



briefing

Dispute Management - November 2009

The NHS Dispute Resolution Procedure in Wales

Morgan Cole has advised various NHS bodies in relation to disputes which have been referred to the National Assembly for Wales to be decided under the NHS Dispute Resolution Procedure (“the Procedure”).

What is it?

The Procedure is an alternative to Court proceedings. It involves either a representative of the National Assembly for Wales or an independent adjudicator nominated by the National Assembly for Wales stepping into the shoes of a Judge and deciding how the dispute is to be resolved. That decision is final and binding on the parties in dispute, save for very limited circumstances in which the decision can be appealed through the Courts (e.g. the adjudicator made an error in applying the law when reaching their decision).

When is it used?

The Procedure can be used to resolve any dispute arising out of specific contracts made between NHS bodies and third parties. This includes, for example, contracts for the provision of GP or dental services. Those contracts will contain provisions which state when the Procedure **must** be used and mean that the parties are not able to take the alternative option of pursuing a claim through the Courts. The Procedure must be used where:

- the contract is specified to be an NHS contract; or
- the contract is not an NHS contract but the contractor wishes the Procedure to be followed.

What is the process?

The initial process should be the same in most cases and will involve the following steps:

- One of the parties must make a written request of the National Assembly for Wales for the dispute to be resolved using the Procedure.
- The parties to the dispute are then required to make written representations about the dispute before a specified deadline.
- When those representations have been lodged they will be sent to the other parties to the dispute who will be invited to comment on them, again before a specified deadline.
- When those comments have been received, the National Assembly for Wales will decide whether it will adjudicate the dispute itself or appoint a third party adjudicator to deal with the dispute.

From this point onwards, the process is flexible and is very much in the hands of the individual adjudicator. The adjudicator might decide that they do not need any further information from the parties and could give their decision straightaway. However, this is likely to be quite rare and the adjudicator will often require more information from the parties before reaching their decision. The adjudicator can call the parties to a meeting to discuss and review the evidence and they can require the parties to produce specific documents or witness or expert evidence. The adjudicator even has discretion to consult with individuals not involved with the dispute, if they think their expertise will help them to reach their decision.

A decision will generally be obtained more quickly than would be the case if the dispute proceeded through the Courts. However, given the flexibility of the process it is difficult to estimate how long the procedure will take. Some cases will be dealt with within a matter of weeks, while others will take several months.

What else do I need to know?

Any request to the National Assembly for Wales to deal with the dispute using the Procedure must be made within **three years** of the date on which the dispute arose or should reasonably have come to the attention of the party wishing to refer. This is a shorter timescale than the limitation period for contract disputes, which requires Court proceedings to be started within six years of the breach of contract.

Upon deciding the dispute, the adjudicator has a wide discretion to decide which party or parties should bear the costs of the Procedure.

More information

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