



Hertfordshire and
West Essex Integrated
Care System




Hertfordshire and
West Essex
Integrated Care Board

Primary Care Local Dispute Resolution Procedure

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Local Dispute Resolution Procedure

1. Introduction

On occasions Primary Care Contractors (contractors) may disagree with decisions made by the Integrated Care Board (ICB) in respect to their contracts. Disputes may arise over decisions about contractual sanctions and termination, remuneration, practice area, list closures and 'opt-outs'. Under such circumstances contractors have the right of appeal against such a decision and to request that it is resolved through a series of dispute resolution processes. This paper sets out the procedures that must be undertaken by a ICB at a local level and goes on to explain the next stages. It is expected that most contractual disputes will be resolved informally as part of the normal contractual relationship before entering into formal procedures.

The paper sets out a framework for a formal local dispute resolution process when the informal channels have failed to find a mutually agreeable solution, i.e. informal face-to-face discussion between the Contractor and the ICB. In respect of GPs, it is governed by the GMS & PMS regulations 2004¹.

This procedure will also cover disputes raised by contractors in respect of any local enhanced service they have signed up to deliver. Disputes for these services may arise over achievement of thresholds, payments or decisions made on non-compliance of service delivery or mandatory elements to one or more areas of the service specification.

Disputes arising from Contract Sanctions and Termination of Contracts: It should be noted that disputes around Contract Sanctions and Termination of Contracts are governed by paragraphs 25.1 and 25.2 respectively of Part 25, of the National Health Services (General Medical Services Contracts) Regulations 2004; and schedule 6 of the National Health Services (Personal Medical Services Agreements) Regulations 2004 and are dealt with in section 6 of this paper.

Assignment of patients to contractors with closed lists: It should be noted that disputes around assignment of patients to contractors with closed lists are governed by Paragraph 13.25A, Part 13 "Patients" of the National Health Services (General Medical Services Contracts) Regulations 2004 and Paragraph 25 Schedule 5, part 2 "Patients" of the National Health Services (Personal Medical Services Agreements) Regulations 2004 and dealt with in section 7 of this paper.

NHS dispute resolution procedure: If, however, the formal local procedure fails then either contractors or ICBs can, under the regulations, within three years beginning on the date on which the matter giving rise to the dispute happened or should reasonably have come to the attention of the party wishing to refer the dispute, refer a dispute to the Secretary of State for determination. Thus the parties concerned should endeavor to resolve a dispute well within the three year period allowing adequate time to refer the matter to the Secretary of State if necessary.

¹ [The National Health Service \(General Medical Services Contracts\) Regulations 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk)



2. Informal process

Paragraphs 99 of the GMS regulations schedules¹ respectively, put an expectation upon contractors and ICBs to make every reasonable effort to communicate and co-operate with each other to resolve disputes before considering referring the dispute for determination in accordance with the formal, local dispute resolution procedure, or to the Courts (if the contractor does not have NHS Body status). Indeed the formal process cannot be activated until the informal process has been exhausted. Either party might wish to involve the LMC at this stage in an advisory or mediation role.

The Informal process may involve:

- Meetings between the Contractor and ICB
- Meetings between the Contractor and an Independent GP
- Review of all the information received at the ICB Primary Care Contracting Panel (PCCP).

Informal resolution helps develop and sustain a partnership approach between practices and the ICB, as well as avoiding bureaucracy and cost for both parties. Informal resolution might benefit from the involvement of a suitably qualified mediator; the LMC has access to recommended mediators.

A final decision will be made in the private section of Primary Care Commissioning Committee (PCCC) before informing the Contractor. If this decision is still disputed, the ICB and Contractor will move onto the Formal Local Dispute Process².

3. Stage 2 – The Formal Local Process

3 (a) Scope of the procedure

This procedure applies to all disputes arising from decisions within the jurisdiction of the ICB, excluding those areas covered by separate procedures i.e. it will not apply to:

- The implementation of national guidance locally, where there is no choice for the ICB other than to apply;
- Sanctions imposed on a contract or termination of a contract.

3 (b) ICB Local Dispute Resolution Panel (LDRB)

All contractors who are aggrieved by a decision of the ICB within whose boundaries they operate can lodge a request for “Formal Local Dispute Resolution” in writing, including the grounds for the request, to the ICB Director of Primary Care Transformation and copied to the ICB Contracts Team, hweicbhv.pcccontracting@nhs.net. Under these circumstances the ICB will set up a Local Dispute Resolution Panel (LDRP) to hear the dispute and make a determination.

The panel members will be Hertfordshire and West Essex (HWE) ICB representatives in the first instance. If there are conflicts of interest from within the HWE ICB, the ICB will approach ICBs from outside of their geographical footprint. The Panel members will consist of:

- ICB Director of Primary Care Transformation (Chair)
- The Head of Finance Services – Primary Care (if dispute is of a financial matter)
- Assistant Director of Primary Care Contracts (Deputy Chair)
- An LMC (or other professional body) representative (as an observer)

² This policy does not detract from the fact that a contractor can refer a dispute to NHS Resolution if the informal process is unsuccessful.



