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**NHS CORBY CLINICAL
COMMISSIONING GROUP**

Policy for Managing Disputes

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Audience:	All Staff of NHS Corby CCG (including members of the Governing Body), All contractors, Bidders and members of the CCG

Consultation

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Contents

1.	Introduction	4
2.	Background	4
3.	Managing Disputes – Informal Process.....	5
4.	Managing Disputes – Stage 1 (Local Dispute Resolution)	6
5.	Managing Disputes – Stage 2 (NHS Dispute Resolution Procedure).....	8
6.	Other Dispute Resolution Procedures	10
7.	Assignment of Patients to Lists: Procedure Relating to Determinations of the Assessment Panel.....	11
Annex 1	Example Acknowledgement Letter	13
Annex 2	Example Invitation Letter.....	14
Annex 3	Example Stage 1 Outcome Letter (FHSAU Referral)	16
Annex 4	Example Stage 1 Outcome Letter (Matter(s) Resolved).....	17
Annex 5	Guidance Note for Parties Involved in Dispute Resolution	18

1. Introduction

- 1.1 This policy describes the process to determine the action required when a contractor has requested to follow the NHS dispute resolution process or where the Commissioner elects to follow the NHS dispute resolution procedure.
- 1.2 The policy focuses on primary medical care contracts in their various forms.

2. Background

- 2.1 The Commissioner must identify whether the contract is an NHS contract or a non-NHS contract. In GMS contracts, the Commissioner can do this by reviewing clause 14 of the standard GMS contract. A similar clause will also be set out within PMS and APMS contracts.
- 2.2 An NHS contract (as set out at section 9 of the NHS Act) is an arrangement under which one health service body arranges for the provision of goods or services to another health service body. It must not be regarded as giving rise to contractual rights or liabilities.
- 2.3 A non-NHS contract is where the contract is legally binding.
- 2.4 Contractors have the right to be regarded as a health service body under regulation 10 of the GMS Regulations or regulation 9 of the PMS Regulations or where the APMS contractor is a health service body by virtue of section 9 of the NHS Act.
- 2.5 Where a contractor is regarded as being a health service body, its contract will be an NHS contract. Where a contractor is not regarded as a health service body, its contract will not be an NHS contract. Health service body status affects the eligibility and application process for NHS dispute resolution.
- 2.6 GMS and PMS contracts require the parties to make every reasonable effort to communicate and co-operate with each other with a view to resolving the dispute before referring the dispute for determination in accordance with the NHS dispute resolution procedure or, where applicable, before commencing Court proceedings.

- 2.7 There are two different routes that can be taken for resolving contractual disputes, depending on the contractor's health service body status:
- 2.7.1 where the contractor is a health service body and the contract is an NHS contract the steps laid out in this policy will be used to resolve all matters of dispute. The parties should not make a claim at Court in relation to the contracts; or
 - 2.7.2 where the contractor is not a health service body and the contract is a non-NHS contract, the dispute can either be resolved using the process described within this policy or using the Court system.
- 2.8 The dispute resolution process for APMS contracts is specific to the parties' agreement as set out in the APMS contract. The APMS contract must be reviewed in the event of a dispute and that process followed. The APMS Directions do not require the NHS dispute resolution to be included in the APMS contract and more commercial terms are usually set out.
- 2.9 The use of the Court system can be an expensive and public route. In normal circumstances, non-health service bodies will elect to follow NHS dispute resolution.
- 2.10 Where the parties have followed this policy and NHS dispute resolution to the end determination, the result is binding. A second referral to the Court system for a further ruling on the same issue cannot be made other than to enforce the decision as having the status of a County Court Judgement or to seek Judicial Review of the process.

3. Managing Disputes – Informal Process

- 3.1 The parties must make every reasonable effort to communicate their issues in relation to decision-making and rationale and must co-operate with each other to resolve any disputes that emerge informally before considering referring the matter for determination through formal dispute resolution procedures.
- 3.2 The formal process should not be initiated until the informal process has been exhausted and it should be noted that both parties may wish to involve the relevant professional representative (e.g. LMC).

- 3.3 The use of an informal resolution process helps develop and sustain a partnership approach between contractor and Commissioner.
- 3.4 The informal process may include (but is limited to):
 - 3.4.1 regular telephone communications;
 - 3.4.2 face-to-face meetings at a mutually convenient location; and/or
 - 3.4.3 written communications.
- 3.5 It is essential that the Commissioner maintains accurate and complete written records of all discussions and correspondence on the contract file in relation to the dispute at all levels of dispute resolution. The Commissioner should ensure that it responds to contractor concerns and communications in a timely and reasonable manner.

