

To All Somerset GPs & Practice Managers

27th October 2021

Dear Colleagues

This letter is being sent to all General Practitioners and Practice Managers in Somerset. It describes the motion passed by the BMA General Practitioners' Committee (GPC) of England on Thursday 21st October and how the BMA may move towards Industrial or Collective Action and some of the implications. Not all details are yet known.

There is widespread resistance to NHS England's failure to address the crisis within General Practice caused by underfunding to primary care, uncontrolled demand and which has been exacerbated by the pandemic. You may have seen the LMC's disappointment at the NHSEI plan to improve patient access and support practices expressed in our letter to MPs recently.

Many colleagues will be feeling anxious about these developments. There will be a range of reactions across the profession. The LMC will provide advice to practices but it is only the BMA, as the Trades Union, that can call for and co-ordinate Industrial and Collective Action (see appendix 1). The LMC also needs to maintain the strong relationships with the CCG for the sake of the people and practices of Somerset.

The GPC England Motion

That this committee is outraged by the deliberate, relentless denigration of GPs by Government, NHSEI and certain quarters of the media, and: (57/57 - 100% Agree)

- i. *rejects the plan published by NHSEI on 14th October 2021 and calls on all LMCs (local medical committees) in England to disengage from any participation with the implementation of that plan (53 agreed, 2 disagreed, 2 abstained)*
- ii. *calls on all practices in England to pause all ARRS recruitment and to disengage from the demands of the PCN DES (47: 8: 2)*
- iii. *promises its full support to protect and defend any constituent GPs who refuse to engage or comply with the unreasonable contractual impositions by NHSEI of "Pay Transparency" and "Covid Medical Exemption Certification" (54: 1: 2)*
- iv. *calls on all practices in England to submit undated resignations from the PCN DES to be held by their LMCs, only to be issued on the condition that submissions by a critical mass of more than 50% of eligible practices is received (48: 8: 1)*
- v. *instructs the GPC Executive to negotiate a comprehensive new contract to replace the outdated, underfunded, unlimited, unsafe workload of the current GP contract (49: 6: 2)*

Somerset Local Medical Committee Crown Medical Centre Venture Way Taunton TA2 8QY

Chairman: Dr Karen Sylvester

Vice Chairman: Dr Tim Horlock

Medical Director: Dr Barry Moyse
Executive Director: Jill Hellens

Phone: 01823 331428 Fax: 01823 338561

Email: somersetlmc.office@nhs.net

Website: www.somersetlmc.co.uk

Motion 1(i) rejected NHSEI's letter of 14 October 2021 and called for LMCs to disengage from any participation in the plan to improve patient access and support practices. LMCs are independent of the GPC and had already signalled its disapproval as stated above. Proposals that involve extracontractual performance management are unacceptable given that we know that GP appointment data is flawed and the arbitrary 20% parameter proposed does not reflect the quality or safe delivery of patient care. It is possible that investment could be available to support practices by other routes if agreed locally and Somerset CCG has a proven track record of thinking innovatively. Happily, it appears that the "naming and shaming" concept has been changed now with the CCG expected to submit only anonymised practice data to the regional NHSEI.

Motion 1 (iii) relates to the contractual requirement, introduced in October 2021, for the GP NHS earnings 'Pay Transparency' declaration and participation in the 'Covid Medical Exemption Certification' process. Both are parts of the GMC/PMS contract (albeit the former being an imposition) not complying would count as Industrial Action and so the BMA would have to provide further guidance before colleagues took any action.

Motions (ii) and (iv) relate to the PCN DES and are the most significant parts as practices joining PCNs and engaging in the ARRS staff recruitment and deployment is the central plank of NHSEI's 'Long Term Plan' for General Practice including our role in Integrated Care Systems. The thought of jeopardising this will be unsettling for many, not least the PCN CDs who have committed so much time and energy to their roles and all those who are enthusiastic about the opportunities the DES offers for collaborative working while maintaining practice independence. GPs who have worked with ARRS colleagues recognise the value of their contribution to patient care and the wider team. The PCN DES was meant to bolster practices now as well as being part of making sure general practice is properly listened to in ICSs in future and make a real difference in disease prevention and improving public health.

Others contend that PCNs could be used by NHSEI to substitute the traditional practice model as PCN investment should be used to properly fund the core contracts. They argue that the ARRS scheme, the PCN DES specifications and the Investment and Impact Fund targets ("QOF for PCNs") carry a substantial workload.

The PCN DES is voluntary and so withdrawal by a partnership would not constitute Industrial Action as long as the right notice is given. It would be Collective Action if the BMA encouraged GP practices to do so. Practices are reminded that they may withdraw from the PCN DES until 31st October 2021 (Sunday) simply by giving the CCG notice and without reference to the LMC.

Recruitment of ARRS staff is expected but not a contractual requirement given the unpredictable nature of finding of suitable staff. PCNs will have submitted ARRS workforce plans for 2021/22 and 2022/23 but these are aspirational and not firm commitments.

Disengagement from "the demands of the PCN DES" is not further defined; the current PCN DES specifications include, for example, Enhanced Care in Care Homes, MDTs and Structured Medication Reviews undertaken with the support of ARRS staff to the benefit of patients and the wider NHS.