Upon formation, the LDRP will agree a Chair. Should any of the panel members find it necessary to declare an interest in the dispute which is being considered, the Chairman will seek to approach another ICB/patient representative/LMC representative to nominate alternative panel members.

The ICB Primary Care Contracts Team will supply admin support for the LDRP.

3 (c) Timescales for the Local Dispute Resolution Panel

Responding to the request for Formal Local Dispute Resolution

If a contractor requests formal dispute resolution, the ICB shall acknowledge receipt of the request for formal Local Dispute Resolution, in writing, within **3 working days** of receipt of a written request, explaining the procedure to be carried out by the ICB. Likewise, if the ICB requests formal dispute resolution, the contractor shall acknowledge receipt of the request within **3 working days** of receipt of the written request (this is in line with the NHS complaints procedure).

The Hearing

The Chair of the LDRP will be asked to arrange a meeting of the LDRP to hear the dispute and ensure that all parties are notified of the date, time and location of the hearing. The hearing should be held within **25 working days** of the request being lodged by the Contractor(s) or the ICB, but with the agreement of both parties to the hearing may be delayed to a date agreed by both parties. The Chair of the LDRP will ensure that at least **10 working days** notice of the date of the hearing will be given to all participants.

4. The Hearing

4 (a) Documentation

All the relevant documentation, including the request for Formal Local Dispute Resolution will be passed to the Chair of the LDRP and then to panel members for consideration before the hearing.

4 (b) Contractor(s) Representation

The contractor(s) will have the right to be supported at the LDRP hearing by an LMC member, BMA representative, or other appropriate professional body colleague. The supporting colleague will be allowed to speak to the panel. If a solicitor accompanies the contractor(s), the Chair of the Panel will make it clear that the panel is not a statutory tribunal.

Professional advisors, such as solicitors or accountants, will not normally attend in a *representative role* unless especially requested in advance of the hearing.

4 (c) Witnesses

Either party has the right to call witnesses. Any witnesses shall be present at the panel hearing *only* while they are giving evidence.

4 (d) Procedure at the LDRP Hearing

The discussions of the Panel will remain confidential.

The Chair of the Panel will keep a record (or arrange for minutes to be taken) of the hearing.

The contractor(s) and the ICB will be asked to present their cases and may call witnesses. Members of the Panel will be given the opportunity to ask any questions relevant to the case.

Following the presentation of their case the contractor(s) and ICB will withdraw and the panel will deliberate. The panel will reach a decision on the case and notify the contractor and the ICB Chief Executive of the decision including any recommendations in writing within seven



days after the hearing. The decision will be reported to the private section of ICBs Primary Care Commissioning Committee (PCCC) for information.

If no solution can be found locally it will be open to either party to the dispute to refer the matter to NHS Resolution in line with paragraphs 101 and 95 of the GMS and PMS regulations respectively, for dispute resolution under the 'NHS Dispute Resolution Procedure'.

If no solution can be found locally, the Primary Care Commissioning Committee, on behalf of the ICB, will refer the matter to NHS Resolution.

5. Stage 3 - Appeal to the Secretary of State through NHS Resolution - NHS Dispute Resolution Procedure

If an issue cannot be satisfactorily resolved through local Dispute Resolution, an appeal can be lodged by either party to NHS Resolution. Where a dispute arises out of or in connection with a NHS contract either party may refer to matter to NHS Resolution³.

Written requests must be directed to NHS Resolution within three years beginning on the date on which the matter giving rise to the dispute happened or should reasonably have come to the attention of the party wishing to refer the dispute (effectively referring a dispute to the Secretary of State for determination). Disputes should be addressed directly to NHS Resolution and must include:

- The names and addresses of the parties to the dispute
- A copy of the contract; and
- A brief statement describing the nature and circumstances of the dispute.

6. Disputes arising from Contract Sanctions and Termination of Contracts

Disputes concerning sanctions or contract termination must be referred to NHS Resolution within 28 days of the imposition of the sanction or termination of the contract for NHS Dispute Resolution. The contractor must notify in writing the ICB that it has requested NHS Dispute Resolution. During the NHS Dispute Resolution procedure the relevant body (i.e. the ICB) shall not impose the sanction or terminate the contract until determination permits the relevant body to do so.

The resulting determination will be binding on both parties.

7. Disputes arising from Assignment of patients to practices with 'Closed Lists'.

Disputes concerning assignment of patients to practices with 'Closed Lists' must be referred to NHS Resolution within 7 days of the determination of the ICB's assessment panel, for NHS Dispute Resolution⁴.

The resulting determination will be binding on both parties.

Disputes where the contractor is not an NHS body can be referred to either NHS Resolution or a competent court.

This policy and procedure will be reviewed annually from the date detailed on the front page by the ICB in conjunction with the Local Medical Committee.



Appendix 1 - Flow Chart outlining the Dispute Resolution Procedure

