

This message draws attention to the comments of your authorised spokesperson in the **Kent Messenger** of 19 October 2012 ([see images](#)). Addressed to you, it is aimed at those who may wish to hold you to account for your failure to enforce the terms of the GP contracts. Other "areas", including the neighbouring "Surrey and Sussex", may be in the same position.

The content holding comments attributed to **NHS Kent and Medway** is shown below.

'We're working to solve the problem'

SURGERIES in Kent and Medway are monitored by the area's Primary Care Trust. A spokesman for the service said: "Some surgeries took out contracts for 084 numbers several years ago because the call management systems enabled GPs to improve their service to patients.

"However it was not made clear that calls from providers other than BT or from mobile phones could cost more.

"We are currently working with the Kent Local Medical Committee and the remaining practices that have 084 numbers to find a resolution.

"Some surgeries have installed an additional geographical number and we will be looking to recommend this type of arrangement."

The spokesman added that some surgeries opted for an 084 code because it allowed them to add various options and lines.

I am disturbed by the incompetence shown by **NHS Kent and Medway**. You risk misleading others, by demonstrating a continuing ignorance about the cost of relevant telephone calls.

You claim that you are still working with the LMC in search of a resolution. This could be between the actual contract terms and the [BMA GPC Guidance of January 2010](#), which supports use of expensive numbers (maybe by deceit). The contract must now be enforced.

There is no evidence to show that migration to the equivalent 0344 number is not a "reasonable step" for each of your practices to take. This is demanded by the terms of the contract, once the truth of the relative cost of calling has been accepted.

You have adopted a policy which seeks to deliberately undermine the principles of the NHS

In "our NHS" we do not permit patients to choose the quality of their access to NHS services on the basis of price. We specifically prohibit contracted NHS providers from presenting this option, but you look to recommend it - "**Some surgeries have installed an additional geographic number and we will be looking to recommend this type of arrangement**".

If a practice provides access on a geographic number, operating an expensive number in parallel is to offer a superior service at a premium rate. "**Two tier**" access to the NHS.

I address your comments in detail below, with links to relevant materials.

Your remarks and my comments

I quote below attributed remarks, published by the **Kent Messenger**, and comment. I trust that the Editor was seeking to express the opinions of readers by choosing the message: *"GP phone cost makes us sick"*.

I provide many useful links, however I must urge you, and others, to confirm the veracity of all my comments, as necessary, from authoritative sources. Please ask me for help or clarification, or challenge me, as appropriate.

I would be delighted to receive a direct response from yourselves, however you are only accountable to those you serve, if to anyone, not to me. It is the people of Kent who need to hear your responses to the points made here.

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 It was not made clear that **calls from providers other than BT or from mobile phones could cost more**

Until 1 October 2009, calls to the type g6 0844 numbers in question **invariably cost more** than equivalent calls to geographic numbers. This applied **if the call was made using BT** or any other call service provider. You may have misunderstood what happened in 2009.

Since these price changes (see [BT announcement](#), see [my comment](#)), the unregulated "penalty charge" for daytime calls to geographic numbers, outside the terms of the chosen Call Plan, has been greater than the regulated cost of an equivalent call to a g6 number. This affects only a small group, who are subject to a perverse effect caused by some legacy regulation of BT remaining in place, whilst other regulation of BT charges has been lifted.

Some have foolishly allowed themselves to be led to believe that this minority group represents the totality of telephone users. Furthermore, some have even been further misled into believing that this perverse situation pertained prior to October 2009.

For the overwhelming majority of BT customers, as well as all those of other providers, the 5p per minute Service Charge and the telephone company's Access Charge has always made calls to these 0844 numbers more expensive than equivalent calls to geographic numbers.

It is disturbing to learn that your officers are *"working to solve the problem"* in continuing ignorance of the reality of the situation. This is especially disturbing when they appear to be claiming to have corrected a previous misunderstanding.

