

Pharmacy Appeals Committee (“Committee”) Terms of Reference

By Schedule 3 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (the Regulations), the Secretary of State for Health and Social Care must determine valid appeals in relation to inclusion on the pharmaceutical list regulated by NHS England in connection with Regulation 10 of the Regulations.

These functions are delegated to the NHS Litigation Authority (NHS LA) by Regulation 117 of the Regulations. With effect from 1 April 2017, NHS Resolution became the operating name of the NHS Litigation Authority.

NHS Resolution is therefore responsible for ensuring the reasoned determination of such appeals. The Primary Care Appeals service, is responsible for carrying out this function on behalf of NHS Resolution.

Remit

In accordance with paragraph 3(1) of The NHS Litigation Authority (Functions relating to Pharmaceutical and Local Pharmaceutical Services) Directions 2013 (the Directions), NHS Resolution must make arrangements for the final deciding of appeals against the grant or refusal of an application for inclusion in a pharmaceutical list to be exercised on its behalf by a committee constituted in accordance with the Directions.

Similar requirements apply with regard to functions exercised under Direction 6(1) (oral hearings) of the National Health Service Litigation Authority (Pharmaceutical Remuneration – Payment Disputes) (England) Directions 2022.

Membership

Paragraph 4—(1) A committee established under direction 3(1)—

- (a) may, but need not, be composed wholly or partly of officers of the Authority; and
- (b) is to consist of no more than 5 members, of whom—
 - (i) in the case of a committee consisting of 2 members, both members must be lay persons, or
 - (ii) in the case of a committee consisting of more than 2 members, a majority or all of the members must be lay persons.

(2) No person is to be a member of a committee established under direction 3(1) (whether or not their involvement would give rise to a reasonable suspicion of bias) who—

- (a) is a person who is included in a pharmaceutical list or is an employee of such a person;
- (b) assists in the provision of pharmaceutical services under Chapter 1 of Part 7 of the 2006 Act (pharmaceutical services and local pharmaceutical services – provision of pharmaceutical services);
- (c) is an LPS chemist, or provides or assists in the provision of local pharmaceutical services;
- (d) is a provider of primary medical services;
- (e) is a member of a provider of primary medical services that is a partnership or a shareholder in a provider of primary medical services that is a company limited by shares;

(f) is employed or engaged by a primary medical services provider or a PCTMS practice; or

(g) is employed or engaged by an APMS contractor in any capacity relating to the provision of primary medical services.

(3) No other person is to be a member of a committee established under direction 3(1) which is considering any matter if because of an interest or association they have, or because of a pressure to which they may be subject, their involvement in that consideration would give rise to a reasonable suspicion of bias.

(4) In paragraph (1), “lay person” means a person who is not and never has been registered by—

(a) a body (B) mentioned in section 25(3)(a) to (ga) of the National Health Service Reform and Health Care Professions Act 2002 (the Council for Healthcare Regulatory Excellence); or

(b) a body that preceded B as the statutory regulator of any profession regulated by B.

NHS Resolution Officers who sit on Committee are currently, but not limited to, the Head of Appeals, the Deputy Director of Advice and Appeals and the Technical Case Manager. The remaining membership is drawn from Primary Care Appeals Panel Members.

Accountability

Committee has delegated authority from the NHS Resolution Board. At operational level, Committee members are accountable to the Head of Appeals.

Under no circumstances will an NHS Resolution Officer or any other person apply any influence to Committee to make a particular decision where they are not a Committee member on the case in question, albeit that such officers and any advisors instructed by them may raise matters or queries to a Committee's attention for its consideration prior to finalising its determination. The decision will be, however, for the Committee.

Pursuant to the Scheme of Delegation, senior NHS Resolution Officers exercise functions in relation to the determination of appeals that are not required to be exercised by a Committee in accordance with the Directions.

Papers Committee

The following sets out the arrangements for such meetings:

- NHS Resolution will determine the frequency of any Committee meetings;
- membership of each Committee shall be determined by either the Chief Executive Officer, the Director of Advice and Appeals, the Deputy Director of Advice and Appeals, the Head of Appeals or the Technical Case Manager;
- Committee will normally be chaired by the Head of Appeals or, in their absence, the Deputy Director of Advice and Appeals;
- the Agenda will normally be published on-line at least three working days in advance of the meeting;
- cases can be withdrawn from the Agenda at any stage e.g. additional advice might be sought or the case referred to oral hearing;
- cases may be deferred on the stated date e.g. additional advice might be sought or the case referred to oral hearing;
- cases can be tabled at any Committee meeting if agreed in advance with the Chair of the meeting;

- Committee will be provided with a brief and bundle to enable it to consider the application;
- Committee will declare any interests prior to any meeting;
- in line with current policy, determinations will continue to be disclosed in writing (inclusive of email) and not verbally to parties; and
- unless cases are deferred, NHS Resolution would aim to issue a decision within one week of the meeting.

Oral Committee

The following sets-out the arrangements for such hearings:

- NHS Resolution will determine the period in which Committee will convene;
- membership of each Committee shall be determined by either the Director of Advice and Appeals, the Deputy Director of Advice and Appeals, the Head of Appeals or the Technical Case Manager;
- Committee will normally be chaired by the Primary Care Appeals Panel Member - Committee Chair;
- Committee will be provided with an oral hearing bundle to enable it to consider the application;
- Committee will declare any interests prior to any hearing;
- prior to the hearing, those conducting it will visit the area and may visit the proposed premises and other pharmacies in the vicinity of the application in order to better understand the evidence of the parties (market entry only);
- Committee will establish a procedure to be followed which will be outlined at the beginning of the hearing;
- in line with current policy, determinations will continue to be disclosed in writing (inclusive of email) and not verbally to parties; and
- NHS Resolution would aim to issue a decision within four weeks of the hearing (unless Committee is required to reconvene).

Review of Terms of Reference

These Terms of Reference will be reviewed every twelve months.

| Date | Author | Version | Reason for Change |
|-------------|-----------------|----------------|---------------------------------------|
| 05/06/2024 | Head of Appeals | 6 | Amendment to accountability paragraph |