

Dispute Avoidance and Resolution Process for complaints connected to the Principles and Rules for Co-operation and Competition

Introduction

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, more plurality of provision, and a greater degree of competition for service provision. The Principles and Rules for Co-operation and Competition (PRCC) set out the expectations on commissioners and providers working in this environment.

Primary Care Trusts in the North West are committed to fulfilling their roles as local system managers to ensure that they deliver quality, safety, value for money and equity.

This document sets out the dispute avoidance and resolution process (DARP) in PCTs across the North West for dealing with perceived breaches of the 10 national PRCC.

The process is based on the principle that disputes should be resolved at the most local level possible:

- The recourse for a provider is the relevant PCT, who will have clear processes for resolving the dispute locally.
- If the dispute is not successfully resolved at this level, the dispute can then be referred to the SHA.
- If the dispute is not successfully resolved at the SHA level, it can be referred on to the National Panel for Co-operation and Competition (NCCP).

Objectives for the North West PCTs dispute resolution process

- To resolve disputes relating to the *principles and rules for co-operation and competition* (PRCC) transparently, fairly and consistently and in the interest of the public.
- To provide a response to perceived disputes in a timely manner.
- To provide confidence to the system that the process is fair and transparent, enhancing choice for patients and willingness by providers to participate in the market.

- To mitigate risks and protect the reputation of the PCT.
- To prevent where possible legal challenge/ expensive external referral processes.
- To prevent referral to the NHS Northwest DARP.
- To ensure continued development of system management within NHS Central Lancashire

2. Acceptance Criteria for the PCT Local Resolution panel

The panel will only consider disputes that meet the following criteria:

- The content of the dispute is covered by the principles and rules for co-operation and competition. Appendix 1 includes the 10 principles under which disputes may be raised and Appendix 2 gives some examples of the kind of issue that may be covered. The latter is intended as a guide only and is not an exhaustive list.
- The dispute does not relate to treatment of an individual patient resulting from the PCT's system management activities. Such disputes would fall under the provisions of the NHS Complaints Procedure
- The scope of the allegation is clearly defined
- 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 - such information should be supplied to the PCT within 28 working days);
- Full details have been received by the PCT, with a preferred remedy;
- The nature of the complaints or challenge are clearly set out
- No legal proceedings have commenced;
- There is adequate time for the panel to review the complaint appropriately, for example, if there are time-critical issues

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 arrangement the existing arrangements will continue.

3. The Process

The process is made up of the following four stages (see flowchart in appendix 3):

Stage 1: Making the Complaint

Any complaint must be submitted in writing to the PCT Chief Executive. The Chief Executive will acknowledge receipt of the complaint within 2 working days, enclosing a copy of this process document

Stage 2: Triage

- The complaint will be assessed by one of either the Associate Director Commissioning and Patient Choice or the Associate Director Service Planning, against the acceptance criteria set out above.
- On acceptance of the complaint, the PCT may contact the complainant to request clarification, further information and offer mediation.
- If the complaint is not deemed to be covered by the acceptance criteria, the complainant is notified in writing that the complaint did not progress.
- If the complaint cannot be assessed with the information provided, the complainant will be given the opportunity to submit further information. If a subsequent submission is still deemed not to meet the criteria, the PCT will close the case and advise the complainant as in the point above.

Confidentiality

The PCT will treat any information it receives that may be consider as commercially sensitive with confidence and will not disclose that information unless compelled to do so under legislative rules or through Court processes. In order to properly consider disputes, the PCT may need to forward submitted evidence to external consultants who have been appointed to advice on specific aspects of the dispute. The external consultants will be bound by confidentiality rules and will be obliged not to disclose that information to anyone else.

Stage 3: Mediation

- If the complainant accepts the offer of mediation, the PCT shall appoint an independent mediator (this would normally be the Director with responsibility for health services procurement in another PCT or an independent procurement expert). The mediator would be responsible for bringing the parties together to explore whether a solution can be found.

