SCHEDULE 1

CONTENT OF AGREEMENTS

PART 7

DISPUTE RESOLUTION

Local resolution of contract disputes – Local Dispute Resolution Process

56.—(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 the Health Board ("the first Health Board")(other than the Health Board who is a party to the agreement ("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 an agreement 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 dispute arising out of or in connection with an agreement and reporting to the area medical committee, the local resolution panel and the parties to the dispute in accordance with sub-paragraph **[**[F1](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;

"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 local resolution approved 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 agreement—

(a) the provider 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 determination in

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

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

(b) neither the provider 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 agreement may commence the local dispute resolution process by serving written notice on—

(a) the other party to the agreement; and

(b) the area medical committee for the second Health Board's area.

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

(a) the issue in dispute which must arise out of or be in connection with the agreement;

(b) contact details for the parties to the agreement; 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 **[**[F2](6)**]** 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 57 or 58.

Textual Amendments

F1 Word in sch. 1 para. 56(1) substituted (1.4.2018) by The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (S.S.I. 2018/94), regs. 1, **15(h)(i)**

F2 Word in sch. 1 para. 56(9) substituted (1.4.2018) by The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (S.S.I. 2018/94), regs. 1, **15(h)(ii)**

[[F3]Dispute resolution: non-NHS contracts]

57.—(1) In the case of an agreement which is not **[**[F4]an NHS contract**]**, any dispute arising out of or in connection with the agreement, 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 provider has agreed in writing; or

(b) the provider 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.

Textual Amendments

F3 Sch. 1 para. 57 heading substituted (1.4.2018) by The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (S.S.I. 2018/94), regs. 1, **15(i)(i)**

F4 Words in sch. 1 para. 57(1) substituted (1.4.2018) by The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (S.S.I. 2018/94), regs. 1, **15(i)(ii)**

NHS dispute resolution procedure

58.—(1) Subject to sub-paragraph (2), the procedure specified in the following sub-paragraphs and paragraph 59 applies in the case of any dispute arising out of or in connection with the agreement, which is referred to the Scottish Ministers—

(a) in accordance with section 17A(4) of the Act(**2**) (where the agreement is an NHS contract); or

(b) in accordance with paragraph 57(1) (where the agreement is not an NHS contract).

(2) In the case where—

(a) a dispute is referred to the Scottish Ministers in accordance with regulation 9(1) (pre agreement disputes); or

(b) a provider (or providers) refers a matter for determination in accordance with paragraph 26(1) or (2) of schedule 2,

the procedure specified in the following sub paragraphs and paragraph 59 is modified as mentioned in regulation 9 or, as the case may be, paragraph 26 of schedule 2.

(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 must include or be accompanied by—

(a) the names and addresses of the parties to the dispute;

(b) a copy of the agreement; 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 three years beginning with the date on which the matter

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

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 the 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 give, 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—

(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 sub-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 must specify in the request 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 59 and to any agreement by the parties, the adjudicator must 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 59 may be by a majority.

Determination of dispute

59.—(1) The adjudicator must record the 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) A determination of a reference to the Scottish Ministers for the purposes of section 17A(4) of the Act or in accordance with paragraph 57(1) may contain such directions (including directions as to payment) as the adjudicator considers appropriate to resolve the matter in the dispute, and it is the duty of the provider and the Health Board to comply with such directions.

(3) Without prejudice to the generality of the adjudicator's powers on a reference to the Scottish Ministers for the purposes of section 17A(4) or referred in accordance with paragraph 57(1), the adjudicator may, by the adjudicator's determination, in relation to an agreement vary the terms of the agreement or bring it to an end; and where the agreement is so varied or brought to an end—

(a) subject to paragraph (b), the variation or termination will be treated as being effected by agreement between the Health Board and the provider; and

(b) directions included in the determination by virtue of sub-paragraph (2) may contain such provisions as the adjudicator considers appropriate in order satisfactorily to give effect to the variation or to bring the agreement to an end.

Interpretation of Part 7

60.—(1) In this Part, "any dispute arising out of or in connection with the agreement" includes any dispute arising out of or in connection with the termination of the agreement.

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

Changes to legislation:
There are currently no known outstanding effects for the The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018, PART 7.