



Gabi Darby, Interim Director of Primary Care Commissioning Transformation, NHS England
Laurence Bickerton, Policy Lead, Dentistry & Eye Care, Department of Health & Social Care

Via email

3rd March 2021

Dear Gabi and Laurence

NHS payments to associates and practice staff

As we come to the end of the financial year, I wanted to flag again our concern about the situation of a number of associates, as well as other practice staff, who have not seen NHS income paid at previous levels for the period April to December 2020. Whilst we know that the vast majority of practices have honoured the expected commitment to pass on NHS earnings, we are aware that this has not happened in all cases. We ask again that this issue is tackled as we come towards the end of year contract reconciliation process.

The BDA's view is that there are clear ways to ensure that this is properly addressed. Indeed, Martin Woodrow wrote to Matt Neligan as long ago as 8th May 2020 outlining our proposal to give legislative force to an obligation to pass on NHS income. We asked NHS England to agree to amend the General Dental Services Statement of Financial Entitlement 2013, suggesting an amendment that mirrors provisions already in the SFE in relation to payments in respect of maternity leave and other types of leave to associates. Our proposal was based on the principle that practices should pay associates an amount equivalent to their Net Pensionable Earnings from the equivalent period the previous year, or by other agreed mechanism.

Subsequent discussions with NHS England have indicated that there is some support for an amendment to the regulations. However, we have also been told that responsibility for amending the regulations lies with the Department of Health and Social Care. We have therefore repeatedly raised this question with DHSC officials as well as with NHS England. We have been told that the legal constraints around making a change to the SFE have been, and still are, under consideration.

We would urge that this approach is considered, even at this late stage, to encourage all practices to take the same reasonable steps adopted by the majority.

Even without that legislative change, it is of course the case that NHS England and the Office of the CDO have been clear throughout the year about the conditions attached to contractors' NHS income being protected. This has included an expectation that NHS income would be passed on during April to December 2020. The NHS England letter of 25th

March 2020 indicated that it was 'a requirement on practices to ensure that all staff including associates, nonclinical and others continue to be paid at previous levels'.

Whilst there has been inevitable debate about what is meant by 'paid at previous levels', the NHS England and Office of CDO letter of 13th July reiterated that this commitment continued to be 'an essential requirement'. That letter also confirmed that there would be a simple assurance mechanism via workforce data collection, with a signed declaration of adherence from each practice, and that this would be an explicit condition of the funding stability provided.

The NHS England and Office of the CDO letter of 22nd December 2020 went on to confirm that for any period during April to December where the expected conditions were not met, normal rather than enhanced contractual arrangements would apply. It was made clear that one of those conditions was a requirement to make a declaration that payments had been made to the practice workforce during from April to December 2020.

It would be helpful therefore as we come towards the end of year reconciliation process to understand how NHS England will satisfy itself that practices have complied with this expectation. We are aware that the BSA has launched a new pay concerns form in recent days with the indication that any information collected may be used as part of the end-of-year contract review process.

In order to be fair to both practice owners and to staff raising concerns it would be helpful to have clarity about NHS England and the DHSC's expectations around passing on previous earnings. As indicated above, we would still argue that the best way of achieving that certainty is legislative change. In the absence of that legal framework, we at least need to give a clear indication of how practice owners will be judged in the end of year reconciliation process.

If we have unambiguous guidance, even at this late stage, it will enable practices to ensure that they are doing the right thing in passing on NHS earnings and not putting themselves at risk of financial penalty. It will also give associates and practice staff some reassurance that there is value in raising concerns.

I look forward to hearing from you and am of course happy to discuss and work with you on this issue.

Yours sincerely

A handwritten signature in black ink, reading "Shawn Charlwood". The signature is written in a cursive style with a period at the end.

Shawn Charlwood
Chair
General Dental Practice Committee