4. Managing Disputes – Stage 1 (Local Dispute Resolution)

- 4.1 The timescales set out in this stage 1 are indicative only. The Commissioner should ensure any timescales used are appropriate to the circumstances. Regardless of timescales, the parties must ensure that every reasonable effort to communicate and co-operate with each other is made prior to invoking stage 2 of the NHS dispute resolution procedure.
- 4.2 Where a dispute arises, the Commissioner should refer to the relevant policy that covers the issue that caused the dispute to determine whether due process has been followed.
- 4.3 The contractor should notify the Commissioner of its intention to dispute one or more decisions made in relation to its contract. This notification should usually be received no later than 28 days after the Commissioner advises the contractor of its decision except in exceptional circumstances.
- 4.4 The Commissioner will immediately cease all action in relation to the disputed notice or decision, until:
 - 4.4.1 there has been a determination of the dispute and that determination permits the Commissioner to impose the planned action; or

4.4.2 the contractor ceases to pursue the NHS dispute resolution procedure or Court proceedings,

whichever is the sooner.

4.5 Where the Commissioner is satisfied that it is necessary to terminate the contract or impose a Contract Sanction before the NHS dispute resolution procedure is concluded in order to:

4.5.1 protect the safety of the contractor's patients; or

4.5.2 protect NHS England from material financial loss;

then the Commissioner shall be entitled to terminate the contract or impose the contract sanction at the end of the period of notice it served. This should only be followed with close reference to the GMS Regulations and PMS Regulations, pending the outcome of that procedure.

4.6 The paragraphs below set out a process that may be adopted for stage 1 (Local Dispute Resolution).

4.7 The Commissioner may acknowledge the notification of dispute within seven days of receipt and request the submission of supporting evidence from the contractor within a further 28 days from the date they receive the letter. An example acknowledgement letter is provided in Annex 1.

4.8 Upon receipt of the evidence the Commissioner should review the evidence within 28 days and invite the contractor to attend a meeting, which should be as soon as possible, but at the very latest within a further 28 days. The contractor(s) has the opportunity to invite representative bodies to support it at the meeting, for example, the LMC. An example invite letter is provided in Annex 2.

Once the meeting has been held, the Commissioner should notify the contractor in writing of the outcome of the meeting, whether this is that the dispute will now need to be moved to stage 2 of the NHS dispute resolution procedure (refer to the example stage 1 outcome letter in Annex 3) or that the dispute has been successfully resolved (refer to the example stage 1 outcome letter in Annex 4).

Where the matter is resolved, the issue can be deemed closed and the Commissioner should document the outcome accordingly on the contract file.

Where the matter remains unresolved, the process may be escalated to the next stage of the dispute resolution procedure.

At this point the Commissioner should commence preparation of the contract file to ensure that if and when the FHSAU or Court requests submission of evidence in respect of the dispute the documentation is in order.

5. Managing Disputes – Stage 2 (NHS Dispute Resolution Procedure)

The informal process and stage 1 (Local Dispute Resolution) should be exhausted before proceeding to this stage of the process. The Commissioner or a contractor wishing to follow this route must submit a written request for dispute resolution to the FHSAU, which carries out the NHS dispute resolution functions of the Secretary of State in the GMS Regulations and the PMS Regulations, which should 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.

The written request for dispute resolution must be sent within a period of three years from the date on which the matter gives rise to the dispute occurred or should have reasonably come to the attention of the party wishing to refer the dispute. Please see FHSAU determination reference 17156 for further details on the date that the dispute should have reasonably come to the attention of the relevant party.

The Commissioner will be required to prepare documentation, evidence and potentially an oral presentation in response to evidence presented in support of the dispute. Each party will be asked to prepare representations on the dispute, which will be circulated to the other party and an opportunity to provide observations on the other party's representations will be given. Again, the observations of each party will be circulated to the other party.

The Commissioner should not underestimate the preparation that will be required in the event that evidence is required by the FHSAU, as all records pertaining to the contractor in question may be required, including (but not limited to) all contract documentation and contract variations, all written correspondence (both to and from the Commissioner and the contractor) and any electronic correspondence that may

have passed between the parties, in relation to the dispute. This process will benefit from a clearly recorded contract file.