 It was not made clear that calls from providers other than BT or from mobile phones could cost more

You do not make it clear to whom you are referring when you suggest that it was not the practices which had to make the necessary determination about relative call costs, as demanded by the terms of their contract. Who could it be that should have made it clear?

-  The **telephone call service companies** have always published their tariffs.
-  As a **campaigner for the NHS**, I published a briefing (available [at this link](#)), drawing attention to the relevant elements of these tariffs. This was circulated to all PCTs on 5 January 2010, to assist with preparation for the implementation of the forthcoming contract revisions. I have published and circulated many other briefings. The **fair telecoms campaign** presents a [formal briefing and detailed evidence](#).
-  The **Department of Health** has always made it very clear (after having made the [awful mistake](#) of approving, rather than banning, use of 084 numbers in 2005) that it is going to keep well away from detail, which it is clearly unable to understand or deal with.
-  The **BMA** made its position clear by arguing, in response to the DH public consultation on use of 084 numbers, that it thought it acceptable for patients to pay more to contact their GP if this enabled the practice to offer an "enhanced" telephone system. The need for such an argument could have been taken as clarification of the cost position also.
-  The **providers of telephone systems** funded by the revenue share from these numbers (notably **NEG / Daisy Surgery Line**) cannot be expected to make the downsides of their offering clear. It is the responsibility of their customers to use their judgement in making a business decision. As GPs have the business skills necessary to lead CCGs, a relatively petty issue such as this would surely not challenge their commercial competence!

The **BMA GPC** recommends use of the telephone system provider to the practice as a source of information about the charges levied by all telephone companies. Whilst this company may be very keen to step forward with an opinion, it cannot be expected to offer an objective and comprehensive view, nor could it be held to account for matters beyond its control - i.e. the charges levied by telephone providers to those who call the practice.

If the PCT is now complaining that it expected the opinions offered by NEG / Daisy to be totally objective, accurate, comprehensive and accountable and is surprised to discover that this is not the case, then one can have little sympathy for such foolishness.

The terms of the contractual provisions that came into effect on 1 April 2010 required that *"The Contractor shall ... consider whether, having regard to the arrangement as a whole, persons pay more to make relevant calls than they would to make equivalent calls to a geographical number"*.

It is blatantly clear that it is for the contractor (the practice) to make this determination for itself, not for some other party to "make it clear". The PCT's role is simply to verify that the consideration has been undertaken properly. If practices, the BMA GPC, the LMCs and the PCTs were foolish enough to believe that non-specific, misleading and false "assurances" from an unaccountable interested party could be trusted in lieu of proper considerations, then that was always a gross error, which must be acknowledged and remedied.

We are currently working with the Kent Local Medical Committee and the remaining practices that have 0844 numbers to find a resolution

The **LMC** is probably reflecting the policy of the **BMA GPC**, which originally opposed the prohibition, and has subsequently sought to undermine its implementation.

The "remaining practices" now include many who adopted 0844 numbers after the prohibition was introduced on 1 April 2010; the Park Practice in Herne Bay did so at the end of August 2012. Had the PCTs been timely in recognising their responsibilities, these cases would not have required belated resolution, during the last few months of their existence.

The "resolution" for practices using 0844 numbers, as demanded by the contract terms, is that they take "*reasonable steps ... to ensure that, having regard to the arrangement as a whole, persons will not pay any more to make relevant calls to the practice than they would make equivalent calls to a geographical number*". (I stress two key phrases.)

One "reasonable step" available to all users of 084 numbers is to migrate to the equivalent 034 number. This avoids the need to vary the system or telephone service provision arrangements, and the possible consequence of a penalty charge for early termination of a contract being incurred. The provider in question "**Daisy / NEG Surgery Line**" advises that it offers 034 numbers for migration. Any "remaining" practice that cannot produce evidence to show that this is not a "reasonable step" available to it, is clearly in breach of its contract.

