

THE NORTH EAST LONDON LOCAL DISPUTE RESOLUTION PROCESS

1.0 Introduction:

On occasion a primary medical services contractor may disagree with a decision made by the North East London Integrated Care Board (The Commissioner) in respect to contractual actions such as clawback of monies, breach notices, remedial notices and termination of contract. It is important that contractors are informed of the process in which they are able to exercise their right of appeal against any such decisions and to have these resolved by means of an agreed Local Dispute Resolution Procedure.

GMS and PMS contract regulations require the parties to make every reasonable effort to communicate and co-operate with each other to resolve the dispute before referring the dispute for determination in accordance with the regulations for NHS dispute resolution procedure¹. For APMS contracts, the APMS Directions do not require the NHS dispute resolution to be included and more commercial terms are usually set out that can be costly for both parties in the event of Court proceedings.

The NHSE Primary Medical Care Policy and Guidance Manual describes the process to determine the action required when a contractor requests to follow the formal NHS dispute resolution process.

2.0 Purpose:

The NEL local dispute resolution process seeks to achieve the following objectives:

- Provide confidence to parties that the process is transparent and proportionate
- Develop and sustain a partnership approach between practices and the Commissioner
- Assure there is a robust process to evidence a clear audit trail is maintained to satisfy local and national policy requirements.
- To resolve disputes locally to minimise referral to the NHS Dispute Resolution NHS Appeals Unit or costly Court proceedings as appropriate for an APMS contractor with Non-NHS Body Status

3.0. The Process

Local Dispute Resolution will be managed in a two-staged process:

Stage 1: Informal Dispute Resolution

The contractor notifies the Commissioner they wish to enter into discussions to appeal a decision made. The LMC may be involved in either an advisory or mediation role in facilitating a discussion between both parties.

¹ Regulation 81 of the NHS (GMS Contracts) Regulations 2015, Regulation 74 of the NHS (PMS Agreements) Regulations 2015,

The outcome of the meeting(s) and or correspondence trail to resolve the issue should be maintained for the records.

The outcome of the final discussion should be confirmed by both parties as either a) resolved b) unresolved.

It is a requirement that the Informal Process must have been confirmed in writing as exhausted before either party decides to escalate the dispute to:

Stage 2: Formal Local Dispute Resolution

In cases where either party remains dissatisfied with the outcome of Stage 1, they have the right to request the matter be referred to the Formal Local Dispute Resolution process within 20 working days of confirmation of Level 1 being exhausted.

The party wishing to initiate the request (the Appellant) should make their formal representation in writing to the ICB stating:

- a. the full names and contact details of the parties involved in the dispute;
- b. statement describing the nature and circumstances of the dispute with any supporting information to be considered
- c. reference to the appropriate regulations; contract provisions or policies
- d. what the applicant sees as the appropriate outcome of the dispute;

Representation must be made within 20 working days of the confirmed outcome of the first Stage.

The Commissioner or Contractor will be required to provide representation in response within ten working days of receipt of the Appellant's representation. The representation must include evidence of the appropriate regulations, policies or regulations that were relied on to support the original decision made,

4.0 The LDR Panel Review:

A Local Dispute Resolution Panel (LDRP) will be convened within 20 working days (of receipt of the representation. to review the case for determination.

The representation statements for both parties will be provided to LDR panel members at least five working days before the panel convenes:

The majority of cases will be decided on the basis of the representation documents provided. Occasionally, however, where there are material differences in the facts presented by the parties, complexities, or even insufficient information, it may be necessary to request further information or hold an Oral Hearing.

The panel members will analyse the evidence, consider the relevant guidance, policies and regulations pertinent to the case.

The final determination should be reached by consensus.

Members of the LDRP:

The Panel will be constituted of the following non-conflicted members who have not had prior involvement with the case matter.

1. Chairperson (voting)

2. LMC representative (observer)
3. ICB Director (voting)
4. Place Based Director (voting)
5. Subject Matter Expert as relevant (e.g. finance lead, clinician)

Notes of the discussion and the rationale for reaching the determination will be recorded.

5.0 Outcome of the LDRP Review

After careful review of the representations, the Panel will determine either:

- Appeal upheld
- Appeal partially upheld
- Appeal not upheld

If either party disputes the decision of the LDRP and the decision relates directly to provisions in its GMS/PMS contract, then it may refer the matter to NHS Resolution NHS Appeals nhsr.appeals@nhs.net

References:

- 1) <https://resolution.nhs.uk/wp-content/uploads/2019/05/NHSR-Dispute-Resolution-Guidance-Note-May-2023.pdf>
- 2) <https://www.england.nhs.uk/publication/primary-medical-care-policy-and-guidance-manual-pgm/>