

4 April 2021

FILE REF: SHA/24673

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**DECISION MAKING BODY: NHS COMMISSIONING BOARD
("NHS ENGLAND")**

**GMS CONTRACTOR: KING CROSS SURGERY
199 KING CROSS ROAD
HALIFAX
HX1 3LW**

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

RE: NON PAYMENT FOR CHILDHOOD IMMUNISATIONS

1. Outcome

- 1.1 I am satisfied that NHS England can decline the request for payments as this request has been made outside the relevant time periods as set out in the GP Practice Vaccination and Immunisation Agreement and the SFE.
- 1.2 I note that neither party has submitted a claim for interest with regard to this dispute so I make no determination in this regard.

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1. INTRODUCTION

- 1.1 The above Contractor referred the dispute in relation to its General Medical Services Contract for dispute resolution under the provisions of paragraph 99 of Schedule 6 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 his behalf. I, as an authorised officer of NHS Resolution, have made this determination.

2. APPLICATION FOR DISPUTE RESOLUTION

- 2.1 By letter dated 15 December 2021 the Contractor applied to NHS Resolution, for dispute resolution.
- 2.2 I have had regard to the following documents made available to me in consideration of this matter to ensure the just, expeditious, economical and final determination of this dispute:
 - 2.2.1 Cover email of 15 December 2021 from the Contractor enclosing application for dispute resolution;
 - 2.2.2 Email of 5 January 2022 from Contractor containing further information, the letter of authority and the GMS Contract variation notice dated October 2020;
 - 2.2.3 Email of 10 January 2022 from NHS England;
 - 2.2.4 Email of 12 January 2022 from NHS England with enclosures; and
 - 2.2.5 Email of 3 March 2022 from the Contractor with enclosures.
- 2.3 The Contractor has failed to send a copy of the General Medical Services Contract with its request for dispute resolution as is required by the Regulations. For the reasons set out below, I am satisfied that I can resolve this dispute without sight of the Contract.

3. PARTIES SUBMISSIONS

The Contractor's application

3.1 In a letter of 15 December 2022, the Practice Manager on behalf of the Contractor applied to NHS Resolution for NHS dispute resolution and stated:

“Following discussion with West Yorkshires (sic) Enhanced Services Team via email, I have been advised to raise an appeal regarding missed payments for King Cross Practice, B84021.

I have recently taken over the Practice and have been made aware by our accountants that there are a number of payments missing for Child Immunisations:

September 2019
March 2020
September 2020
December 2020

On review of the submission dates stated above within the Open Exeter Statements I can see that information was submitted for the following dates, on time, and therefore payment should have been received:

01.07.2019 – relating to payment which should have been received for September 2019
01.01.2020 – relating to payment which should have been received for March 2020
01.10.2020 – relating to payment which should have been received for December 2020

I have included below a screen shot of the information submitted for these dates. [redacted by Primary Care Appeals]

Due to staff illness during the COVID-19 pandemic one submission was missed for the September 2019 payment (submission for 01.07.2020), yet data had been added to Open Exeter in the run up to the submission date. Below is a screenshot of this data, which has been filled in but not submitted. [redacted by Primary Care Appeals]

During this time the Practice was both facing the Covid-19 pandemic, short staffing and a Practice Manager who was involved in a secondment, and therefore the proper processes for checking that these payments were being received has not been followed. The work has been completed and we would like the opportunity to appeal the decision of the West Yorkshire Enhanced Service Team to refuse payment.

Please could I have confirmation that payments will be made for the dates where submission was made and review of the submission which was missed, as the data was uploaded to the system. Thank you in advance for any assistance.”

Representations

NHS England's representations

3.2 NHS England has provided representations in relation to this matter and states:

“In summary, I have declined the King Cross Surgery claim for childhood immunisation payments as they missed the deadline for such claims, as set out in the Statement of Financial Entitlement (SFE) Directions. As per the evidence listed below, the practice contacted us on 18th November 2021 after the final deadline of June 2020 and as such, their request was outside of the timescales permitted and was declined on that basis. The documents listed below and attached, evidence our processes for making such decisions. These include:

- 1 A. The GP Practice email and Vaccination and Immunisation Agreement signed by the Practice Manager at [King Cross Surgery dated 02.05.2019].
B. The GP Practice email and Vaccination and Immunisation Agreement signed by the Practice Manager at [King Cross Surgery dated 29.04.2020]
- 2 The full GP Practice Vaccination and Immunisation Agreement, as signed above, which sets out the submission timescales and payment deadlines for childhood immunisations on pages 15, 19, and 20.
- 3 The Statement of Financial Entitlement (SFE) Directions 2013 which sets out in sections 11.12 and 11.22 the deadlines for payment of childhood immunisations.
- 4 Our internal Standard Operating Procedure (SOP) which sets out our method of working through payment claims, including the deadlines for payment on page 3.
- 5 A copy of a letter to all GP practices in Yorkshire and Humber region which set out our intention to strictly abide by SFE deadlines in future, dated 20/12/2019.
- 6 All email correspondence with King Cross Surgery in respect of this query

In respect of the declined claims, we believe that the claims process (including reference to CQRS vs Open Exeter claims) and deadlines for routine childhood immunisation claims were outlined to the practice on three separate occasions.