The Commissioner must ensure that records of communications and contract files are maintained to a high standard and all documentary evidence is collated correctly prior to submission to the FHSAU

Once the FHSAU has reached a conclusion (the determination) the Commissioner will receive a copy and will be required to act upon it. A copy of the Guidance Note for parties involved in Dispute Resolution at the NHSLA (FHSAU) is attached in Annex 5 and should be followed by the parties to the dispute.

Co-commissioning - delegated commissioning arrangements

A CCG that has delegated commissioning arrangements will have entered into a Delegation Agreement with NHS England setting out the scope of those arrangements.

The Delegation Agreement includes a section on Claims and Litigation which is likely to include a dispute with a GMS, PMS or APMS contractor that has been referred to Stage 2 of the NHS dispute resolution procedure. In such cases, the CCG is required to act in accordance with the Delegation Agreement which includes but is not limited to:

notifying NHS England of any documents concerning the dispute and providing copies of these documents;

co-operating fully with NHS England in relation to such dispute and the conduct of such dispute;

providing, at its own cost, to NHS England all documentation and other correspondence that NHS England requires for the purposes of considering and/or resisting such dispute; and/or

at the request of NHS England, taking such action or step or providing such assistance as may in NHS England's discretion be necessary or desirable having regard to the nature of the dispute and the existence of any time limit in relation to avoiding, disputing, defending, resisting, appealing, seeking a review or compromising such dispute or to comply with the requirements of the FHSU in relation to such dispute.

6. Other Dispute Resolution Procedures

The GMS and PMS Regulations allow the NHS dispute resolution procedure to be used by the contractor as a means of resolving every dispute except where an assessment panel makes a determination that the Commissioner may assign new patients to contractors which have closed their practice list of patients. The procedure to follow in such circumstances is set out in paragraph 0 below.

Disputes may also arise prior to a contract being entered into. Such disputes will relate to the eligibility of the person seeking to enter into the contract or contract terms.

Where the Commissioner is of the view that a person seeking to enter into a contract does not meet the eligibility conditions (for eligibility conditions see chapter 5 (Which medical contract when?)), the Commissioner must notify the person in writing.

This notice must state the Commissioner view of the person's eligibility, the reasons for that view and guidance on the person's right of appeal.

Where the Commissioner has issued such a notice, the recipient of the notice has a right of appeal to the First-Tier Tribunal.

Where the dispute relates to the parties being unable to agree on a particular proposed term of a GMS or PMS contract, either party may refer the dispute to the Secretary of State to consider and determine the matter in accordance with:

for GMS contracts, paragraphs 101(3) to (14) and 102(1) of Schedule 6 and regulation 9(3) of the GMS Regulations; or

for PMS agreements, paragraphs 95(3) to (14) and 96(1) of Schedule 5 and regulation 8(3) of the PMS Regulations,

except where both parties to the prospective agreement are health service bodies (in which case section 9 of the NHS Act applies).

7. Assignment of Patients to Lists: Procedure Relating to Determinations of the Assessment Panel

Where an assessment panel makes a determination that the Commissioner may assign new patients to contractors which have closed their practice list of patients, any contractor specified in that determination may refer the matter to the Secretary of State to review the determination of the assessment panel.

If a referral is made to the Secretary of State, it shall be reviewed in accordance with the following procedure:

where more than one contractor specified in the determination of the assessment panel wishes to refer the matter for dispute resolution, those contractors may, if they all agree, refer the matter jointly, and in that case the Secretary of State shall review the matter in relation to those contractors together

within the period of seven days beginning with the date of the determination by the assessment panel, the contractor(s) shall send to the Secretary of State a written request for dispute resolution which shall include or be accompanied by:

the names and addresses of the parties to the dispute;

a copy of the contract (or contracts); and

a brief statement describing the nature and circumstances of the dispute.

Each party will be asked to make representations and observations on the representations of the other party both of which will be allocated between the parties.

Within the period of 21 days beginning with the date on which the matter was referred to him, the Secretary of State shall determine whether the Commissioner may assign patients to contractors which have closed their lists of patients. If the Secretary of State determines that the Commissioner may make such assignments, the Secretary of State shall also determine those contractors to which patients may be assigned.

The Secretary of State may not determine that patients may be assigned to a contractor which was not specified in the determination of the assessment panel.

In the case of a matter referred jointly by contractors, the Secretary of State may determine that patients may be assigned to one, some or all of the contractors that referred the matter.

The period of 21 days for determination may be extended (even after it has expired) by a further specified number of days if an agreement to that effect is reached by:

the Secretary of State;

the Commissioner; and

the contractor(s) that referred the matter to dispute resolution.