Stage 4: Local Dispute Resolution Panel

- If the complainant does not wish to accept mediation, or if mediation fails to resolve the dispute, the PCT will convene a Local Dispute Resolution Panel, This will be chaired by a Non-Executive Director appointed by the PCT Chair and will comprise the Deputy Chief Executive and a senior manager not previously involved in the matter under dispute.
- The complaint will be sent to the chair of the panel , who will request all documentation in respect of the complaint and assess it against current PCT guidance, policies and procedures relevant to the complaint

The chair can then decide whether:

- To invite any additional independent experts, particularly specialist Procurement or legal professionals to advise the panel.
- To agree with the panel whether any further information is required before the panel can consider the complaint. If this is the case, the Chair will request this from the complainant, to be provided within 2 weeks.

The panel will then formally sit and review the case. This will be desk based rather than an open panel. This stage of the process should take no more than 25 days.

Stage 5: The decision

If the panel is able to make a decision, the Chair will write to all parties notifying them of the decision within 2 working days, explaining the rationale and setting out the requirements for both sides for resolving the dispute. It will also notify the SHA of the dispute and the outcome. The PCT Board will be notified of the decision at the first available Board meeting after a decision has been reached. This notification will be undertaken in the public session of the Board meeting.

If the panel is not able to make a decision based on the information available it can:

- Adjourn the process to gather additional information and analysis and reconvene as a Panel. If the complainant does not agree to this course of action, the case will be closed and the complainant referred to the NHS Northwest DARP.
- Refer the case to the NHS Northwest Disputes Resolution panel.

4. Where resolution is not reached

If resolution is not reached during this process, the PCT should refer the matter to the NHS Northwest Dispute Avoidance and Resolution Process. The Chair shall advise the complainant in writing and enclose a copy of the NHS Northwest DARP procedure for information.

5. Review of the Dispute Avoidance and Resolution Process

This process will be subject to annual review by the Procurement Steering Group.

Appendix 1

TEN PRINCIPLES AND RULES FOR COOPERATION & COMPETITION

(Source: Operating Framework 2008/9 Annex D. DH, Dec 2007)

1. Commissioners should commission services from the providers who are best placed to deliver the needs of their patients and population
2. Providers and commissioners must cooperate to ensure that the patient experience is of a seamless health service, regardless of organisational boundaries, and to ensure service continuity and sustainability
3. Commissioning and procurement should be transparent and non-discriminatory
4. Commissioners and providers should foster patient choice and ensure that patients have accurate and reliable information to exercise more choice and control over their healthcare
5. Appropriate promotional activity is encouraged as long as it remains consistent with patients' best interests and the brand and reputation of the NHS
6. Providers must not discriminate against patients and must promote equality
7. Payment regimes must be transparent and fair
8. Financial intervention in the system must be transparent and fair
9. Mergers, acquisitions, de-mergers and joint ventures are acceptable and permissible when demonstrated to be in patient and taxpayers' best interests and there remains sufficient choice and competition to ensure high quality standards of care and value for money
10. Vertical integration is permissible when demonstrated to be in patient and taxpayers' best interests and protects the primacy of the GP gatekeeper function; and there remains sufficient choice and competition to ensure high quality standards of care and value for money

