

SCHEDULE 3

OTHER CONTRACTUAL TERMS

PART 7

DISPUTE RESOLUTION

NHS dispute resolution procedure

55.—(1) The procedure specified in the following sub-paragraphs and paragraph 56 applies in the case of any dispute arising out of or in connection with the agreement which is referred to the Assembly—

- (a) in accordance with section 4(3) of the 1990 Act (where the agreement is an NHS contract);
or
- (b) in accordance with paragraph 54(1) (where the agreement is not an NHS contract).

(2) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) will send to the Assembly a written request for dispute resolution which will 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.

(3) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) must send the request under sub-paragraph (2) within a period of three 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.

(4) Where the dispute relates to an agreement which is not an NHS contract, the Assembly may determine the matter itself or, if it considers it appropriate, appoint a person or persons to consider and determine it⁽¹⁾.

(5) Before reaching a decision as to who should determine the dispute, either under sub-paragraph (4) or under section 4(5) of the 1990 Act, the Assembly will, within the period of seven days beginning with the date on which a matter was referred to it, 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.

(6) The Assembly will give, with the notice given under sub-paragraph (5), 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.

(7) The Assembly will give a copy of any representations received from a party to the other party and will 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.

(8) 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 (5) or (7), the Assembly will, if it decides to appoint a person or persons to hear the dispute—

- (a) inform the parties in writing of the name of the person or persons whom it has appointed;
and

(1) Where the dispute relates to a contract which is an NHS contract, section 4(5) of the 1990 Act applies.

Status: This is the original version (as it was originally made).

(b) pass to the person or persons so appointed any documents received from the parties under or pursuant to paragraph (2), (5) or (7).

(9) For the purpose of assisting the adjudicator in the 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 the adjudicator wishes them to give special consideration; or

(b) consult other persons whose expertise the adjudicator considers will assist in the consideration of the matter.

(10) Where the adjudicator consults another person under sub-paragraph (9)(b), the adjudicator will 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 will give to the parties such opportunity as the adjudicator considers reasonable in the circumstances to make observations on those results.

(11) In considering the matter, the adjudicator will consider—

(a) any written representations made in response to a request under sub-paragraph (5), but only if they are made within the specified period;

(b) any written observations made in response to a request under sub-paragraph (7), but only if they are made within the specified period;

(c) any oral representations made in response to an invitation under sub-paragraph (9)(a);

(d) the results of any consultation under sub-paragraph (9)(b); and

(e) any observations made in accordance with an opportunity given under sub-paragraph (10).

(12) In this paragraph, “specified period” means such period as the Assembly will specify in the request, being not less than two, nor more than four weeks, beginning with the date on which the notice referred to is given, but the Assembly may, if it 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.

(13) Subject to the other provisions of this paragraph and paragraph 56, the adjudicator will have wide discretion in determining the procedure of the dispute resolution to ensure the just, expeditious, economical and final determination of the dispute.