It may be possible to show that, for no sound commercial reason, **Daisy** deviates from standard industry practice and effectively prevents NHS GPs from belatedly complying with the principles of the NHS, by migrating to the equivalent 034 number. If, and only if, this can be shown, then it may be appropriate to look at measures to mitigate the effect of this alleged external attempt to subvert the NHS, in pursuit of openly declared objectives.

We are already 18 months past the 1 April 2011 deadline. The use of 03 as a resolution was proposed, in general terms, in December 2008 both by Ofcom (see "[The 03 alternative](#)") and by myself on [TV](#) and [radio](#). I then published [a specific outline proposal](#) on 7 January 2009.

If you are to show that your unsuccessful 2½ year long search for a resolution has been undertaken seriously and competently, we need to understand why all Surgery Line users did not migrate to the equivalent 0344 numbers before 1 April 2011 and why they are not doing so now. If there is evidence to show that this is not a "reasonable step", as stated in the contract, then this evidence must be published.

We also need to know why practices in Kent continue to adopt 0844 numbers, and thereby add to the number of cases that will have to be resolved, once the resolution is recognised.

If **NEG / Daisy** misleads the unwary by offering its unaccountable unsubstantiated opinions about other company's tariffs, then it is the unwary who are at fault. If this company deviates from standard industry practice, without good reason, by refusing requests for migration to the equivalent 0344 number, then this unusual policy must be declared publicly. Evidence of such a policy would provide the only justification for a practice using **Surgery Line** not to be able to cease holding a 0844 number. (Whether that number needed to be used is addressed below.)

Some surgeries have installed an additional geographic number and we will be looking to recommend this type of arrangement

This is the point that causes me the greatest concern.

"This type of arrangement" does not **ensure that** callers **will not** pay more, as required by the contract, because the 0844 number remains in use.

This is especially true if, as would normally be the case, the 0844 number offers superior access and some may chose to call it for this purpose.

It cannot be seen as a "resolution", because it fails to address the requirements specified in the contract.

Consideration, adoption or PCT recommendation of this type of arrangement represents a far more serious breach of regulations - the statutory duty held both by contracted practices and by PCTs to **"have regard to the NHS Constitution"**.

A most fundamental principle of the NHS is that the same access and level of service is available to all, without charge. **"Access to NHS services is based on clinical need, not an individual's ability to pay"**. Well-off patients may not acquire a better standard of service from, or access to, the NHS by paying, even if they are happy to do so. Perhaps the greatest danger to the NHS lies in those cases where some patients are prepared to pay.

Doubts about this issue in the context of "the NHS reforms" were resolved, by Government Ministers and by parliament, during the passing of the Health and Social Care Act 2012.

In this context we read your declared intention not only to tolerate, but to positively recommend, an arrangement that offers "two tier" access to NHS services by telephone.

At a time when we fear that the principles of the NHS will be tested by the involvement of many more external bodies, it is a cause of great concern to learn that they are being actively set aside by those charged with the duty of defending them.

If a practice chooses to provide access on a geographic number, the only reason for operating an expensive number in parallel is to offer a superior service option at a premium rate. This "two tier" arrangement is simply intolerable and must be halted.

In terms of the GP contract, arranging access through the geographic number is the **"reasonable step"**. **Use of the 0844 number must be withdrawn** to **"ensure that ... persons will not pay more"**. The practice's commitment to make further lease payments is its responsibility - if an alternative geographic number is available, it must be used.

Migration to the 0344 equivalent number would probably provide a better solution all round - avoiding the need to acquire a new number. It is likely that the practice would have to continue paying for the (otherwise unused) non-geographic number facilities. It would be better for these to be made available for use by patients - through a single (03) number.

My conclusions

Whatever the impropriety of the GPs involved, the fact that officials of the NHS are not only failing in their duty, but also actively setting out to undermine the principles of the NHS, must be the cause of great concern to the people of Kent.

