

Guidance to parties on Premises disputes

NHS Resolution receives and determines appeals and applications for dispute resolution where NHS England and NHS Improvement (or Clinical Commissioning Groups) and primary care providers, or those wishing to provide primary care services, cannot reach agreement at local level. Our jurisdiction includes disputes arising from the application of Premises Costs Directions (PCD).

On 19 May 2020, NHS Resolution amended the guidance issued to parties involved in PCD cases regarding submissions and evidence in order to facilitate the efficient and effective determination of disputes. The guidance (as detailed below) is set-out in first-step letters to parties seeking submissions.

You are requested to ensure the following information is provided within the period for submitting representations.

- Where the contractor is represented, a letter from the contractor appointing the representative in which the representative is made fully aware of the requirements below.
- A copy of the Contract/Agreement – or relevant sections relied upon.
- Is this a GMS Contract or PMS Agreement? If PMS, please confirm whether you are content that the GMS Premises Costs Directions apply.
- **In applying for dispute resolution to NHS Resolution, it is taken that local dispute resolution is exhausted.** If this is not the case, please advise us within the next 7 days and clearly state why you consider it has not been exhausted.

It has not been decided yet whether to seek Advice with regard to this application for dispute resolution. However, the following documents should be provided to us within the representation period to assist the adjudicator in determining your application. Failure to do so will materially adversely affect your case.

1. You are requested to provide a full copy of all the information pertaining to discussions at local level as part of the Local Dispute Resolution Procedure **except any "Without Prejudice" Information which should not be provided to NHS Resolution.**
2. If either party intends to rely on a valuation report from a third party then they must include it at this stage.
3. If not previously supplied, the parties must include a Statement of Agreed Facts including, for leasehold premises, an agreed bundle of lease documents in respect of the subject property, including appropriately coloured demise plans.
4. All parties should have already endeavoured to agree as many facts as possible at the local dispute resolution stage, particularly floor areas and plans in respect of both the subject property and any comparable property referred to. That agreement must be embodied in the statement of facts signed by each party and submitted to NHS Resolution. Where there are matters that remain in indifference, these should be identified and listed. Please note that consideration of this dispute shall be limited to

those areas of dispute that were raised at the local dispute resolution stage. Parties are encouraged to advise whether they consider there are any new areas of dispute being raised that they consider they have not had full opportunity to consider at local level.

5. In the event that the floor area of the subject property is not agreed the parties shall advise NHS Resolution accordingly and clearly highlight the areas agreed and the areas of dispute.
6. All parties are encouraged to advise whether they consider there are any improvements to the property which are to be disregarded in assessing the rent, and provide reasons for this with reference to any supporting regulations, directions or terms of the contract.
7. In providing evidence of comparable transactions the parties must provide NHS Resolution with the following information and the details of the parties.
 - a. the address of the property
 - b. a location plan enabling the property to be clearly identified
 - c. for leasehold premises the names of the Landlord, Tenant and their agents. For Notional Rents the details of the Practice and, where appropriate, the agent and the DVS calculation
 - d. the floor area and basis of calculation (to be in accordance with the RICS Code of Measuring Practice in use at the date of the event in question)
 - e. the lease terms and review pattern (where applicable)
 - f. the nature of the transaction (Rent Review, Notional Rent, New letting etc) and relevant date
 - g. the rent or notional rent agreed
 - h. details of alienation and user clauses/for rent reviews and new leases.
 - i. details of any improvements specifically excluded in assessing the rent
 - j. the parties shall state quite clearly whether the transactions to which they refer are within their own personal knowledge. If it is not, then more weight can be given if details are certified and signed off by one of the parties or their agent.
8. Whilst strict Rules of Evidence do not apply it is nonetheless of assistance to NHS Resolution and their Advisor if parties provide as much verified (by a party involved) detail as possible in respect of the subject property and comparable transactions. Failure to do so may affect the weight given to the evidence. In some cases, the evidence may be discounted.

If the matter requires the appointment of an Independent Advisor, they will be responsible to NHS Resolution only. They will not act as an Independent Expert. Parties need to be fully aware that NHS Resolution will not instruct or expect the Independent Advisor to investigate or verify any poorly presented facts or evidence.

Document Control - Change Record

Date	Author	Version	Reason for Change
12/06/20	Head of Operations, Primary Care Appeals	1	New document