

**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 individual primary care contractors.

Although the relevant Regulations refer to the Secretary of State, these matters were delegated to NHS Resolution. The Primary Care Appeals service (formerly known as the Family Health Services Appeal Unit or FHSAU) based in Leeds discharges these functions for NHS Resolution.

**3 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 General 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 2015;
- the National Health Service (Personal Medical Services Agreements) Regulations 2015

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 in the relevant directions.

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 APMS contracts and contracts other than those 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 himself 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 to him 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;
- what the applicant sees as the appropriate outcome of the dispute;
- confirmation that all local dispute resolution options have been exhausted.
- A comparables table (in Current Market Rent cases) in the form set out here: <http://www.nhs.uk/Pages/Publications.aspx?library=FHSAU%7cpublications>

NHS Resolution's current Protocol can be found at:

<http://www.nhs.uk/Pages/Publications.aspx?library=FHSAU%7cpublications>

#### **6 *Who will take the final decision?***

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

#### **7 *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 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 NHS Resolution, 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.

#### **8 *What happens next on GMS/PMS Current Market Rent 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.

#### **9 *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.

#### **10 *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.

#### **11 *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).

#### **12 *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.

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

**14 *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 received.

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

**15 *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.

**16 *What happens after the Hearing?***

The Adjudicator 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.

**17 *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.

**18 *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 Oral Hearing or Advisor.

**19 *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.

**20 *To whom can I write to if I am dissatisfied?***

You can write to either:

Chief Executive or  
NHS Resolution  
151 Buckingham Palace Road  
London  
SW1W 9SZ

Head of Primary Care Appeals  
NHS Resolution  
1 Trevelyan Square  
Leeds  
LS1 6AE

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

**21 Is there any other information available?**

NHS Resolution publishes previous decisions, statistical information, a sheet of Frequently Asked Questions and other material on its website at: [www.nhs.uk/FHSAU/Pages/Home](http://www.nhs.uk/FHSAU/Pages/Home) .

Alternatively you can email [appeals@resolution.nhs.uk](mailto:appeals@resolution.nhs.uk)

Please note however that we do not provide advice.

**Document Control**

**Change Record**

Date	Author	Version	Reason for Change
14.06.2018	Business Services Manager, Primary Care Appeals	10	Rebrand of FHSAU to Primary Care Appeals