Kent Messenger

The editorial "GP phone cost makes us sick" ([viewable here](#)) makes it clear that the GP contract changes, enforced by the PCT, should have outlawed use of 084 numbers. It must be recognised that responsibility for the failure to apply this ban rests with **NHS Kent and Medway**.

I do not know how the Editor came to the false conclusion that the only obligation on existing users of 084 numbers was to undertake a "review". There is also a false suggestion that this affair relates only to "guidance", rather than legally enforceable contractual conditions. There is no question that if the matter were competently handled by those with the respective responsibility, then a ban would result.

Responsibility

Responsibility for the enforcement of the terms of the GP contracts rests (in law) with the 3 individual PCTs which comprise the Cluster known as "**NHS Kent and Medway**"; its Chief Executive, **Ann Sutton**, is the accountable officer. With no PCTs from 1 April 2013, this formal responsibility will pass to the NHS Commissioning Board; **Felicity Cox**, has already been appointed as the Local Area Team Director for Kent and Medway.

It is understood that, as with other aspects of the forthcoming changes, transitional arrangements are in place. **Amanda Fadero**, the NCB Director for the neighbouring area of **Surrey and Sussex** accepts responsibility for very similar policies being applied across this area. I would therefore expect that **Felicity Cox** will be ready to do the same.

Accountability

The "NHS Reforms" attempt to adjust lines of accountability. It will however take time, and possible adjustment, before we will truly be able to understand the effect.

Primary Care Trusts are essentially autonomous (not much "Q" in QUANGO). There is even doubt about how a breach of statutory duties could be addressed, short of Judicial Review.

The people of Kent may however look to the following means of applying pressure to their local appointed NHS officers, so that they may properly recognise and fulfil their duties.

- **Kent County Council** has a statutory role to oversee the operation of the NHS in its area. This is exercised through its [Health Overview and Scrutiny Committee](#).

In preparation for the forthcoming changes, there is also a [\(Shadow\) Health and Wellbeing Board](#) already in operation.

- **Kent LINK** is established under statute as a means for local people to make representations about the way in which NHS services are managed and delivered.

From April 2013, the functions of the LINK will be taken over by the local **Healthwatch**. Information about the transition is given on [this page](#).

Informal, but perhaps influential, pressure may be applied through:

- **MPs** and other democratic representatives
- Local **media**

The autonomous nature of PCTs (and the NHS Commissioning Board) precludes specific intervention by the state, however suitable comments and suggestions may be found to be effective if they come from:

- Government **Ministers**
- The **Department of Health**
- senior **NHS officers**

I have aimed to cover all of these channels by the direct circulation of this message.

Whilst the above may be effective on a collective basis (reflecting the nature of the NHS as being owned by us all), individual complaints about the effect suffered as a result of the behaviour of NHS bodies and personnel may be presented to:

- The **Health Service Ombudsman**

This is not necessarily the best way of dealing with someone who is breaking the law (breaching a statutory duty). It is however an approach that has been followed for identical cases in other areas, including one case that is currently undergoing close examination.

Remedy

As the PCTs are to be abolished next April, there is little point in seeking for them to be reformed, or for their officers to be corrected in their performance of roles which they will shortly relinquish. If blame for this "sickening" situation could be made to stick, it would be of no consequence for those who, one hopes, are pursuing future roles outside the NHS.

There is no reason to hold back on the action that should have been taken long ago. A method of searching for a solution that has totally failed over 2½ years cannot however be allowed to continue on the same basis for a further 6 months.

There is indeed every reason for **Felicity Cox** to set out how the future will be for the NHS in **Kent and Medway**, by directing existing resources to use the existing mechanisms available to them properly. Enforcement of the terms of existing contracts may be complicated by them having to be transferred over from the PCTs to the NCB. The resolution must have been found and fully implemented before next April.