The Secretary of State shall record the determination and the reasons for it in writing and shall give notice of the determination (including the record of the reasons) to the parties.

Annex 1

Example Acknowledgement Letter

[date]

Dear [contractor name]

Ref: [contract details]

Further to your recent notification, dated [notification date], I can confirm we have received your intention to dispute our decision dated [insert date] in relation to:

[matter 1 details]

[matter 2 details]

[matter 3 details]

To proceed with the dispute resolution process, please submit to the above address your supporting evidence in relation to the matters under dispute within 28 days from the date of this letter.

Yours sincerely,

[name]

[title]

Annex 2

Example Invitation Letter

[date]

Dear [contractor name]

Ref: [contract details]

Following the receipt of evidence regarding your dispute relating to:

[matter 1 details]

[matter 2 details]

[matter 3 details]

We would like to invite you to discuss the matter at a meeting on:

[proposed date],

[proposed time],

[insert proposed location]

Our representatives [insert names of NHS England representatives], will attend at the meeting.

You may have a representative from your Local Medical Committee or a friend (or other appropriate professional body colleague to attend with you). Please be aware that any representative/s present as a supportive colleague(s) will not normally be permitted to speak at the meeting. Where a solicitor accompanies you, the Chair of the meeting will make it clear that the meeting is not required by legislation. Professional advisors, such as solicitors or accountants, will not normally be in attendance in a representative role unless especially requested in advance of the meeting.

I would be grateful if you would confirm in writing your acceptance to attend this meeting and provide details of any representatives you may wish to accompany you.

Yours sincerely,

[*name*]

[*title*]

Annex 3

Example Stage 1 Outcome Letter (FHSAU Referral)

[date]

Dear [contractor name]

Ref: [contract details]

Further to our recent meeting on [date/time/location of meeting] to discuss your dispute, I am writing to confirm the following outcome(s):

[outcome 1 details]

[outcome 2 details]

[outcome 3 details]

As we were unable to resolve this dispute by local dispute resolution, you may now wish to refer the matter(s) to the Secretary of State for dispute resolution in accordance with the National Health Service [General Medical Services Contracts or Personal Medical Services Agreements] Regulations 2004.

If you do wish to refer the matter(s) to the Secretary of State, then please send all supporting documentation to the NHSLA (FHSAU) which undertakes the delegated function of the Secretary of State. We have enclosed a copy of the NHSLA (FHSAU) Guidance Note for parties involved in Dispute Resolution.

Yours sincerely,

[name]

[title]

Annex 4

Example Stage 1 Outcome Letter (Matter(s) Resolved)

[date]

Dear [contractor name]

Ref: [contract details]

Further to our recent meeting on [date/time/location of meeting] to discuss your dispute, I am writing to confirm the following outcome(s):

[outcome 1 details]

[outcome 2 details]

[outcome 3 details]

We are pleased to confirm the outstanding matters are now resolved and your contract file has been updated to reflect this mutual resolution.

Yours sincerely,

[name]

[title]

Annex 5

Guidance Note for Parties Involved in Dispute Resolution

Introduction

This Guidance Note is for general information purposes only. It is not exhaustive but does cover the essential elements needed for parties submitting, or responding to, applications for dispute resolution.

Who are we?

The NHS Litigation Authority ("NHS LA") is a Special Health Authority, which (amongst other things) adjudicates in contractual disputes between the NHS Commissioning Board (NHS England) and individual primary care contractors.

Although the relevant Regulations refer to the Secretary of State, these matters were delegated to the NHS LA with effect from 1 April 2005. The Family Health Services Appeal Unit based in Leeds discharges these functions for the NHS LA.

What regulations are applicable?

The relevant legislative framework is contained in one of the following:

the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013;

the General Ophthalmic Services Contracts Regulations 2008;

the National Health Service (General Dental Services Contracts) Regulations 2005;

the National Health Service (Personal Dental Services Agreements) Regulations 2005;

the National Health Service (Personal Medical Services Agreements) Regulations 2004.

Is legal representation permitted?

Parties can be represented or assisted by whoever they wish although representatives who are not bound by The Law Society's Code of Conduct should provide an 'authority to act' letter from their client.

What information should I provide?

An application for dispute resolution should include:

the full names and contact details of the parties involved in the dispute;

a statement describing the nature and circumstances of the dispute (with reference to the appropriate regulations or contract provisions);

a signed copy of the contract which is in dispute;

what the applicant sees as the appropriate outcome of the dispute;

confirmation that all local dispute resolution options have been exhausted.

