

GUIDANCE NOTE FOR PARTIES INVOLVED IN DISPUTE RESOLUTION

Introduction

This Guidance Note is for general information purposes only. It is not exhaustive but does cover the essential elements needed for parties submitting, or responding to, applications for dispute resolution.

Who are we?

The NHS Litigation Authority ("the Authority") is a Special Health Authority, which (amongst other things) adjudicates in contractual disputes between the NHS Commissioning Board (NHS England) and individual primary care contractors.

Although the relevant Regulations refer to the Secretary of State, these matters were delegated to the Authority with effect from 1 April 2005. The Family Health Services Appeal Unit based in Leeds discharges these functions for the Authority.

What regulations are applicable?

The relevant legislative framework is contained in one of the following:

- the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013;
- the National Health Service (Ophthalmic Services Contracts) Regulations 2008;
- the National Health Service (General Dental Services Contracts) Regulations 2005;
- the National Health Service (Personal Dental Services Agreements) Regulations 2005;
- the National Health Service (General Medical Services Contracts) Regulations 2004;
- the National Health Service (Personal Medical Services Agreements) Regulations 2004

Is legal representation permitted?

Parties can be represented or assisted by whoever they wish although representatives who are not bound by The Law Society's Code of Conduct should provide an 'authority to act' letter from their client.

What information should I provide?

An application for dispute resolution should include:

- the full names and contact details of the parties involved in the dispute;
- a statement describing the nature and circumstances of the dispute (with reference to the appropriate regulations or contract provisions);
- a signed copy of the contract which is in dispute;
- what the applicant sees as the appropriate outcome of the dispute;
- confirmation that all local dispute resolution options have been exhausted.

Who will take the final decision?

The decision is usually taken by an officer of the Authority who fulfils the role of "the Adjudicator".

What is the procedure?

On receipt of an application, the Authority will first consider whether it has jurisdiction to consider the dispute.

If it does, the Authority will then consider whether the application provides the information required by the Regulations. If the appropriate information has been provided, the Authority will invite representations from parties. At this stage, the parties should provide all further evidence which they wish the Authority to consider.

No document may be provided on a 'confidential basis' although a party may apply to have parts of any document withheld from publication in the Authority's determination. All information received will be disclosed to the other parties, so any party wishing to have material withheld from publication must send a full version of the document to the Authority, indicating which parts the party would like withheld and the reasons why withholding is sought.

Any representations received will be circulated for final observations before the case is placed before the Adjudicator for determination.

What happens next on GMS/PMS Current Market Rent disputes?

The Authority may ask the Royal Institution of Chartered Surveyors to nominate an advisor from whom the Adjudicator may seek advice on the current market rent for the premises. The Authority will circulate a copy of any advice received to the parties for observations on its content, before the Adjudicator reaches a final decision on the application for dispute resolution.

Will there be an Oral Hearing?

The majority of cases are decided on the basis of the correspondence. Occasionally, however, particularly where there are material differences in the facts presented by the parties, complexities, or even insufficient information, it may be necessary to hold an Oral Hearing.

Who will be present at the Oral Hearing?

The Adjudicator (who may be assisted by a clerk), the parties, their representatives and any relevant witnesses will be invited to attend an Oral Hearing.

What procedure will be followed at an Oral Hearing?

The Adjudicator will explain the procedures to be followed on the day (and may also provide written procedural information in advance).

Who will be allowed to speak?

In general terms, each party will be allowed to expand on their written evidence and each party will be given the opportunity to comment on matters raised at the hearing. The Adjudicator may question any party.

Are witnesses allowed?

Appropriate witnesses may be brought to support your case although you should provide the Authority with a written summary of their evidence in advance.

The Adjudicator will indicate at the hearing whether it is necessary for them to give evidence orally.

What papers will the parties receive?

If you have indicated your intention to attend the hearing, you (and all other parties attending) will receive the a set of papers which will usually include:

- the application for dispute resolution; and
- any representations received.

Any further material which you wish to present at the hearing will be considered at the discretion of the Adjudicator.

How long will the hearing last?

This will depend on the complexity of the case and the number of witnesses involved. Hearings may last for one or more days and it will be a matter for the Adjudicator to determine the length for which the case will be listed. The Adjudicator will try to ensure parties keep to the point and that there is no repetition.

What happens after the Hearing?

The Adjudicator will consider the information put forward by the parties and make a determination with reasons. The Authority will then notify the parties of the decision in writing.

Parties with special and other needs?

The Authority is committed to ensuring that adequate facilities and equipment are provided at oral hearing venues to assist parties with disabilities. Please notify the Authority in advance if any particular assistance is required, providing as much notice as possible.

How long will the process take?

The FHSAU is committed to ensuring that disputes processed on the papers are determined within 15 weeks. The Authority aims to resolve disputes involving a RICS advisor or which are determined following an oral hearing within 35 weeks.

To whom can I complain if I am dissatisfied with the adjudication of the dispute?

Decisions of the Authority can only be set aside by the High Court. Independent legal advice should be sought on this.

Any complaints about the way in which a dispute has been handled should be submitted to:

The Chief Executive
The NHS Litigation Authority
151 Buckingham Palace Road, London, SW1W 9SZ

or to:

The Appeals Manager
The NHS Litigation Authority
FHS Appeal Unit
1 Trevelyan Square
Leeds
LS1 6AE.

Your concerns will be investigated by the Chief Executive or a nominated officer.

Is there any other information available?

The Authority publishes previous decisions, statistical information, a sheet of Frequently Asked Questions and other material on its website at: www.nhs.uk.

Alternatively you can email fhsau@nhs.uk

Please note however that we do not provide advice.