Appendix 2 Examples of the Type of Dispute that may be covered by this procedure

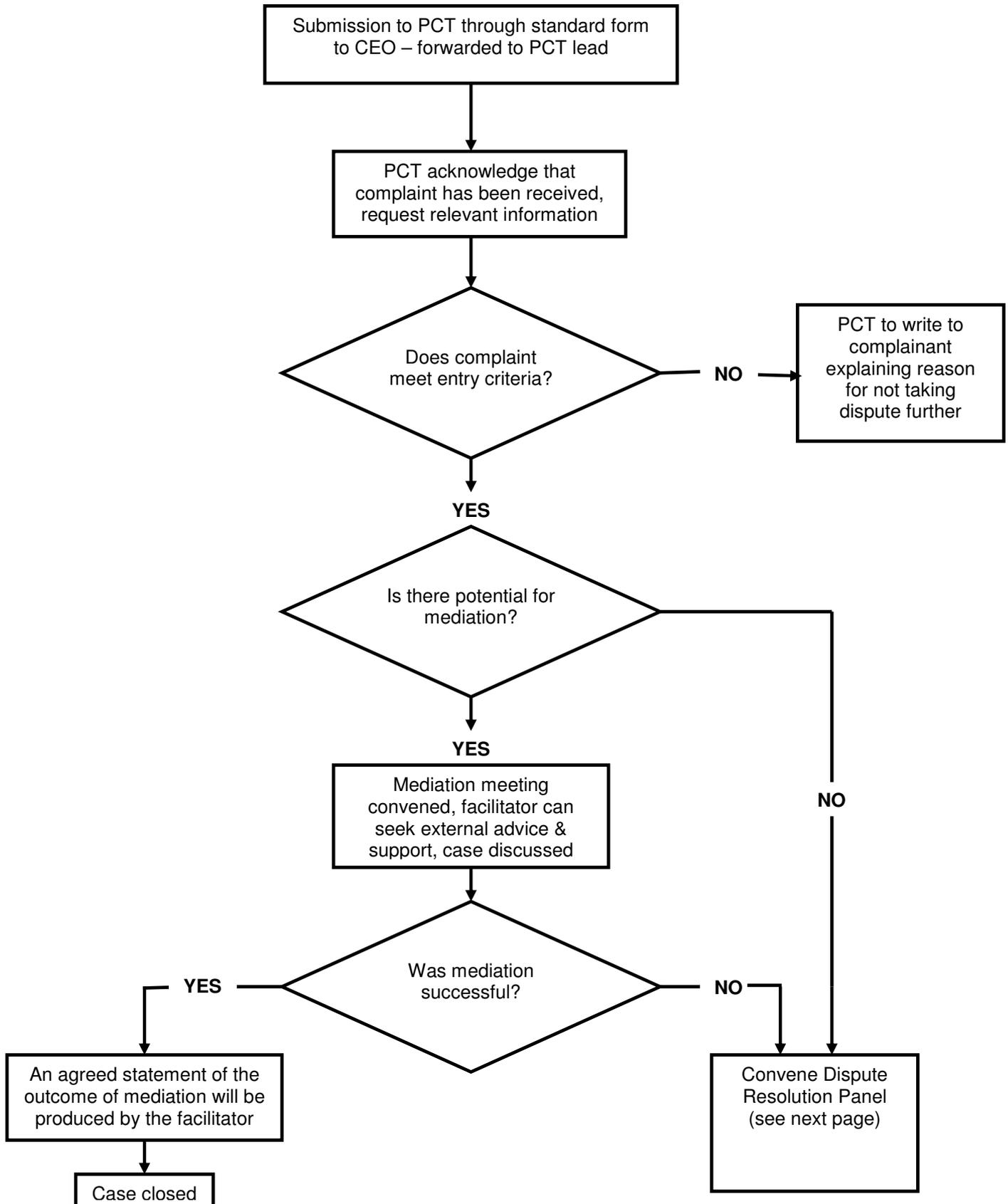
This list is not intended to be exhaustive.