These being:

- December 2019 – in the letter to all GP Practices, referred to in point 5 above
- April 2020 – in the GP Practice Vaccination and Immunisation Agreement, referred to in point 2 above; and
- October 2020 – in the email reminder and ‘Claims on a Page’ document, referred to in point 4 above.

I trust this information helps to support your decision-making as part of the NHS Resolution Appeals process. Should you require further information or clarification on any of the attached documents, please do not hesitate to get in touch via email.”

Observations

- 3.3 In an email of 3 March 2022 the Practice Manager on behalf of the Contractor stated:

“I have attached a review of our accounts by our accountant which highlights the four payment gaps we have.

This has previously been chased by the previous Practice manager (I believe this was within the correct timescales to recover payment) and no resolution was given.”
- 3.4 The following documents were included with this email:
 - 3.4.1 Emails between the current Practice Manager and the Practice accountants;
 - 3.4.2 GMS/PMS Summary statement of payments (30 September 2019, 31 December 2019, 31 March 2020, 30 June 2020, 30 September 2020, 31 December 2020, 31 March 2021);

- 3.4.3 GPP Payments (30 June 2021);
- 3.4.4 Email dated 10 November 2020 between the previous Practice Manager and the Practice accountants; and
- 3.4.5 Email dated 30 November 2020 between the previous Practice Manager and the Practice accountants.

4. CONSIDERATION

- 4.1 I note that with the application for dispute resolution, the Contractor provided a copy of a signature page entitled “Standard General Medical Services Contract Variation Notice – October 2020” in the name of King Cross Surgery which was signed by the Contractor, and dated 28 May 2021. The Contractor has not provided a copy of their General Medical Services Contract.
- 4.2 Having regard to the above, and noting that there is no dispute from either party to the contrary, I am satisfied that the Contractor is party to a General Medical Services Contract with NHS England.
- 4.3 I note from the information provided to me that the application for dispute resolution has been made within the time limits set out in the Regulations.
- 4.4 I note that in an email of 18 November 2021 the Contractor raised the matter giving rise to the dispute with NHS England stating:

“I have recently taken over at King Cross Practice. I have been made aware by our accountants that we are missing a number of payments to the Practice for Childhood Immunisations for the following quarters:

*September 2019
March 2020
September 2020
December 2020*

“Would anyone be able to help and advise if any submissions/payments were made for these dates? If not is there a process for retrospective claiming, given that the Practice was in handover?”

- 4.5 In an email of 19 November 2021 NHS England responded to the Contractor and confirmed that:

“We are bound by the Statement of Financial Entitlement which sets out strict deadlines by which practices must claim for late payments. As per the table below, each quarter has a strict ‘final deadline’. As such I am unable to process your claim for 2019-2020”.

The email went on to say:

“Apologies that I am unable to offer any further support in resolving this issue. Should you wish to challenge this decision for non-payment of your late claim, our escalation process is via NHS Resolution. They are responsible for ensuring the prompt and fair resolution of appeals and disputes between primary care contractors or those wishing to provide primary care services and NHS England/Clinical Commissioning Groups (CCG). The process for appealing the decision can be found here: <https://resolution.nhs.uk/services/primary-care-appeals/>”.

- 4.6 I note that the application for dispute resolution is for payment for childhood immunisations for Quarters 1 and 3 of the 2019/20 financial year and Quarters 1 and 2 of the 2020/21 financial year. NHS England determined that the payment for these quarters would not be made. The Contractor was given a final determination of the

local dispute and in an email of 19 November 2021 the Contractor was advised to refer the matter to NHS Resolution if they remained dissatisfied and wished to challenge the decision for non-payment of the late claim. I note that there is no dispute between the parties that local dispute resolution has been exhausted and that the Contractor has made an application for dispute resolution following receipt of a final decision from NHS England. I am content that local dispute resolution has been completed.

