

Principles and Rules for Co-operation and Competition- Dispute procedure for North Yorkshire and York PCT

1. Introduction

- 1.1 The NHS has moved from a system based on tight control of service provision to a more open system, characterised by a stronger commissioner/provider split, greater choice for patients, more plurality of provision, and a greater degree of competition for service provision.
- 1.2 The Principles and Rules for Co-operation and Competition¹ (PRCC) set out the expectations on commissioners and providers working in this environment.
- 1.3 Where issues around the PRCC arise we would hope that in most cases these could be resolved informally, without recourse to a formal process. If however the dispute can not be resolved informally, this document sets out the process by which the perceived breach will be handled.
- 1.4 The design of the procedure is based on the principle that disputes should be resolved at the most local level possible:
 - The first port of call for the provider is the PCT, who should have clear processes for resolving the dispute locally.
 - If the dispute is not successfully resolved at this level, the complaint should then be heard by an SHA level panel.
 - If the complaint is still not successfully resolved, it can be referred to a national Independent Advisory Panel, which will be in place from October 2008.

2 Objectives of the procedure

- 2.1 The objectives of the procedure are as follows:
 - To provide PCTs with an appropriate mechanism for dealing with reasonable disputes against the PRCC.

¹ The Operating Framework, December 2007

- To resolve disputes relating to the PRCC transparently, fairly and consistently.
- To assure providers that the process is fair and transparent.
- To mitigate risks and protect the reputation of the NHS.
- To be compliant with potential acceptance criteria of the panel at SHA and national level.
- To prevent where possible legal challenge/ expensive external referral processes.

3 System Management Principles

- 3.1 North Yorkshire and York PCT will also uphold the national principles for system management when dealing with disputes of this type. These are as follows:

Transparency

- Communicate the process and decision making criteria widely and in advance
- Engage all relevant stakeholders in the development of this process
- Enforce declarations of interest
- Publish findings within and across SHAs (the latter to enable consistency)

Objectivity

- Base analysis and the decision on objective information and criteria
- Maintain an audit trail

Proportionality

- Only begin the formal dispute process on matters of material importance

- Resources used must be proportionate to the significance of the dispute

Non discriminatory

- The panel must not favour one part of the system over another

Accountability

- The PCT will provide its board, the SHA, and the national panel information relating to the disputes considered and outcome. PCTs will be expected to act on the decision of the SHA panel, and be held to account by their own Board.

Subsidiarity

- Wherever possible the dispute should be managed by the PCT

Consistency

- Internal coherence and consistency in dealing with disputes.
- Consistency across PCTs; all have agreed to cooperate on process

No double jeopardy

- Providers should not be held to account differently by different institutions

4 Acceptance criteria for complaints

4.1 The PCT will only accept complaints that meet the following criteria:

- The content of the dispute is covered by the principles and rules for co-operation and competition.

- There is a full and frank disclosure of all relevant and applicable information. This does not preclude the panel **from** asking for further information as it requires. Furthermore, any individuals connected to the complaint are on hand to provide further evidence / testimony as required.
- The Panel is best placed to resolve the issue (i.e. over the other regulators including the Office for Fair Trade (OFT), and the Advertising Standards Agency (ASA), or the Strategic Health Authority (SHA)).
- The issue is not a 'reserved matter' under the PRCC, as defined in the National Panel's Rules of Procedure (to be published on the national panel's website).
- If legal proceedings are already underway, the panel will take a view on a case by case basis as to whether it will hear the case through the PCT DRP.
- The dispute is not trivial, inappropriate, vexatious or an abuse of the Panel's procedures.
- There is adequate time for the panel to review the complaint appropriately, for example, if there are time-critical issues
- The PCT is the commissioner, or the lead commissioner for the service in question.

5 The Procedure

5.1 The PCT procedure is made up of the following five stages:

Stage 1: Making the Complaint

Any complaint must be submitted to the PCT Chief Executive via an electronic form available here [insert link]. By completing this form the complaint is confirming its consent to resolution by the PCT DRP. The complaint will then be assessed against the acceptance criteria set out above. The complaint will be acknowledged within five working days.

Stage 2: Triage

Following the receipt of the complaint, the PCT will make an assessment of the following factors:

- *Whether the complaint meets the acceptance criteria.* The PCT may get in contact with the complainant at this stage and request clarification or further information. If the complaint is not deemed to meet the acceptance criteria, the complainant is notified that the complaint will not progress, and what further information is needed (if any).
- *Whether the complaint should be fast tracked to another organisation, including the ASA, OFT, the SHA or the national competition panel.* In which case, the claimant is informed of the course of action and the process the complaint should follow.

Where the complaint is in scope and not subject to fast tracking, it will proceed to the next stage. In most cases we would envisage that the triage process will be carried out within five working days.

Stage 3: Lead director review

Following the triage, the responsible director will review the complaint to determine whether a swift resolution can be achieved without need to call the panel. The lead director may call a meeting of the parties concerned to discuss the matter informally and without prejudice.

Lead Director: Director of Performance & Delivery

Stage 4: The panel

If the complaint cannot be resolved by the lead director, the panel will then formally review the complaint. In most cases this will be based on a consideration of documentary evidence, although the PCT may invite representations in person if they deem this to be necessary.

Stage 5: The decision

Once the panel has made the decision, it will write to the complainant notifying them of the decision, explaining the rationale and where necessary the course of action. It will also notify the national panel and SHA panel of the dispute and the outcome.

If the complainant does not believe that the case has been satisfactorily resolved it can enter the SHA DRP process. In most cases, this stage of the process is expected to take no longer than 20 days.

While the timescales set out for each stage above are illustrative, the process as a whole will take no longer than three months.

6 Membership of the PCT panel

6.1 The membership of the PCT panel will normally have the following 4 core members:

- Non-Executive Director (chair)
- Chief Executive
- Director of Commissioning
- Director of Performance & Delivery

PCT's may choose to vary membership but at least one executive director must be on the panel. The chair of the panel will also be call on other experts to provide advice depending on the nature of the case, although they will have no decision making role.

7 Right of Appeal

7.1 Our expectation is that most complaints will be successfully resolved. However, if the complainant is unsatisfied by the results of this procedure, they can refer the complaint to the SHA process. This is available [here](#). Appeals to the SHA must be made within six months of the complainant being informed of the PCT decision.

8 Contractual Dispute Resolution

8.1 It is important to differentiate between the proposed new approach for dealing with disputes relating to the co-

operation and competition principles and the arrangements for resolving NHS contractual disputes. Where a dispute arises between NHS partners regarding contractual arrangements it is not proposed to change the existing arrangements.

9 Further Information

- 9.1 If you have any questions or queries about this process, please contact Gary Metcalfe (Senior Procurement Manager).

Gary.metcalfe@nyypct.nhs.uk