

Working arrangements between the NHSLA and the CCP

Introduction

1. These working arrangements establish a framework for cooperation and constructive communication between, on the one hand, the NHS Litigation Authority (NHSLA) and, on the other hand, the Cooperation and Competition Panel (CCP) (together, the Parties). They explain how the Parties will deal with cases involving the provision of primary healthcare services in England.
2. This document is not legally binding on either of the Parties. The working arrangements will be reviewed regularly and will be amended as necessary to take account of developments, for example changes to the Principles and Rules for Cooperation and Competition (Principles and Rules), government policy and the case work of the CCP and NHSLA (see paragraph 25, Commencement and review).

The role and responsibility of the NHSLA in relation to these working arrangements

3. The NHSLA adjudicates on contractual disputes between primary care practitioners and their local Primary Care Trusts (PCTs). Primary care practitioners include GPs, dentists, opticians and pharmacists. The NHSLA acts under delegated authority from the Secretary of State.
4. In relation to general practitioners (GPs), Schedule 6, Part 7 of the NHS (General Medical Services Contract) Regulations 2004 sets out dispute resolution procedures that apply to GMS contracts and Schedule 5, Part 7 of the NHS (Personal Medical Services Agreements) Regulations 2004 sets out a dispute resolution procedure in respect of disputes arising out of or in connection with PMS agreements.
5. Specifically the NHSLA:
 - determines appeals against PCT decisions concerning the provision of NHS pharmaceutical services. Such appeals generally relate to the proposed opening of a new pharmacy, relocation of an existing pharmacy, or the provision of dispensing services by GPs;
 - deals with contractual disputes between GPs, dentists or opticians and their local PCTs under the relevant contractual arrangements;

- handles disputes over the assessment of GP Registrars' allowances under the Directions to Strategic Health Authorities concerning GP Registrars;
- handles other occasional appeals and applications under various regulations governing primary care;
- maintains a database of primary care practitioners who have had restrictions placed upon their inclusion on Primary Care Performer Lists by PCTs: and
- carries out fitness to practice checks following requests by PCTs.

The role and responsibility of the CCP in relation to these working arrangements

6. The CCP is an independent, non-statutory, advisory body. It has been established by the Secretary of State to provide advice to the Department of Health, Strategic Health Authorities (SHAs) and, in relation to NHS Foundation Trusts (Foundation Trusts), Monitor on issues arising from the application of the Principles and Rules for Cooperation and Competition (Principles and Rules) which apply to all NHS-funded services in England. The Secretary of State, acting through the Commissioning and System Management Directorate (System Management and New Enterprise Division) of the Department of Health (DH), and Monitor are the joint sponsors of the CCP (the Sponsors).
7. The Principles and Rules were published by DH in December 2007 as part of the NHS Operating Framework for 2008/09.
8. The CCP has a wide remit which is not limited to issues relating to patient choice or competition. It will receive the following cases:
 - First, appeals of procurement or advertising decisions following dispute resolution at SHA or PCT level (appeals) and advertising disputes that have been referred by the SHA to the CCP for consideration (referrals);
 - Second, cases involving mergers or raising complaints in relation to conduct that fall to be considered under the Principles and rules (reserved matters); and
 - Third, requests made to the CCP by one of the Sponsors to review a general issue arising under the relevant principles in the PRCC which is broader than a single specific case (non case specific matters).
9. The CCP will advise one or more of DH, Monitor or SHAs on the application of the Principles and Rules and make recommendations as to how any breaches should be remedied.
10. The CCP can also advise DH and Monitor on wider competition policy issues in relation to healthcare in England.

Non-concurrent powers

11. Responsibility for dealing with appeals of PCT decisions concerning the provision of NHS pharmaceutical services and disputes arising out of, or in connection with, contracts between PCTs and primary care providers lies with the NHSLA. The CCP does not have jurisdiction in relation to these matters, unless a specific complaint is made to the CCP alleging that the relevant arrangements are inconsistent with the Principles and Rules.
12. Responsibility for overseeing and advising on the application of the Principles and Rules lies with the CCP. The NHSLA does not have jurisdiction in relation to these matters.