- 4.7 I have been provided with a copy of the NHS General Medical Services Statement of Financial Entitlement 2013 (“the SFE”) from NHS England, the application of which to this matter has not been disputed by the Contractor. I have also been provided with a copy of the “2020/21 GP Practice Vaccination and Immunisation Agreement” by NHS England. NHS England also provided signed pages from the “Contract Agreement – Public health 2019/20 – GP Vaccination and Immunisation Programmes” dated 2 May 2019 and “2020/2021 GP Vaccination and immunisation Programmes” dated 29 April 2020. I note that the contents of the Agreement as well as the signed pages provided have not been disputed by the Contractor.
- 4.8 I note that the periods in question: the year 2019/20 and 2020/21 are covered by the SFE and the year 2020/21 is covered by the above Agreement.
- 4.9 I note that NHS England, in their representations, state that the claims process and deadlines for submission of claims were highlighted to the Contractor on three occasions:
- 4.9.1 December 2019 – in the letter to all GP Practices;
 - 4.9.2 April 2020 – in the GP Practice Vaccination and Immunisation Agreement; and
 - 4.9.3 October 2020 - in the email reminder and ‘Claims on a Page’.
- 4.10 I note that the 20 December 2019 letter sets out the deadlines that the practice needs to meet as well as stating that “...*Practices receive reminder emails and the submission window cannot be extended*...” The letter goes on to include a timetable for Open Exeter submissions and manual claims.
- 4.11 I note that it states in the 2020/21 Agreement section 5 “Claiming Mechanisms” under “Open Exeter” that “*In regards the claiming and re-imburement of Routine Childhood Immunisations, the payment mechanism is via a **quarterly** submission, electronically uploaded onto the relevant section of Open Exeter by GP practices. GP practice managers will receive email reminders when submissions are due with a specific deadline for submission.*”
- 4.12 I note that the 2020/21 Agreement then goes on to state “*Please note: The deadline for your quarterly submissions cannot be extended so please ensure this task is undertaken accordingly. No quarterly payment is payable if the contract provides the necessary information more than four months after the final date for immunisations which would count towards the payment, as detailed in the SFE*”.
- 4.13 There is then a table in the Agreement setting out the timetable for submissions as well as confirming the date that payment will be made as follows:

The timetable for submission and payment of Routine Quarterly Childhood immunisations Year on Year is as follows:	
Count @ 1 April – 30 June Received via Open Exeter by 1 August	Quarter 1
Paid 15 September (PMS) 30 September (GMS)	
Count @ 1 July – 30 September	Quarter 2

Received via Open Exeter by 1 November	
Paid 15 December (PMS) 30 December (GMS)	
Count @ 1 October – 31 December Received via Open Exeter by 1 February	Quarter 3
Paid 15 March (PMS) 30 March (GMS)	
Count @ 1 January – 31 March Received via Open Exeter by 1 May	Quarter 4
Paid 15 June (PMS) 30 June (GMS)	

4.14 I have also been provided with a document entitled “Claims for Open Exeter & CQRS 20/21” which appears to be the document referred to as “Claims on a Page” by NHS England. This states:

“Open Exeter

What is it? A web based programme which allows GPs to download patient data and submit on line returns which generates CQUIN threshold payments

When should data be submitted? Quarterly

Q	Count Starts (Imms Given)	Deadline	Paid
1	1 April to 30 June	1 Aug 20	15 Sept (PMS) 20 Sep (GMS)
2	1 July – 30 Sept	1 Nov 20	15 Dec (PMS) 15 31 Dec (GMS)
3	1 Oct to 31 Dec	1 Feb 21	15 Mar (PMS) 31 Mar (GMS)
4	1 Jan to 31 Mar	1 May 21	15 June (PMS) 30 June (GMS)

What if I miss the deadline? If you miss the deadline as detailed above, in line with the Statement of Financial Entitlements (SFE) you have 4 months beyond the last day of delivery for that quarter to claim i.e. delivery end date 30 June, and you miss the 1 Aug automatic extraction, you have until 31 October to make a manual submission. Don't forget to add your practice code when you contact us.”

4.15 I note that one of the periods in question is in relation to the 2020/21 financial year that is covered by this document. I am of the view that the “Claims for Open Exeter & CQRS 20/21” would have been a useful reminder to the Contractor about the submission of data and the associated deadlines. Apart from the statement from NHS England in their representations that this was sent to the Contractor in October 2020, I have no information before me to confirm this, however I note that there is no dispute from the Contractor that this information was received.

