

SCHEDULE 6

OTHER CONTRACTUAL TERMS

PART 7

DISPUTE RESOLUTION

Local resolution of contract disputes: local dispute resolution process

89.—(1) For the purposes of this paragraph —

“local medical committee” means a local representative committee which represents the interests of general medical practitioners providing primary medical services in its locality and which is identified and recognised by the British Medical Association as a local medical committee on the British Medical Association’s website⁽¹⁾ as updated or replaced from time to time;

“local resolution approved mediator” means a mediator who is on the list of trained mediators kept in accordance with sub-paragraph (2) by a Health Board (“the first Health Board”) (other than the Health Board who is a party to the relevant contract (“the Second Health Board”)) which is requested by the Second Health Board to appoint a local resolution panel and which mediator is chosen by the local resolution panel in accordance with sub-paragraph (6);

“local resolution approved mediator functions” means the functions of—

- (a) facilitating, co-ordinating and mediating communication between the parties to a dispute arising out of or in connection with a contract with a view to helping the parties to reach a voluntary resolution to their dispute;
- (b) assisting the parties to explore options for negotiating a resolution to the dispute; and
- (c) providing recommendations to facilitate resolution of the contractual dispute and reporting to the area medical committee, the local resolution panel and the parties to the dispute in accordance with sub-paragraph (9).

“local resolution panel” means a committee or a subcommittee of the first Health Board appointed by the first Health Board at the request of the second Health Board which must consist of—

- (a) a person representative of patients in the area of the second Health Board;
- (b) a person representative of the local medical committee, in the area of the second Health Board;
- (c) a person who is an employee of the first Health Board. and

“local resolution report” means the written report provided by a local resolution approved mediator in accordance with sub-paragraph (9);

(2) Every Health Board will keep a list of trained mediators who are also employees of the Health Board or available to be engaged by the Health Board and who the Health Board is satisfied are capable of performing the local resolution approved mediator functions.

(3) In the case of any dispute arising out of or in connection with the contract—

- (a) the contractor and the first Health Board must make every reasonable effort to communicate and co-operate with each other with a view to resolving the dispute in accordance with the local dispute resolution process, before referring the dispute for

(1) <https://www.bma.org.uk/about-us/how-we-work/local-representation/local-medical-committees>.

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determination in accordance with the NHS dispute resolution procedure (or, where applicable, before commencing court proceedings); and

- (b) neither the contractor nor the first Health Board may refer the dispute for determination in accordance with the NHS dispute resolution procedure (or, where applicable, before commencing court proceedings) until the local dispute resolution process has been completed.

(4) Either party to the contract may commence the local dispute resolution process by serving written notice on—

- (a) the other party to the contract; and
- (b) the area medical committee for the second Health Board's area.

(5) The written notice referred to in sub-paragraph (4) must set out—

- (a) the issue in dispute which must arise out of or be in connection with the contract;
- (b) contact details for the parties to the contract; and
- (c) any background information which may be reasonably required by a local resolution approved mediator to perform their functions.

(6) Upon receipt of the notice referred to in sub-paragraph (4)—

- (a) the Second Health Board must request that the First Health Board convene a local resolution panel; and
- (b) that local resolution panel must choose, from the list of local resolution approved mediators, a local resolution approved mediator whom the panel considers capable of performing the local resolution approved mediator functions in relation to the dispute.

(7) The parties must provide the local resolution approved mediator and each other with any information which may reasonably be required to facilitate the resolution of the dispute and to enable the local resolution approved mediator to perform their local resolution approved mediator functions.

(8) The local resolution approved mediator must complete their local resolution approved mediator functions within three months from service of the notice referred to in sub-paragraph (4).

(9) Within the period specified in sub-paragraph (8), the local resolution approved mediator must provide a written report to the parties, the area medical committee and the local resolution panel referred to in sub-paragraph (4) which sets out the following—

- (a) any agreement reached between the parties;
- (b) the local resolution approved mediator's recommendation on how to resolve any issues still in dispute; and
- (c) confirmation that the local dispute resolution process has been completed.

(10) The local resolution report may be considered by the Scottish Ministers in the event that either party wishes to refer the dispute to the Scottish Ministers for determination in accordance with paragraphs 90 or 91.

Dispute resolution: non-NHS contracts

90.—(1) In the case of a contract which is not an NHS contract, any dispute arising out of or in connection with the contract, except matters dealt with under the complaints procedure pursuant to Part 6 of this schedule, may be referred for consideration and determination to the Scottish Ministers, if—

- (a) the Health Board so wishes and the contractor has agreed in writing; or
- (b) the contractor so wishes (even if the Health Board does not agree).

(2) In the case of a dispute referred to the Scottish Ministers under sub-paragraph (1)—

- (a) the procedure to be followed is the NHS dispute resolution procedure; and
- (b) the parties agree to be bound by any determination made by the adjudicator.

NHS dispute resolution procedure

91.—(1) Subject to sub-paragraph (2), the procedure specified in the following sub-paragraphs and paragraph 92 applies in the case of any dispute arising out of, or in connection with, the contract which is referred to the Scottish Ministers—

- (a) in accordance with section 17A(4) of the Act⁽²⁾ (where the contract is a NHS contract); or
- (b) in accordance with paragraph 90(1) (where the contract is not a NHS contract).

