

Governing Body

28 September 2016

Details	Part 1	✓	Part 2		Agenda Item No.	10
Title of Paper:	Annual Review of Funding Dispute Resolution Panel					
Board Member:	David McCann, Lay Member					
Author:	David McCann, Lay Member					
Presenter:	David McCann, Lay Member					
Please indicate:	For Decision	✓	For Information		For Discussion	

Executive Summary

Summary	The current terms of reference for the Funding Dispute Resolution Panel require an annual review. In addition, the Panel feel that the terms of reference should be reviewed.					
Risk	High		Medium		Low	✓
	Please indicate above the overall level of risk associated with the paper then state here what the risks are and how this paper aims to address them. If the above summary itself is around managing risk etc. state "Included in Summary". NB Risks can include failure to act and lost opportunities.					
Recommendations	The Governing Body is asked to: <ul style="list-style-type: none"> Note the annual review Agree the amendment to the terms of reference 					

Strategic themes

To deliver improved outcomes and reduce health inequalities for patients through better preventative strategies	
To deliver service re-design in priority areas through innovation	
To develop primary care to become excellent and high performing commissioners	
To develop the CCG leadership to work with the Local Authority to be excellent integrated commissioners	
To develop robust and effective working relationships with all stakeholders and partners to drive integrated commissioning	
To deliver long term financial sustainability through effective commissioning and innovative investment across the wider system	
To develop and influence the provider landscape through development of a Locality Care Organisation (LCO)	
Equality Analysis Assessed?	Supports NHS Bury CCG Governance arrangements

Annual Review of the Funding Dispute Resolution Panel and Review of the Terms of Reference

1. Introduction and background

- 1.1 The Funding Dispute Resolution Panel (the "Panel") was introduced in essence to address situations where there was an element of uncertainty at the inception of the contract as to performance and circumstances that would trigger payments. It was felt that on occasions the commissioners and providers would enter into contracts in good faith but issues that could not be anticipated would arise that if it is that there was a literal adherence to the contract it would result in inequity.
- 1.2 The concern was that in the absence of the Panel it may lead to a lack of engagement by providers, principally in Primary Care.
- 1.3 As a result the Terms of Reference were prepared and ultimately presented to the governing body and adopted on 22 July 2015.
- 1.4 As part of the terms of reference of the Panel it was agreed that the Panel would produce an annual report for the Governing Body outlining as a minimum the number of disputes lodged, the schemes they related to and the outcome of the dispute resolution process.

2. Further information

2.1 Disputes Lodged

- 2.1.1 During the course of the last 12 months the disputes lodged can be categorised in relation to the following:-

- 2.1.1.1 The Prescribing Quality Scheme.
- 2.1.1.2 The £5 Per Head Scheme.

2.2 The Prescribing Quality Scheme

- 2.2.1 Two disputes were submitted.
- 2.2.2 The first application was not supported by the Panel and therefore no recommendation was made to the Contract Monitoring Team for a review of its decision. Certain issues did arise by way of better learning that could be taken from the Scheme and those issues were specifically reported to the Medicines Management Team for further consideration in relation to new schemes.
- 2.2.3 The second application that was submitted was accepted and a recommendation was made by the Panel to the Medicines Management Team for them to review their decision in the light of the information that had been submitted.

2.3 The £5 Per Head Scheme

- 2.3.1 Three applications have been submitted in relation to the £5 Per Head Scheme.
- 2.3.2 In relation to the three applications, the view of the Panel in relation to the first is that it fully supported the application and as a result recommendations were made to the Contract

Monitoring Team for them to reconsider their decision. As a result of this application that had been submitted to the Panel it was also felt by the Panel there were issues of wider learning that needed to be communicated internally within the CCG as appropriate.

2.3.3 In relation to the second application, it was a multi-faceted application and certain elements were rejected. Certain elements however were also supported and in the circumstances again recommendations were made to the Contract Monitoring Team for review.