Somerset Local Medical Committee Crown Medical Centre Venture Way Taunton TA2 8QY

Chairman: Dr Karen Sylvester

Vice Chairman: Dr Tim Horlock

Medical Director: Dr Barry Moyse
Executive Director: Jill Hellens

Phone: 01823 331428 Fax: 01823 338561

Email: somersetlmc.office@nhs.net

Website: www.somersetlmc.co.uk

The LMC recommends GP colleagues await further BMA guidance before considering what action following motion (ii) might constitute.

The LMC will accept and store undated resignations, addressed to the CCG, from the PCN DES from any practice that chooses to submit one. If these were to be implemented – subject to the 50% critical mass and national developments - they could take effect up to 31st March 2022. **Submitting an undated resignation will not mean that a practice has resigned from the PCN DES only that it might in the future. The LMC is not suggesting practices need make an imminent decision nor is it giving advice on whether practices should resign or not.** Practices should also be assured that the resignations, if used, will only be deployed during the next opt-out window which will maintain their contractual obligations.

Motion (v) instructs GPC to negotiate a comprehensive new contract to replace the current GMS Contract. The last new contract took two years to negotiate.

I hope this summary is helpful. Only the BMA can trigger a Trade Dispute and call for Industrial or Collective Action and has promised further guidance shortly. The LMC will do what it has always tried to do: work locally with colleagues at the CCG and across the local NHS to support the profession however challenging the times.

With best wishes



Dr Karen Sylvester
Chairman
Somerset LMC

Somerset Local Medical Committee Crown Medical Centre Venture Way Taunton TA2 8QY

Chairman: Dr Karen Sylvester

Vice Chairman: Dr Tim Horlock

Medical Director: Dr Barry Moyse
Executive Director: Jill Hellens

Phone: 01823 331428 Fax: 01823 338561

Email: somersetlmc.office@nhs.net

Website: www.somersetlmc.co.uk

APPENDIX 1 INDUSTRIAL AND COLLECTIVE ACTION

To take **Industrial Action** a Trades Union must declare there is a Trade Dispute; given the present impasse it is likely the BMA would find grounds to do so. Industrial Action involves acting outside your contract: this would need to be approved by the BMA Council after looking the cause, the outcome that is being sought, an identified achievable end point and the resources needed to support the action.

Under Trades Union law a Union must obtain the participation of at least 50% of those eligible to vote with the addition that, where those involved in industrial action provide 'important public services', for a mandate 40% of the electorate must vote in favour and not just a simple majority.

Collective Action represents actions the BMA could encourage General Practitioners to take collectively; these would not represent a breach of contract and do not necessarily require a Trade Dispute to be declared. It would nevertheless be usual for the BMA to ballot before any collective action to demonstrate it had a mandate in the context of delivering public services.

Response of NHS England and CCGs to any breaches of contract.

If a contractor [GP Partnership] breaches their contract, it is open to a CCG to issue a Remedial or Breach Notice, under clauses within the GM/PMS Contract, which must define what contractual clauses are held to have been breached, and, in the case of Remedial Notices, how they can be set right. Successive Notices can be issued. There is no requirement to issue such Notices, although there is an expectation, and under the Regulations the LMC must be consulted before such a Notice is issued to a practice, or more than one.

The LMC will provide more information to practices on this point should a ballot for Industrial Action be called by the BMA.

APPENDIX 2 CONSEQUENCES OF RESIGNATION FROM THE PCN DES

A practice resigning from the PCN DES will no longer be paid the capitated £1.76 Network Participation Payment.

The payments £1.50 CCG payment, Extended Hours payment, ARRS payments and IIF achievement payments are made to the PCN collectively.

PCN CD payments and the recent quarterly supplements are ringfenced for the PCN CD role.

After withdrawal practices will have no responsibility to deliver the PCN DES specification but will retain a 'Duty of Co-operation' to enable patients to receive services delivered under the PCN DES such as providing contact details of eligible patients.

CCGs will continue to have a responsibility to deliver PCN DES services to their populations.

Considering practice accrued employment liabilities should the PCN DES be handed back, this was addressed in Para. 1.20 of the Update to the GP Contract Agreement 2020/21 – 2023/24 as below: *Furthermore, should all the practices which comprise a PCN ever decide in the future to hand back the DES, the commissioner must arrange timely alternative provision for the same services from another provider, e.g. another PCN or NHS community provider. In these circumstances the law regarding the transfer of staff would apply as normal. The commissioner will approach the appointment of the new provider on the basis that, unless there are exceptional circumstances not to do so, 1) relevant staff will transfer from the outgoing practices) to the replacements, 2) the TUPE Regulations will apply to that transfer and 3) transferring staff will be treated no less favourably than if the TUPE Regulations had applied.*

Somerset Local Medical Committee Crown Medical Centre Venture Way Taunton TA2 8QY

Chairman: Dr Karen Sylvester

Vice Chairman: Dr Tim Horlock

Medical Director: Dr Barry Moyse
Executive Director: Jill Hellens

Phone: 01823 331428 Fax: 01823 338561

Email: somersetlmc.office@nhs.net

Website: www.somersetlmc.co.uk