(2) In the case where—

- (a) a dispute is referred to the Scottish Ministers in accordance with regulation 12(1) (pre-contract disputes); or
- (b) a contractor (or contractors) refers a matter for determination in accordance with paragraph 33(1) or (2),

the procedure specified in the following sub-paragraphs and paragraph 92 is modified as mentioned in regulation 12 or, as the case may be, paragraph 33.

(3) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) must send to the Scottish Ministers a written request for dispute resolution which includes or is accompanied by—

- (a) the names and addresses of the parties to the dispute;
- (b) a copy of the contract; and
- (c) a brief statement describing the nature and circumstances of the dispute.

(4) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) must send the request under sub-paragraph (3) within a period of 3 years beginning with 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.

(5) The Scottish Ministers may determine the dispute themselves or, if they consider it appropriate, appoint a panel consisting of three persons (referred to as “the panel”) to consider and determine the dispute.

(6) Before reaching a decision as to who should determine the dispute under sub-paragraph (5), the Scottish Ministers must, within a period of 7 days beginning with the date on which the dispute was referred to them, send a written request to the parties to make in writing, within a specified period, any representations which they may wish to make about the matter under dispute.

(7) The Scottish Ministers must send, with the notice given under sub-paragraph (6), to the party other than the one which referred the matter to dispute resolution, a copy of any document by which the matter was referred to dispute resolution.

(8) The Scottish Ministers must give a copy of any representations received from a party to the other party and must in each case request (in writing) a party to whom a copy of the representations is given to make within a specified period any written observations which it wishes to make on those representations.

(9) Following receipt of any representations from the parties or, if earlier, at the end of the period for making such representations specified in the request sent under sub-paragraph (6) or (8), the Scottish Ministers must, if they decide to appoint a panel to hear the dispute—

(2) Section 17A was inserted by section 30 of the National Health Service and Community Care Act 1990 (c.19). Section 17A was moved under a new heading entitled “NHS Contracts” by section 31 of the National Health Service (Primary Care) Act 1997 (c.46).

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- (a) inform the parties in writing of the names of the persons whom they have appointed on the panel; and
 - (b) pass to the panel any documents received from the parties under or pursuant to paragraph (3), (6) or (8).
- (10) For the purpose of assisting it in its consideration of the matter, the adjudicator may—
- (a) invite representatives of the parties to appear before the adjudicator to make oral representations either together or, with the agreement of the parties, separately, and may in advance provide the parties with a list of matters or questions to which it wishes them to give special consideration; or
 - (b) consult other persons whose expertise the adjudicator considers will assist the adjudicator in the adjudicator’s consideration of the matter.
- (11) Where the adjudicator consults another person under sub-paragraph (10)(b), the adjudicator must notify the parties accordingly in writing and, where the adjudicator considers that the interests of any party might be substantially affected by the result of the consultation, the adjudicator must give to the parties such opportunity as it considers reasonable in the circumstances to make observations on those results.
- (12) In considering the matter, the adjudicator must consider—
- (a) any written representations made in response to a request under sub-paragraph (6) but only if they are made within the specified period;
 - (b) any written observations made in response to a request under sub-paragraph (8), but only if they are made within the specified period;
 - (c) any oral representations made in response to an invitation under sub-paragraph (10)(a);
 - (d) the results of any consultation under sub-paragraph (10)(b); and
 - (e) any observations made in accordance with an opportunity given under sub-paragraph (11).
- (13) In this paragraph, “specified period” means such period as the Scottish Ministers specify in the request sent under sub-paragraph (6) or (8), being not less than 2, nor more than 4 weeks beginning with the date on which the request is sent, but the adjudicator may, if the adjudicator considers that there is good reason for doing so, extend any such period (even after it has expired) and where it does so, a reference in this paragraph to the specified period is to the period as so extended.
- (14) Subject to the other provisions of this paragraph and paragraph 92 and to any agreement by the parties, the adjudicator is to have wide discretion in determining the procedure of the dispute resolution to ensure the just, expeditious, economical and final determination of the dispute.
- (15) Where the adjudicator is a panel, any decision or determination by the panel for the purposes of this paragraph and paragraph 92 may be by a majority.

Determination of dispute

92.—(1) The adjudicator must record its determination, and the reasons for it, in writing and must give notice of the determination (including the record of the reasons) to the parties and, in the case where the adjudicator is a panel, to the Scottish Ministers.

(2) Subsections (8) and (9) of section 17A of the Act (NHS contracts), as modified by regulation 13(7)(d) apply in the case of a determination of a reference under paragraph 90(1) as they apply in the case of a determination under subsection (4) of that section.

Interpretation of Part 7

93.—(1) In this Part, “any dispute arising out of or in connection with the contract” includes any dispute arising out of or in connection with the termination of the contract.

(2) Any term of the contract that makes provision in respect of the requirements in this Part will survive even where the contract has terminated.