing party. In this circumstance however, I consider that the Contractor has raised a valid concern to be addressed and I have therefore taken into consideration the additional point of complaint raised by the Contractor.

NHS ENGLAND'S OBSERVATIONS

- 5.7 The Commissioner's observations dated 30 October 2018 highlights the ability of the Contractor to raise additional points of complaint in its representations dated 30 September 2018, stating "*any observations should be restricted to the rebuttal of any representations received.*"
- 5.8 The Commissioner provides a response to the Contractor's additional concern as follows: "*Our observation on this representation is that as the Care Quality Commissioner (CQC) is the independent regulator of health and social care in England, primary care commissioners must consider reports published by the CQC as a reliable source, and act accordingly.*"

6 DETERMINATION

- 6.1 I have reviewed all of the papers provided to me. I am grateful to the parties for their detailed submissions.
- 6.2 I note that there are a number of concerns regarding the contractual and statutory framework upon which the Remedial Notice was issued. There is however no dispute between the Parties that a Remedial Notice has been validly issued.
- 6.3 I note that the Contractor does not agree with the issuing of the Remedial Notice on the basis that this was harsh and unconscionable, was served eight months after the events had been rectified and in was an excessive abuse of power. The Contractor contends that the Commissioner would have been in contact with the CQC and aware of the pending CQC re-inspection and the

CQC could have passed on its initial reaction to the re-inspection to the CCG, thus removing the need for a Remedial Notice to be issued.

- 6.4 The Contractor also contends that if the CCG had contacted the CQC following the first inspection in August 2017, it would have been informed that the CQC was happy with the Action Plan and other information received from the Surgery as to the corrective actions it planned to take following issue of the CQC Report.
- 6.5 In conclusion the states that the Commissioner issued the Remedial Notice based solely on the outcome of the CQC Report and not its own evaluation of the practice, that the Contractor was not invited to put forward its own views, and that no notice was provided to the Contractor prior to issue of the Remedial Notice.
- 6.6 I will seek to address each element of the Contractor's appeal in full below.
- 6.7 I note that the Remedial Notice has been issued in accordance with clause 26 of the GMS Standard Contract. Under this clause, the Commissioner has the discretion to issue a remedial notice where there has been an identified breach by a contractor and such breach is capable of remedy.
- 6.8 I note that it is not disputed that the Contractor was in breach of clauses 20 and 23 of the NHS Standard GMS Contract following the publication of the CQC Report. It is not therefore for me to comment on the Commissioner's grounds for issuing the Remedial Notice as contained in the notice. This dispute relates to whether the issue of the Remedial Notice was unwarranted and/or an excessive abuse of power.
- 6.9 I note that the Contractor has raised concern that the Commissioner's decision to issue the Remedial Notice rested entirely on the outcome of the CQC Report. The Commissioner is responsible for monitoring the performance of a contractor and the adherence to the contractual terms of its relevant contract or services. As a requirement of this role, the Commissioner is under an obligation to take into consideration reports made by supervisory bodies, including independent regulatory bodies such as the CQC and, where appropriate, take fitting action.
- 6.10 I note that in the CQC Report, there existed a number of concerns over the practices of the Contractor, including non-compliance of legislation and concerns regarding clinical governance. On this basis, the Commissioner considered the Contractor to be breach of the corresponding elements of its GMS Contract and issued the disputed Remedial Notice. I consider it is logical to conclude that the Commissioner did not act unreasonably or outside of its contractual rights when exercising its direction in issuing the Remedial Notice.
- 6.11 I will now address the concern raised by the Contractor that the Commissioner should have made further contact with the CQC and been aware of the pending CQC re-inspection, and that need for a Remedial Notice to be issued would have been elevated had the CQC passed on its initial reaction to the re-inspection. The Contractor also contends that had the Commissioner contacted the CQC after the initial inspection, it would have been aware that the CQC was happy with the Contractor's proposed corrective action plan.