4.16 I further note the comments from NHS England with reference to the SFE and in particular paragraphs 11.12 and 11.22 which state:

“11.12. The amount payable as a Quarterly TYOIP is to fall due on the last day of the quarter after the quarter in respect of which the contractor is seeking payment (i.e. at the end of the quarter after the last quarter in which immunisations were carried out that could count towards the targets). However, if the contractor delays providing the information the Board needs to calculate its Quarterly TYOIP beyond the Board's cut-off date for calculating

quarterly payments, the amount is to fall due at the end of the next quarter (that is, just under nine months after the cohort was established). No Quarterly TYOIP is payable if the contractor provides the necessary information more than four months after the final date for immunisations which could count towards the payment.”

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

- 4.17 There is no dispute from the Contractor that they received the information highlighted to me by NHS England and that they were therefore aware of the deadlines for submission for claims.
- 4.18 I am of the view that it is for the Contractor to ensure that the data provided in reporting its activity is accurate, correct and submitted within the required timescales.
- 4.19 I am of the view that the Contractor was aware of the deadline for the submission of claims. NHS England has provided signed copies of the Agreement in relation to the provision of the immunisations, which is not disputed by the Contractor. I have also been provided with copies of documents highlighting the deadlines to GP practices.
- 4.20 I note that some monies must have been paid to the Contractor (the claims for Quarters 2 and 4 of 2019/20 as well as Quarters 3 and 4 of 2020/21) as these are not part of this dispute. I am of the view that the Contractor is therefore aware of how monies are paid and that it is for the Contractor to ensure that systems are in place to check that the correct amounts have been received having regard to the immunisations information that they hold.
- 4.21 As there is no dispute that payments were made for Quarters 2 and 4 for 2019/20 and for Quarters 3 and 4 of 2020/21 the relevant information and payment processes must have been operating within the Open Exeter system. I am of the view that it is for the Contractor to ensure that the data provided is accurate and correct and also for the Contractor to check that payments are received.
- 4.22 Whilst I can understand and appreciate the pressures that the practice was under as a result of the global COVID-19 pandemic as well as the frustration that the payments have not been made, I am of the view that they should be aware of when payments were due to be made. If payments were not made when they were expecting them to be made based on the data that they have submitted, then the Contractor should have reviewed this and sought to rectify the problems within the period allowed for submission.
- 4.23 I note that the Contractor was not aware that payment had not been made until it was brought to their attention by their accountant in November 2020 for the 2019/20 financial year. I note the comment from the previous practice manager in an email to the accountant of 10 November 2020 that *“I have emailed both NHSE and PHE today in an attempt to find out why payments were missed ...”* and further in an email of 30 November 2020 that *“I made enquiries about the child imms payment and haven’t heard anything back. I’ll chase them today and let you know when I hear back from them”*.

- 4.24 I note that the Contractor was therefore aware that there were issues with the payments for the 2019/20 financial year in November 2020, however I have not been provided with information as to when the practice manager emailed NHS England to raise this issue.
- 4.25 Whilst I accept that the practice manager may have contacted NHS England without further information in this regard I am unable to be certain of the date that the matter was raised with NHS England and whether this was within the relevant periods as set out in the Agreement and the SFE.
- 4.26 Unfortunately I am unable to ascertain these dates and therefore cannot be satisfied that this was raised with NHS England within the requisite timescales as set out in the SFE.
- 4.27 Although the Contractor was aware of potential issues with payments (in the 2019/20 financial year) they do not appear to have checked if payments for 2020/21 were being received and again they were only aware that payment had not been made once it was again brought to their attention by their accountant in November 2021.
- 4.28 I note that the payment dates for childhood immunisations are approximately 8 weeks after the deadline for the automatic extraction of the data, however I note that the deadline for claims is a further 4 weeks after the automatic payment.
- 4.29 I am of the view that there is sufficient time after the date that payment should have been made for a Contractor to raise the issue of non-payment, for whatever reason, with NHS England before the final date to make a claim has passed.
- 4.30 I am of the view that the Contractor should have been aware sooner than 12 months after a payment was not made that there was a problem and that full payment or no payment had been received in this regard. I am also of the view that once this was brought to their attention for the 2019/20 financial year they should have put systems in place to ensure that expected payments were being received for the 2020/21 financial year.
- 4.31 There is no provision in the SFE or the GP Practice Vaccination and Immunisation Agreement provided to me to extend the payment period beyond the 4 months specified.

5. DECISION

- 5.1 I am satisfied that NHS England can decline the request for payments as this has been made outside of the relevant time periods as set out in the GP Practice Vaccination and Immunisation Agreement and the SFE.
- 5.2 I note that neither party has submitted a claim for interest with regard to this dispute so I make no determination in this regard.