
DIRECTIONS

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service Litigation Authority (Primary Medical Services – General Practice Systems of Choice – CCG Practice Agreement – Dispute Resolution) Directions 2015

The Secretary of State for Health, in exercise of the powers conferred by sections 7(1), 8, 272(7) and (8) and 273(1) of the National Health Service Act 2006(a), gives the following Directions.

Citation, commencement and application

1.—(1) These Directions may be cited as the National Health Service Litigation Authority (Primary Medical Services - General Practice Systems of Choice – CCG Practice Agreement – Dispute Resolution) Directions 2015.

(2) These Directions are given to the Authority and come into force on the day after the day on which they are signed.

Interpretation

2. In these Directions—

“the Act” means the National Health Service Act 2006;

“the 2012 Act” means the Health and Social Care Act 2012(b);

“the Authority” means the National Health Service Litigation Authority established by article 2 of the National Health Service Litigation Authority (Establishment and Constitution) Order 1995(c) (establishment of the National Health Service Litigation Authority);

“the Board” means the National Health Service Commissioning Board(d);

“CCG” means a clinical commissioning group;

“GP IT Services” means Core GP IT Services and Add-on GP IT Services as described in the GP IT Operating Model(e);

“GP Practice” means —

- (a) a person with whom the Board has entered into a general medical services contract under section 84 of the Act(f) (general medical services contracts: introductory) or as a consequence of a property transfer scheme made under section 300 of the 2012 Act (transfer schemes);

(a) 2006 c.41. Section 7 and section 8 are respectively amended by sections 21(1) to (4) of, and paragraph 5 of Schedule 4 to, the Health and Social Care Act 2012 (c.7) (“the 2012 Act”). The powers exercised in giving these Directions are exercisable by the Secretary of State only in relation to England, by virtue of section 271(1) of the Act.

(b) 2012 c.7.

(c) S.I.1995/2800; as amended by S.I. 2002/2621, S.I. 2005/503 and S.I. 2013/295.

(d) The National Health Service Commissioning Board (known as “NHS England”) was established by section 1H of the Act. Section 1H of the Act was inserted by section 9 of the 2012 Act.

(e) The GP IT Operating Model is set out in the document entitled “Securing Excellence in GP IT Services: Operating Model” which is available at <http://www.england.nhs.uk/ourwork/tsd/sst/it-pc>.

(f) Section 84 is amended by paragraph 31 of Schedule 4 to the 2012 Act.

- (b) a person with whom the Board has entered into an arrangement under section 92 of the Act^(a) (arrangements by the Board for the provision of primary medical services) or has entered into such arrangements as a consequence of a property transfer scheme under section 300 of the 2012 Act (transfer schemes) which require the provision by that person of primary medical services; or
- (c) a person with whom the Board has made contractual arrangements for the provision of primary medical services under section 83(2) of the Act^(b) (primary medical services) or as a consequence of a property transfer scheme made under section 300 of the 2012 Act (transfer schemes);

“GPSoC” means General Practice Systems of Choice^(c);

“GPSoC Call Off Agreement” means an agreement between a CCG and a GPSoC Supplier which enables a CCG to order the services described in the GPSoC Framework Agreement;

“GPSoC CCG – Practice Agreement” means an agreement between a GP practice and a CCG for the provision and receipt of GPSoC Services and GP IT Services;

“GPSoC Framework Agreement” means the agreement between a GPSoC Supplier and the Secretary of State for Health for the provision of GPSoC Services;

“GPSoC Services” means the services provided under the GPSoC Framework Agreement and the GPSoC Call Off Agreement”; and

“GPSoC Supplier” means an organisation which is contracted to deliver services under the terms of the GPSoC Framework Agreement.

Functions exercisable by the Authority

3.—(1) The Authority is to exercise on behalf of the Secretary of State the functions of the Secretary of State under section 9(8) of the Act (NHS contracts – determination of disputes) in respect of any dispute referred to the Secretary of State in accordance with section 9(6) of the Act which arises under or in connection with a GPSoC CCG – Practice Agreement.

(2) For the purposes of these Directions—

- (a) a GPSoC CCG – Practice Agreement is to be treated as if it were an NHS Contract to which section 9 of the Act applies; and
- (b) a GP practice which is a party to such an agreement is to be regarded as a health service body for the purposes of that agreement and of that section of the Act.

(3) In exercising the functions of the Secretary of State pursuant to paragraph (1), the Authority must comply with the procedure set out in the following provisions of these Directions.

Consideration of disputes referred

4.—(1) Where a dispute arising in respect of a GPSoC CCG – Practice Agreement is referred to the Authority, the Authority must, before the end of the period of seven days beginning with the date on which the dispute was referred to it, send a written request to both parties to that agreement inviting them to make any written representations which they would like to make about the matter under dispute.