- 6.12 I firstly note that the Remedial Notice had already been issued prior to the re-inspection by the CQC on the 17 April 2018. As such, the Commissioner could not have relied upon or consulted the outcome of the re-inspection as deciding factor when making the decision to issue the Remedial Notice.
- 6.13 I also note that whilst communication between the CQC and the Commissioner is recommended, the obligation to discuss the findings of a CQC Report does not rest solely on the Commissioner. In this regard, I am of the view that both the Commissioner and the Contractor should have been aware of the result of the CQC inspection and should have made contact with each other following the initial distribution of the CQC Report to both discuss and identify how to remedy the findings.
- 6.14 I consider the Contractor's assertion relating to the Commissioner's failure to invite a representative of the practice to put forward their position to the Primary Care Commissioning Committee, despite its awareness of the Contractor's ability to make representations to the CQC.
- 6.15 With regards to the Contractor's representations to the CQC, I consider that a mutual obligation rests on the Contractor to keep the Commissioner informed and up to date on any progress with such representations. Where the Contractor contends that a CQC report is unjustified and intended to contest the report, it is not illogical to expect that a Contractor itself, should keep the Commissioner of the GMS Contract in question, up to date and not rely on an assumption that the findings of any CQC representations will be shared between the CQC and the Commissioner.
- 6.16 I do however consider that the Commissioner should be criticised for failing to follow the suggested process laid out for Commissioner in the Primary Care Manual following notification of a breach. The Primary Care Manual contains clear guidance for commissioners, including a requirement to make contact with a contractor to discuss the breach and any potential action the Commissioner may take, providing a contractor with an opportunity to provide an explanation as to the circumstances that led to the breach, and reviewing any evidence and contractor representations.
- 6.17 I note that it is at a Commissioner's discretion to determine what action it considers would be reasonable to take before issuing a Remedial Notice, taking into account the circumstances of an individual breach. I note the Commissioner's contention that the seriousness of the concerns raised by the CQC and the potential impact on patients made the issuing of the Remedial Notice an overriding factor in its decision making process.
- 6.18 I consider however that this view is somewhat contradicted by the actions the Commissioner took to relay these concerns to the Contractor. Given that a number of the concerns raised by the CQC related to significant patient safety issues, I consider that communication with the Contractor should have been made a priority upon receipt of unfavourable CQC findings. It appears from the information that I have received, that the Commissioner failed to make any prior contact with the Contractor regarding the remediation of such patient safety issues prior to issuing the Remedial Notice and must be criticised for its failure to do so.
- 6.19 This leads me to the further complaint raised by the Contractor regarding the failure by the Commissioner to inform the Contractor that the Remedial Notice

was to be issued. A remedial notice should not land unexpectedly on a Contractor and I consider that in this instance, the Commissioner has fallen below the standard of transparency and openness expected from a Commissioner. I do not consider however that this factor overrides the contractual ability of the Commissioner to take the contractual action provided for under clause 26 of the GMS Contract and that this was a reasonable position for the Commissioner to take.

- 6.20 I now consider the Contractor's contention that the Commissioner issued the Remedial Notice eight months after the events complaint of had been put right. I note that the CQC Report was published on 16 November 2018. The Remedial Notice was issued by the Commissioner on 16 April 2016, five months after the publication of the CQC Report.
- 6.21 I have considered the Commissioner representations regarding the correct governance processes it is required to follow when issuing a remedial notice and the evidence provided identifying the governance process having been applied. Consideration has also been given to the fact that the decision making process took place over an extended holiday period. From this review, I consider that the Commissioner has acted within the required guidelines and adhered to the required governance requirements.
- 6.22 Whilst the delay is unfortunate, I note that the Commissioner has acknowledged the delay could have been minimised and have apologised to the Contractor for this. I do not consider however that this affects the validity of the issue of the Remedial Notice in this instance.
- 6.23 I note that the issuing of a remedial notice is discretionary on the part of the Commissioner; however I have not been provided with any information to indicate that the Commissioner did not act reasonably or within its own policy guidelines, when exercising this discretion.
- 6.24 I determine that the Remedial Notice issued by the Commissioner stands.

Head of Primary Care Appeals

A copy of this letter is being sent to:

Mr ##### on behalf of Dr A Sarajlic
NHS England