2.3.4 In relation to the third application, it was rejected. There was however again wider learning that was communicated internally within the CCG as a result.

2.4 Review of the Terms of Reference

2.4.1 Introduction

2.4.2 As a result of the applications submitted to the Panel during the course of the last 12 months, it has enabled the Panel to review its effectiveness.

2.4.3 It is felt that the purpose of the Panel has largely been met. At its inception it was felt that the Panel was not to be a decision-making body but simply one that made recommendations.

2.4.4 Ultimately in practise however it in real terms has become a decision-making panel and as such it is felt that the terms of reference should reflect this.

2.4.5 Further, a key area that has come out of the work of the Panel over the last 12 months and perhaps the most valuable element of the outcomes is the wider learning that the CCG and its providers can benefit from.

2.5 The Next Step

2.5.1 In the circumstances, the Panel have prepared amendments to the Terms of Reference which are attached for consideration (**please see Appendix A**).

3. **Recommendations**

3.1 It is the recommendation of the Panel that its Terms of Reference be amended.

3.2 The key amendments are to make it a decision-making panel but on the basis that there are financial limits.

David McCann

Lay Member and Chair of the Dispute Resolution Panel

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Funding Dispute Resolution Panel Terms of Reference

1. Introduction/Background

In certain limited contracts, principally with primary care providers there is an element of uncertainty at the inception of the contract as to performance and the circumstances that will trigger payments. Although both the Commissioners and the Providers enter into the contracts in good faith there will be certain issues that arise that cannot be anticipated that will potentially impact on the performance of Providers and their ability therefore to meet targets that trigger contractual payments.

In these circumstances, to ensure that the contracts continue to be formed in good faith, the Commissioners have agreed a dispute resolution process to enable any provider who feels aggrieved by a decision of the CCG's Primary Care Team to have a mechanism to enable the decision to be independently reviewed with the CCG.

At its heart this process is to create openness and transparency and to provide equity to the Providers. These terms of reference set out the membership of the Dispute Resolution Panel, the remit/responsibilities and the reporting arrangements of the Panel.

The Panel has authority to bind the CCG to a decision up to a value of the contractual limit of the appellant's share of the agreed budget for the particular scheme in question.

2. Membership

The following are the members of the panel:

- Lay Board Member x 1
- Clinical Director (Board Member) x 2
- Chief Finance Officer or nominated Deputy
- Deputy Chief Officer / Director of Commissioning and Business Delivery or Deputy

The panel will have the authority to co-opt members as required for expert advice

3. Administrative Support

Administrative support for the panel will be provided by the corporate secretarial team. Their role will be to ensure that both the panel and the outcome of the panel's decision are convened within the timeframe detailed within section 5. They will ensure the necessary information is communicated to panel members prior to the meeting.

A member of the corporate secretarial team will provide an accurate account of the meeting along with the decision, which will be communicated in a letter from the Chair to the Provider within 5 working days.

4. Quorum

The Panel's quorum will include at least 4 of the members listed in section 2 above, one of whom must be a board member.

5. Frequency and notice of meetings

Meetings of the Panel will be convened as and when required when a provider seeks to avail itself of the dispute resolution process. It is intended that the Panel will meet within one month of a dispute being submitted, or as soon as reasonably practical thereafter.

The process for invoking the dispute resolution procedure will be as follows:-

- The provider will complete the standard pro forma dispute resolution form and submit this to karen.keen2@nhs.net with all supporting documentation. This documentation should be a stand-alone form and should contain all information that the Dispute Resolution Panel would need to understand the dispute as raised by the provider (see Appendix 1).
- The Primary Care Team of the CCG will then provide a full written report in relation to the original decision made and any comments upon the written submission of the provider. This will be submitted to the provider and the provider then given the opportunity to withdraw or continue with their dispute.
- Upon confirmation of the provider wishing to continue with their dispute an oral hearing will then be fixed at which the provider, if it so chooses, will be entitled to attend. The officer who had made the decision in the first place out of which the dispute has now arisen will also be required to attend.
- Both the provider submission and CCG response will be shared with the panel in advance of the meeting.