Potential areas of overlapping jurisdiction

13. Complaints to the CCP relating to conduct involving PCTs and primary care providers of NHS-funded services may also raise contractual issues. Similarly, contractual disputes and appeals dealt with by the NHSLA may raise questions under the Principles and Rules. It may be possible to characterise a particular grievance or dispute either as a breach of the Principles and Rules or as a contractual dispute.
14. In these types of situations, the CCP and the NHSLA will seek to avoid duplication of effort and to minimise the risk of inconsistent outcomes. There are two principal ways of doing this: (i) through use of the CCP's acceptance criteria; and (ii) through dialogue between the Parties to determine which body is best placed to deal with the dispute.

Acceptance criteria

15. The CCP will investigate matters under the Principles and Rules provided the acceptance criteria set out in the relevant CCP guidelines are met. One of the acceptance criteria is that no legal proceedings have commenced. Legal proceedings are considered to have commenced once the matter has been filed in a court or tribunal, including the situation where investigations have been commenced by other professional or government regulatory bodies, such as the NHSLA. Moreover, if legal proceedings are commenced when the CCP has already started its investigation, this may result in the CCP's processes being terminated or suspended, at the discretion of the CCP.
16. Therefore, the CCP is unlikely to accept complaints that are directly related to a contractual dispute or an appeal that is already being considered by the NHSLA.
17. In relation to cases where a contractual dispute or an appeal is raised with the NHSLA after the CCP has opened an investigation, the NHSLA and the CCP will enter into a dialogue to determine whether the CCP should suspend or terminate its investigation (pending the review by and decision of the NHSLA), or the NHSLA should, provided that the parties so consent, suspend or terminate its proceedings pending the review by and recommendation of the CCP.

Which of the Parties is best placed to deal with the dispute?

18. If conduct may be characterised both as raising issues under the Principles and Rules and as a contractual dispute or appeal that falls within the remit of the NHSLA, the Parties will decide at the earliest opportunity, on a case by case basis, which authority is best placed to deal with it.
19. Practically, in cases where the centre of gravity of the dispute is an issue under the Principles and Rules, then the CCP is likely to be best placed to deal with the dispute, regardless of the fact that the dispute also raises peripheral contractual issues, or that a recommendation of the CCP may ultimately impact on contractual arrangements between one or more primary care providers and a PCT or PCTs. Where the centre of gravity of the dispute is a contractual issue, the NHSLA is likely to be best placed to deal with the dispute.
20. For the avoidance of doubt, the NHSLA is not precluded from adjudicating on contractual disputes and appeals, and the CCP is not precluded from investigating an issue under the Principles of Rules. However, to avoid duplication of effort and to minimise the risk of inconsistent outcomes, the CCP and NHSLA will cooperate to ensure that their respective processes are run consecutively rather than simultaneously, where this is at all possible.
21. Each Party will endeavour to inform the other in a timely manner about cases raising issues that they consider may reasonably fall within the remit of the other Party; they will do so on their own initiative, i.e. regardless of whether or not the parties to the dispute have raised the matter.
22. In cases where one of the Parties investigates conduct that has already been the subject of a review by the other Party, the Party carrying out the subsequent investigation will endeavour to take into account the decision or recommendation reached by the Party that carried out the first investigation, provided that this does not lead to an outcome that is inconsistent with its remit and duties. The Party that has carried out the first investigation will, to the extent that this is consistent with its pre-existing obligations, make available on request relevant information to the party carrying out the second investigation.

Cooperation and information sharing

23. The Parties will:
 - meet and communicate regularly to discuss matters of mutual interest; and
 - consult one another at an early stage on any issues that might have material implications for the other organisation.
24. The Parties will, to the extent that this is consistent with their respective obligations, share relevant information with each other.

Commencement and review

25. These working arrangements come into effect when signed by both Parties. They will be reviewed as the need arises or by written request of either Party, though the Parties anticipate that they will be reviewed no later than two years after coming into force. Any changes will be subject to the agreement of both Parties.

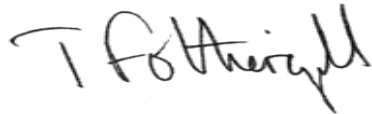
Signed for and on behalf of the CCP

Date: 22 March 2010

A handwritten signature in black ink, appearing to be 'AS' followed by a stylized flourish.

Signed for and on behalf of the NHSLA

Date: 22 March 2010

A handwritten signature in black ink that reads 'T Fothergill'.