

**GUIDANCE NOTE
FOR PARTIES INVOLVED IN DISPUTE RESOLUTION**

1 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.

2 Who are we?

NHS Resolution, amongst other things, adjudicates in contractual disputes between the NHS Commissioning Board (NHS England and NHS Improvement (“NHS England”)) and primary care contractors.

Although the relevant Regulations refer to the Secretary of State for Health and Social Care (“Secretary of State”), these matters are delegated to NHS Resolution. The Primary Care Appeals service based in Leeds discharges these functions for NHS Resolution.

3 What regulations are applicable?

The legislative framework relevant to primary care NHS dispute resolution is contained in one of the following:

- the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013;
- the General Ophthalmic Services Contracts Regulations 2008 (“GOS”);
- the National Health Service (General Dental Services Contracts) Regulations 2005 (“GDS”);
- the National Health Service (Personal Dental Services Agreements) Regulations 2005 (“PDS”);
- the National Health Service (General Medical Services Contracts) Regulations 2015 (“GMS”);
- the National Health Service (Personal Medical Services Agreements) Regulations 2015 (“PMS”).

There may also be statutory directions that are relevant, for example, the General Medical Services Statement of Financial Entitlements Directions 2013.

Parties to an NHS Contract have the right to utilise the NHS dispute resolution process as a cost effective mechanism for determining contractual disputes. This right is contained in section 9 of the NHS Act 2006 and enables a party to an NHS Contract to refer a dispute to the Secretary of State.

The ability of NHS Resolution to determine a dispute depends on whether the dispute falls within the authority delegated to it which may be contained within the relevant

Regulations or in the Secretary of State's directions to NHS Resolution.

Contractual disputes concerning primary care contractors may arise which the Secretary of State has not currently delegated to NHS Resolution. These include disputes relating to Alternative Provider Medical Services contracts ("APMS") and contracts other than those made in accordance with the legislation listed above, such as contracts for locally commissioned services (which are often commissioned under the NHS Standard Contract or a local authority contract).

A primary care contractor may still be able to refer a dispute under these contracts to the Secretary of State under section 9 of the NHS Act 2006 if the contract is considered to be an NHS Contract. Once referred, the Secretary of State will need to determine the matter personally or appoint a person to do so on a case by case basis. The Secretary of State has on previous occasions appointed NHS Resolution to hear individual disputes referred in this way.

Where a dispute is referred directly to NHS Resolution, it will first consider whether it has delegated authority to determine the matter. If it falls outside its authority, NHS Resolution will inform the party submitting the dispute and suggest that the party refers the matter to the Secretary of State under section 9 of the NHS Act 2006 requesting that a person is appointed to determine the dispute.

4 *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.

5 *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;
- if you are acting on behalf of a Contractor which is made up of a number of "contractor parties" (for example, four individuals who may or may not be acting in partnership, but who are contractor parties to a PMS Agreement), we require a letter of authority which is signed by all signatories to the contract;
- what the applicant sees as the appropriate outcome of the dispute;
- confirmation that local dispute resolution options have been exhausted;
- a copy of NHS England's decision letter (if applicable);
- a completed comparables table (in Current Market Rent cases).

NHS Resolution's current protocol can be found at <https://resolution.nhs.uk/resource-services/primary-care-appeals/>

6 Who will take the final decision?

The decision will be taken in accordance with any relevant directions from the Secretary of State. Decisions are usually taken by an officer of NHS Resolution who fulfils the role of "the Adjudicator".

7 Local Dispute Resolution (LDR)

The relevant Regulations may require parties to have LDR before a referral is made to NHS Resolution.¹ NHS Resolution will, as a preliminary matter, consider whether the parties have complied with LDR requirements.

The Regulations may also require LDR in other contexts which may, depending on the nature of the dispute, be relevant to the matter.²

8 Limitation

The relevant Regulations set out the timescale within which an application for dispute resolution should be made (the limitation period). For example, applications for dispute resolution pursuant to GMS, PMS, GDS, PDS and GOS arrangements must be made before the end of the period of three years beginning with the date on which the matter giving rise to the dispute occurred or should reasonably have come to the attention of the referring party.³

9 What is the procedure?

As stated earlier, on receipt of an application, NHS Resolution will first consider whether it has jurisdiction to consider the dispute.

