

Derby and Derbyshire LMC
Saxon House
Heritage Gate
Friary Street
Derby
DE1 1NL

15th December 2016

Dear Peter,

Re: Cost of regulation of practices – CQC fees

Thank you for your letter on behalf of the Derby and Derbyshire Local Medical Committee dated 4th November regarding the Care Quality Commission's (CQC) proposals for regulatory fees from April 2017. Your letter was shared and debated with GPC at its meeting in November, during which you further articulated the views of your constituents. The intention is to have a further debate on this matter at the GPC meeting in January as we take the issues that you and the wider profession have raised very seriously.

In your letter you called for action by the British Medical Association (BMA) and/or the General Practitioners Committee (GPC) to be considered. It's important to state at the outset that GPC has called for the scandalous proposal by CQC to increase fees in 2017 by 76% to be halted, and will do so again as part of the formal consultation process – a copy of our response will be sent to you before your next LMC meeting. General practitioners and Local Medical Committees are understandably furious at the high costs of regulating general practice in England, and have previously made their views on CQC clear through votes of no confidence passed by GPC and the BMA. GPC has vigorously argued that the cost of regulating practices should in fact reduce as a result of CQC's own proposals to diminish the frequency and bureaucracy of GP inspections.

As you pointed out in your letter, CQC's fees proposals are a result of government policy to cease central funding, and for all fee-setting regulators like the CQC to fully recover their costs through the fees they charge providers. Although the total cost of regulating the GP sector is not increasing, this policy would see the costs recovered from GP practices rise from 56% of total recoverable costs this year (£21.3M) to 100% of recoverable costs next year (£37.5M).

Following pressure by GPC, the value of the CQC fee rise for 2016/17 was fully reimbursed by NHS England through an increase to core practice funding. GPC will be holding NHS England to its commitment in the General practice Forward View that practices are fully compensated against further rises – we are now in active discussions to secure this additional new funding to fully cover the projected rise next year.

While NHS England has promised to reimburse GP practices for the proposed increase in fees, it nevertheless will divert overstretched NHS funds from frontline patient services simply to prop up a system of regulation and inspection in which the majority of GPs have little confidence.

In your letter you proposed a number of specific actions for the BMA/GPC to take forward – all of which have been considered by the BMA's regulation policy team and in-house senior solicitor, and externally via a formal legal opinion provided by Counsel. The first was that GPC/BMA should declare a formal dispute with Government on this issue. The requirement to pay CQC fees is a statutory, rather than contractual duty. Based on the legal advice received, it is clear that a significant barrier to taking lawful industrial action is demonstrating that opposition to the CQC fee increase amounts to a 'trade dispute' within the meaning of the relevant regulations. Without being able to do so, there is an important gap in the legal protection offered to GPs who would wish to take part in any so called dispute. As such a BMA/GPC declaration of a formal dispute would not offer practices any protection. The consequences of non-payment of the fees are serious both for the GP practice/ service provider and also potentially for individual GPs depending on their responsibilities for payment. The BMA does not therefore believe that practices should be put in this extremely vulnerable position.

You also proposed the BMA/GPC establish an escrow account for practices to pay the required fees into, with these only being released when satisfactory arrangements have concluded to deal with a range of the profession's CQC concerns. The legal opinion from Counsel is clear that unless the escrow payment method was the subject of a specific agreement between the BMA/GPC and CQC, payments to any such account would not meet the legal obligation to pay fees to CQC under the Health and Social Care Act 2008. As GP practice owners (as regulated service providers) are required by statute to make payments to CQC they do not have a legal basis to withhold the payment – accordingly it is extremely unlikely that GPC/BMA would be able to secure such an agreement with CQC.

In your letter you also called into question the CQC's consultation process based on the principle that regulators must recover their costs from those they regulate. Although HM Treasury has stated that the move to full cost recovery must be achieved in as short a timescale as possible, resulting in CQC not consulting on options other than achieving full cost recovery next year, this does not render the consultation process legally deficient. Counsel advises that it is well established in case law that an authority such as CQC can have a 'preferred option' and can proceed to consult upon that option. The fact that it has already come to a provisional view or preferred option does not legally prevent the consultation exercise being conducted in good faith.

Any challenge to the proposed fee increases for 2017 would involve calling into question the actual consultation process. However, no evidence was found that would support a legal challenge on these grounds given how this process has been managed.

With the above information in mind, the options you have proposed cannot be legally taken forward. However, I would like to reassure you that GPC will continue to resist the imposition of these unjustified fee increases, to ensure practice expenses are fully reimbursed and to work to overhaul CQC's registration and inspection approach, and in doing so seek to halt the continued waste of funds that are being diverted from essential front line services on which patients rely.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Chaand Nagpaul', written over a light blue circular stamp.

Dr Chaand Nagpaul CBE
Chair, BMA General Practitioners Committee