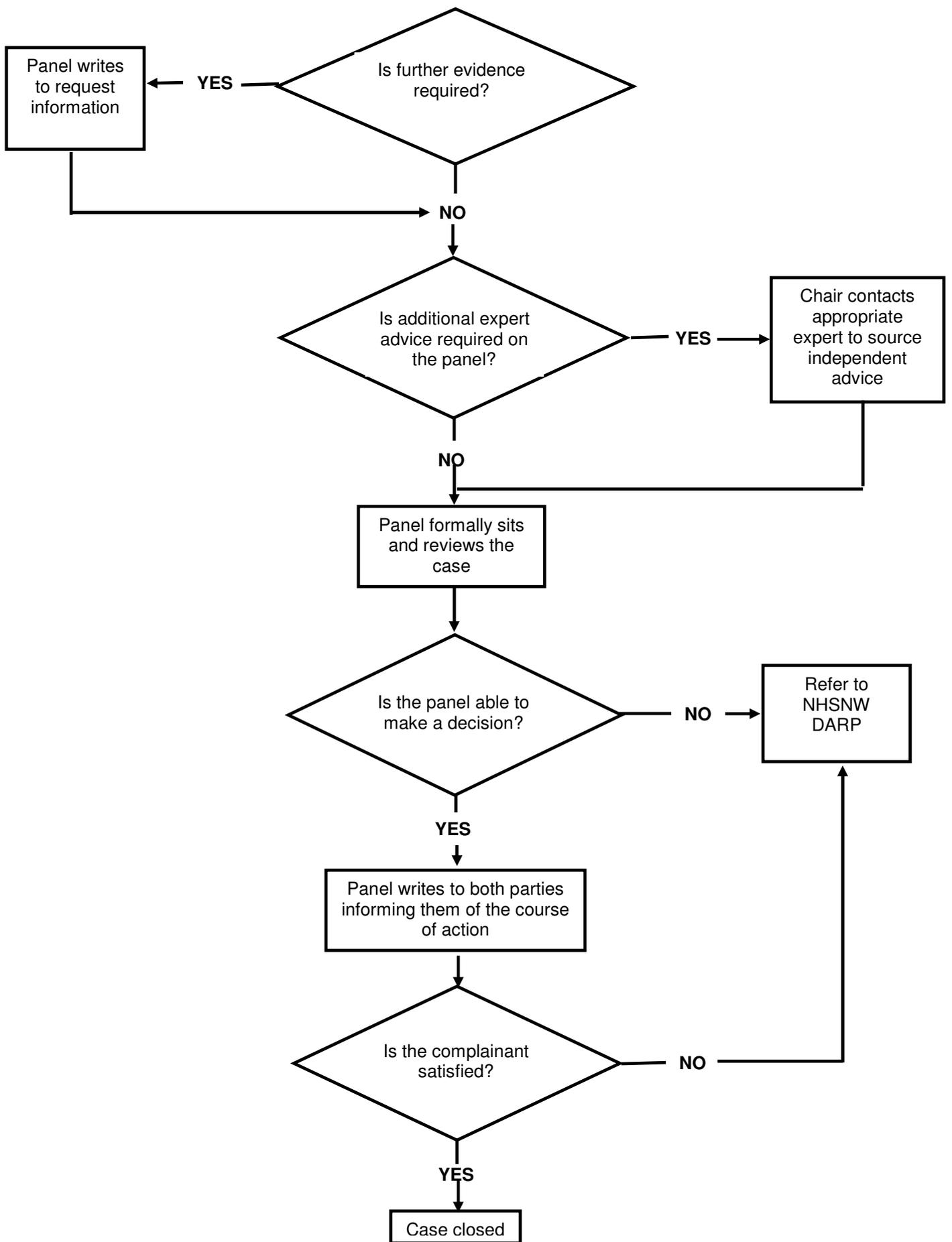
- Breaches of PCT procurement procedures
- Failure of the PCT to manage potential or actual conflicts of interest, resulting in lack of openness and transparency
- Breaches of the NHS Promotion code
- Anti-competitive procurement practices and inappropriate restriction of choice
- Breaches of the PbR code of Conduct
- Breaches of PbC Policy and accountability arrangements
- Breaches of NHS Choice Policy

Disputes not covered by this process

- Complaints about care or treatment of an individual patient
- Complaints about Independent Contractors
- Complaints about individual staff members (unless related to behaviour affecting competition rules)
- Disputes covered by NHS contract disputes procedures
- Matters falling under the remit of the Advertising Standards Authority
- Breaches of obligations under PCT coordinating commissioner Consortium Agreements

NHS Central Lancashire - Dispute Avoidance/Resolution Process





APPENDIX 4

NHS NORTHWEST DISPUTES RESOLUTION PROCEDURE

The final version of the NHS NW Dispute Avoidance Resolution Process (DARP) will be inserted once it has finally been agreed.