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

When submitting representations to NHS Resolution, accompanying bundles of documents should be indexed and paginated. A chronology of events is useful in complicated cases. Parties should not assume that NHS Resolution is familiar with particular systems and processes. Clear and specific reference should be made to any pages in the bundle upon which the party relies in support of a particular representation.

No document may be provided on a 'confidential basis' although a party may apply to have parts of any document withheld from publication in NHS Resolution's

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1. Regulation 81 of the NHS (GMS Contracts) Regulations 2015, Regulation 74 of the NHS (PMS Agreements) Regulations 2015, Paragraph 53 of Schedule 3 of the NHS (GDS Contracts) Regulations 2005, Paragraph 53 of Schedule 3 of the NHS (PDS Agreements) Regulations 2005) and Paragraph 28 of Schedule 1 of the NHS (GOS Contracts) Regulations 2008.
 2. For example Regulations 68 and 69 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
 3. Regulation 83 of the NHS (GMS Contracts) Regulations 2015, Regulation 76 of the NHS (PMS Agreements) Regulations 2015, Paragraph 55 of Schedule 3 of the NHS (GDS Contracts) Regulations 2005, Paragraph 55 of Schedule 3 of the NHS (PDS Agreements) Regulations 2005) and Paragraph 30 of Schedule 1 of the NHS (GOS Contracts) Regulations 2008.

determination. All information received will be disclosed to the other party, so any party wishing to have material withheld from publication must send a full version of the document to NHS Resolution, clearly 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.

All submissions should be made within the time frame indicated by NHS Resolution. In exceptional circumstances extensions of time will be granted, but generally only when the application has been made before the time limit in question has expired.

10 *Determination on a preliminary matter*

On occasion it is necessary to determine an initial point or points before the substantive matter can proceed either to be settled between the parties, or to a determination. Parties will be informed if there is to be a determination on a preliminary matter.

11 *What happens next on GMS/PMS Current Market Rent (CMR) disputes?*

NHS Resolution 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. NHS Resolution 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. See Guidance Note for Premises Costs – Current Market Rent (<https://resolution.nhs.uk/wp-content/uploads/2019/11/NHS-Resolution-Premises-Costs-Current-Market-Rent-Guidance-Note.pdf>) for further information.

12 *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.

13 *Who will be present at the Oral Hearing?*

The Adjudicator will appoint an Adjudication Panel to hear the application for dispute resolution on its behalf. The parties, their representatives and any relevant witnesses will be invited to attend an Oral Hearing.

14 *What procedure will be followed at an Oral Hearing?*

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

15 *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 Adjudication Panel may question any party.

16 *Are witnesses allowed?*

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

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

17 *What papers will the parties receive?*

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

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

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

18 *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 Adjudication Panel to determine the length for which the case will be listed. The Adjudication Panel will try to ensure parties keep to the point and that there is no repetition.

19 *What happens after the Hearing?*

The Adjudication Panel will consider the information put forward by the parties and make a determination with reasons. NHS Resolution will then notify the parties of the decision in writing.

20 *Parties with special and other needs?*

NHS Resolution is committed to ensuring that adequate facilities and equipment are provided at oral hearing venues to assist parties with disabilities.

Please notify NHS Resolution in advance if any particular assistance is required, providing as much notice as possible.

21 *How long will the process take?*

It may take up to 15 weeks to determine cases on the papers and up to 33 weeks for cases referred to an Advisor (CMR cases).

If parties come to an agreement before the end of the process, you are required to withdraw your application for dispute resolution.

22 *To whom can I appeal to after a decision has been reached?*

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

23 *To whom can I write to if I am dissatisfied with the conduct of Appeals staff?*

You can write to:

Head of Corporate and Information Governance
NHS Resolution
10 South Colonnade
Canary Wharf
London
E14 4PU

Please note that Challenges to NHS Resolution's interpretation of the regulations, procedures during the process and to final decisions are outside the scope of the Complaints Policy.

24 *Is there any other information available?*

NHS Resolution publishes previous decisions, statistical information and other material on its website at <https://resolution.nhs.uk>

Alternatively you can email nhsr.appeals@nhs.uk

Please note however that we do not provide advice.

Document Control

Change Record

Date	Author	Version	Reason for Change
03/02/2022	Head of Operations (Primary Care Appeals)	15	Change of new address