A comparables table (in Current Market Rent cases) in the form set out here: <http://www.nhsla.com/Pages/Publications.aspx?library=FHSAU%7cpublications>

The NHS LA's current Protocol can be found at <http://www.nhsla.com/NHSLA/Documents/Local%20Dispute%20Resolution%20Protocol%20for%20CMR%20April%202014.pdf>

Who will take the final decision?

The decision is usually taken by an officer of the NHS LA who fulfils the role of "the Adjudicator".

What is the procedure?

On receipt of an application, the NHS LA will first consider whether it has jurisdiction to consider the dispute.

If it does, the NHS LA will then consider whether the application provides the information required by the Regulations. If the appropriate information has been provided, the NHS LA will invite representations from parties. At this stage, the parties should provide all further evidence which they wish the NHS LA to consider.

When submitting representations to the NHS LA, accompanying bundles of documents should be indexed and paginated. A chronology of events is useful in complicated cases. Parties should not assume that the NHS LA is familiar with particular systems and processes. Clear and specific reference should be made to any pages in the bundle upon which the party relies in support of a particular representation.

No document may be provided on a 'confidential basis' although a party may apply to have parts of any document withheld from publication in the NHS LA's determination. All information received will be disclosed to the other parties, so any party wishing to have material withheld from publication must send a full version of the document to the NHS LA, indicating which parts the party would like withheld and the reasons why withholding is sought.

Any representations received will be circulated for final observations before the case is placed before the Adjudicator for determination.

What happens next on GMS/PMS Current Market Rent disputes?

The NHS LA may ask the Royal Institution of Chartered Surveyors to nominate an advisor from whom the Adjudicator may seek advice on the current market rent for the premises. The NHS LA will circulate a copy of any advice received to the parties for observations on its content, before the Adjudicator reaches a final decision on the application for dispute resolution.

Will there be an Oral Hearing?

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

Who will be present at the Oral Hearing?

The Adjudicator (who may be assisted by a clerk), the parties, their representatives and any relevant witnesses will be invited to attend an Oral Hearing.

What procedure will be followed at an Oral Hearing?

The Adjudicator will explain the procedures to be followed on the day (and may also provide written procedural information in advance).

Who will be allowed to speak?

In general terms, each party will be allowed to expand on their written evidence and each party will be given the opportunity to comment on matters raised at the hearing. The Adjudicator may question any party.

Are witnesses allowed?

Appropriate witnesses may be brought to support your case although you should provide the NHS LA with a written summary of their evidence in advance.

The Adjudicator will indicate at the hearing whether it is necessary for them to give evidence orally.

What papers will the parties receive?

If you have indicated your intention to attend the hearing, you (and all other parties attending) will receive a set of papers which will usually include:

The application for dispute resolution; and

Any presentations received.

Any further material you wish to present at the hearing will be considered at the discretion of the Adjudicator.

How long will the hearing last?

This will depend on the complexity of the case and the number of witnesses involved. Hearings may last for one or more days and it will be a matter for the Adjudicator to determine the length for which the case will be listed. The Adjudicator will try to ensure parties keep to the point and that there is no repetition.

What happens after the Hearing?

The Adjudicator will consider the information put forward by the parties and make a determination with reasons. The NHS LA will then notify the parties of the decision in writing.

Parties with special and other needs?

The NHS LA is committed to ensuring the adequate facilities and equipment are provided at oral hearing venues to assist parties with disabilities. Please notify the NHS LA in advance if any particular assistance is required, providing as much notice as possible.

How long will the process take?

It may take up to 15 weeks for the FHSAU to determine cases on the papers and up to 33 weeks for cases referred to an Oral Hearing or Advisor.

To whom can I complain if I am dissatisfied with the adjudication of the dispute?

Decisions of the NHS LA can only be set aside by the High Court. Independent legal advice should be sought on this.

Any complaints about the way in which a dispute has been handled should be submitted to:

Chief Executive
NHS Litigation Authority
151 Buckingham Palace Road, London, SW1W 9SZ

or to:

Head of the FHSAU
NHS Litigation Authority
FHS Appeal Unit, 1 Trevelyan Square, Leeds, LS1 6AE

Your concerns will be investigated by the Chief Executive or a nominated officer.

Is there any other information available?

The NHS LA publishes previous decisions, statistical information, a sheet of Frequently Asked Questions and other material on its website at: www.nhsla.com.

Alternatively you can email fhsau@nhsla.com

Please note however that we do not provide advice.