(2) Any written representations made in accordance with a request under paragraph (1) must be received by the Authority before the end of such period as may be specified by the Authority in the request but the period specified must not be less than two weeks or more than four weeks from the date on which the request was made.

(a) Section 92 was amended by paragraph 36 of Schedule 4 to the 2012 Act.

(b) Section 83 was amended by paragraph 30 of Schedule 4 to the 2012 Act.

(c) GP Systems of Choice is a scheme by which the National Health Service funds the cost of GP Clinical IT Systems in England. Guidance about this scheme is available from the Health and Social Care Information Centre, 1 Trevelyan Square, Boar Lane, Leeds, LS1 6AE.

(3) The Authority must give 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 it together with the written request referred to in paragraph (1).

(4) The Authority must—

- (a) give a copy of any representations received by it from a party to the dispute to the other party to the dispute; and
- (b) in each case, request in writing a party to whom a copy of the representations is given to send to the Authority, before the end of such period as may be specified by the Authority in the request, any written observations which that party would like to make regarding those representations.

(5) The period specified by the Authority in a request under paragraph (4)(b) must not be less than two weeks or more than four weeks from the date on which the request is sent.

(6) The Authority must decide whether to determine the matter itself or to appoint a person in accordance with direction 5 to consider and determine the matter.

(7) The Authority must make the decision referred to in sub-paragraph (6)—

- (a) following the receipt of any representations requested in accordance with sub-paragraph (1), before the end of the period specified by the Authority in the request unless paragraph (b) applies;
- (b) if applicable, following the receipt of any observations requested in accordance with sub-paragraph (4)(b), before the end of the period specified by the Authority in the request; or
- (c) if the Authority has not received any representations or observations by the end of the period specified by the Authority in the request, at the end of that period.

Appointment of a person to consider and determine a dispute

5.—(1) Where the Authority appoints a person to consider and determine the matter, the Authority must —

- (a) give notice in writing to the parties of that fact, which must include the name of the person appointed; and
- (b) provide the person appointed with—
 - (i) any documents by which the matter was originally referred,
 - (ii) any documents received from the parties in response to a request made in accordance with direction 4(1), and
 - (iii) any documents received from the parties in response to a request made under direction 4(4)(b).

(2) A person appointed by the Authority under this direction to consider and determine the matter must do so in accordance with the National Health Service Contracts (Dispute Resolution) Regulations 1996(a).

Determination of disputes by the Authority

6.—(1) If the Authority decides to determine the matter itself, the Authority must inform the parties accordingly.

(2) For the purpose of assisting in the consideration of the subject matter of the dispute, the Authority may—

- (a) invite representatives of the parties to appear before it to make oral representations either together or, with the agreement of the parties, separately;

(a) S.I.1996/623; as amended by S.I. 2004/865. These Regulations apply to the consideration and determination of a matter by a person appointed under section 9(8) of the Act.

- (b) in advance of hearing any oral representations, provide the parties with a list of matters or questions that the Authority would like the parties to give special consideration to;
 - (c) consult such other person or persons whose expertise the Authority considers is likely to assist in the consideration of the matter.
- (3) If the Authority consults another person in accordance with paragraph (2)(c), it must—
- (a) give notice in writing to the parties accordingly; and
 - (b) where the Authority considers that the interests of any party might be substantially affected by the results of the consultation, give to the parties such opportunity as it considers reasonable in the circumstances to make observations on those results.
- (4) In considering the matter, the Authority must have regard to—
- (a) any written representations made in response to a request under direction 4(1), but only if they are made before the end of the period specified in the request or, where this is not reasonably practicable, before the end of such further period as the Authority may, in the circumstances of a particular case, allow;
 - (b) any written observations made in response to a request under direction 4(4)(b), but only if they are made before the end of the period specified in the request or, where this is not reasonably practicable, before the end of such further period as the Authority may, in the circumstances of a particular case, allow;
 - (c) any oral representations made in response to an invitation issued under paragraph (2)(a);
 - (d) the results of any consultation undertaken in accordance with paragraph (2)(c); and
 - (e) any observations made in accordance with an opportunity given under paragraph (3).
- (5) Subject to complying with the provisions of these Directions, the Authority may determine, in such manner as it considers appropriate, the procedure which is to apply to the dispute resolution in order to ensure the just, expeditious, economical and final determination of the dispute.

Determination of the dispute

7. The Authority must —

- (a) record a determination made by it under section 9(8) of the Act, and the reasons for that determination; in writing; and
- (b) give notice in writing of the determination, and the reasons for it, to the parties.

Signed by authority of the Secretary of State for Health



GARETH ARTHUR

Member of the Senior Civil Service
Department of Health

Dated 13 March 2015