The form of the hearing will be as follows:-

- Introduction by Chair.
- Submission of any additional or oral comment, limited to comments on the report of the Contract Monitoring Team, to be made by the provider.
- Questions from the Panel seeking clarity on any issue.
- Decision. It will be usual for the decision to be communicated in writing within 5 working days of the oral hearing.

6. Remit and responsibilities of the panel

The Dispute Resolution Panel has authority to support or overrule a decision of the Primary Care Team. The Panel has authority to bind the CCG to a decision up to a value of the contractual limit of the appellant's share of the agreed budget for the particular scheme in question. In addition, the Dispute Resolution Panel can make recommendations in relation to wider learning that does not impact on the decision of the Primary Care Team but where it is felt that both as a commissioner and also as providers certain lessons can be learnt.

All parties submitting to the dispute resolution process being both the Commissioners and the Providers accept that the process is to be deemed without prejudice to whatever alternative legal or NHS dispute resolution routes are available to them pursuant to the existing contract that is being reviewed and further therefore all documentation submitted

within the process, all submissions made and any decisions or recommendations of the Panel itself are accepted by the parties as being privileged and thus not capable of being produced in court proceedings. The process itself is a non-binding process to facilitate the resolution of a dispute rather than to impose by way of expert determination a finding on the parties. All parties agree to enter into the process therefore in good faith.

The Panel will consider all evidence submitted and as part of its decision and recommendations will specifically address the following:-

1. Whether there is evidence to support the dispute
2. Irrespective of evidence to support the dispute are there such exceptional circumstances that it is felt appropriate for consideration to be given to the request of the Provider for contractual payment
3. Whether there is any wider learning that flows from the Dispute Resolution Panel process that either the commissioner or providers would benefit from; or
4. Whether the decision made by the Primary Care Team is against the spirit of the intent of the commissioned service

In relation to item 2 above, exceptionality is defined as:-

- A)** The measurement of the target
 - o performance /assessment data used by the CCG to measure the practice's achievement against this scheme is materially inaccurate,
 - o reward calculations are incorrect,
 - o there was a significant change in activity or clinical care that was determined after the target was included in the scheme
- B)** Mitigating circumstances affecting the provider's achievement that should be taken into account

7. Reporting Requirements

The panel will produce an annual report for Governing Body which outlines as a minimum the numbers of disputes lodged, the schemes they related to and the outcome of the dispute resolution process.

8. Conduct of the panel

- Members of the panel are expected to declare conflicts of interest at the start of any meeting.
- Annually the panel will review its own performance, membership and terms of reference. Any resulting changes to the terms of reference should be approved by the Primary Care Commissioning Committee.

Date agreed: September 2016

Date to be reviewed: September 2017

D McCann
Chair
Dispute Resolution Panel

Appendix 1 - GP Practice request to query result / reward

<p>Which target does query relate to:</p>	<p>Please detail the scheme and target you are querying (using a separate template if you have more than one query)</p>	
<p>Does your query relate to:</p>	<p>a. The measurement of the target 1. performance /assessment data used by the CCG to measure the practice's achievement against this scheme is materially inaccurate, <u>or</u> 2. reward calculations are incorrect, <u>or</u> there was a significant change in activity or clinical care that was determined after the target was included in the scheme</p>	<p>Please provide detail below (state clearly the exact nature of your query providing evidence to substantiate your dispute). If you feel there are mitigating circumstances, you must provide supporting data to evidence this.</p>
<p>b. The practice asserts there are mitigating circumstances relating to this target:</p>		
<p>Primary Care Team Response:</p>	<p>To be completed on receipt of dispute by Primary Care Team</p>	
<p>Practice response:</p>	<p>To be completed by the practice should they wish to continue with their dispute</p>	

Name of person raising query:

Practice:

Date:

Please return this form to Karen Keen (Karen.keen2@nhs.net) Primary Care Team by (date to be added)