

# WELSH HEALTH CIRCULAR



Llywodraeth Cymru  
Welsh Government

**Issue Date:** 12 April 2019

**STATUS: COMPLIANCE**

**CATEGORY: FINANCE**

**Title:** Dispute Arbitration Process - Guidance for Disputed Debts (invoices and service agreements) within NHS Wales - 2019/20 – 2020/21

**Date of Expiry / Review:** April 2021

**For Action by:**  
Chief Executives & Directors of Finance  
LHBs/Trusts/NWIS/NWSSP/WHSSC/EASC/HEIW

**Action required by:**  
See paragraphs 8 – 40 of Guidance

**Sender:** Alan Brace, Director of Finance NHS Wales, Health & Social Services Group (HSSG)

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**Enclosure(s):** Covering Letter and Guidance

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Chief Executives and Directors of Finance – NHS Trusts including NWSSP &  
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Our Ref: AB/AJH/DDG

12<sup>th</sup> April 2019

Dear Colleague,

Please find enclosed revised guidance for disputed debts between Welsh NHS bodies. It should be noted that this updated guidance incorporates a change in timescales for service agreement disputes.

This year, the earlier Planning Framework timeframe has provided the opportunity for organisations to progress the agreement of service agreements sooner and achieve earlier sign off of SLA/LTAs. A two stage approach has been taken to bring forward the deadline over the next two years. This increases certainty of NHS Wales contracted income and expenditure assumptions and allows early resolution of issues; releasing resources to be directed towards operational delivery. I would hope that your individual Boards are also driving this approach on the basis of achieving this position as expected normal practice.

I wish to re-iterate that this arbitration process should be regarded as a last resort; therefore, the submission of cases will be viewed as a failure of organisations to deal with the matter locally in a prompt and professional manner.

Yours Sincerely

**Professor Alan Brace**

Cyfarwyddwr Cyllid | Director of Finance

**ENC**



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## **Dispute Arbitration Process - Guidance for Disputed Debts (invoices and service agreements) within NHS Wales**

### **Summary**

1. This guidance supersedes Welsh Health Circular (WHC 2017 013) titled 'Dispute Arbitration Process - Guidance for Disputed Debts (invoices and service agreements) within NHS Wales - 2017/18 – 2018/19'.
2. The arbitration process should be seen as a last resort, it is therefore expected that invoices and service agreements with immaterial values, should be resolved between parties within the timescales set out in this document. If organisations fail to reach an agreement and require Welsh Government intervention, then cases should be submitted, irrespective of the value.

### **Scope**

3. This procedure will apply to all NHS Trusts and Local Health Boards in Wales. In addition, this process and procedure will equally apply to Health Education and Improvement Wales (HEIW), Welsh Health Specialist Services Committee (WHSCC), Emergency Ambulance Services Committee (EASC), NHS Wales Informatics Service (NWIS) and NHS Wales Shared Services Partnership (NWSSP).

### **Background**

4. The early resolution of issues drives improvement in payment performance and provides increased certainty of NHS Wales contracted income and expenditure assumptions, through early sign off of SLA/LTAs.
5. This revised guidance brings forward the deadline for both parties to have signed service agreements. A two stage approach has been taken with the deadline for 2019/20 agreements set as the last working day of May 2019 (previously June) with an arbitration deadline of the first working day of June 2019 (previously July); and for 2020/21 agreements the last working day of March 2020, with an arbitration deadline of the first working day of April 2020.
6. The invoice arbitration escalation process and submission date of 17 weeks for the debtor organisation, with the creditor organisation submitting a counter arbitration case by week 18, remains unchanged. The impact on the timescales for the individual escalation stages is provided within Section 8. It should be noted that the accelerated 'year end' process also remains unchanged. It is therefore assumed that those staff whose role it is to manage, resolve and process payments, in accordance with the timescales laid out in this document, have the systems, procedures and support mechanisms embedded within the organisations, to efficiently and effectively fulfil this requirement.

7. This guidance reiterates the following principles in relation to invoices, which should now be embedded within your processes:
  - a. The responsibility for settlement of invoices lies with the Directors of Finance of the organisations involved.
  - b. Organisations should not raise invoices which they know will give rise to an outright dispute due to lack of validity. This is particularly the case around the year end. All valid invoices should be settled promptly, within the timescale set down in the CBI's prompt payment guidance.
  - c. Invoices should be raised in regular intervals (e.g. quarterly/monthly) or should cover periods agreed in advance between the parties, for services provided throughout the financial year.
  - d. Disputed invoices imply, merely by their existence, a breakdown in communication between organisations. Should any debts need to progress to arbitration, this will be viewed as a failure of Directors of Finance to deal with the matter locally in a prompt and professional manner.
  - e. Arbitration should be seen as the very last resort in dispute resolution.
  - f. Arbitration will not result in the apportionment of liability. This is to prevent organisations seeking arbitration speculatively in order to achieve a part settlement.

### **Invoice Arbitrations - Procedure & Implementation**

8. Invoice arbitrations will be conducted by the Head of NHS Financial Management and ratified by the Director/Deputy Director of Finance, Welsh Government (WG) HSSG Finance Division.
9. The timetable for action in relation to disputed debtors invoices is outlined below:

<b>Age of Debt (weeks)</b>	<b>Action</b>	<b>Responsibility</b>
0-10	Routine follow-up	Receivables/Payables Ledger Staff
10-15	Escalation/Negotiation	Directors of Finance or nominated Deputy, escalated to Chief Executive
16	Arbitration Preparation	Directors of Finance or nominated Deputy, signed off by Director of Finance. If applicable, WG informs non submitting organisation that a case has been received.
17	Debtor & Creditor Case Submission	
18	Final Creditor Submission Deadline	
19-23	Decision/Award	Head of NHS Financial Management (WG)

10. The timetable outlined above assumes the age of the debt begins on the invoice date.

### **Invoice Arbitration - Routine Follow-up**

11. The period between 0 and 10 weeks is for organisations to settle invoices using their own follow up procedures. The overwhelming majority of invoices should be settled within this period. This timescale provides sufficient time to review statements, request and receive copy invoices, obtain payment authorisation within the organisation, resolve simple disputes, provide supplementary information to explain the basis of charges, raise credit notes and make part payments where part liability is agreed etc.
12. Organisations must submit a list of Aged Debtors relating to Welsh inter-NHS invoices as part of the monthly Financial Monitoring Returns.

### **Invoice Arbitration - Escalation/Negotiation**

13. At this stage, an invoice has remained unpaid for over 10 weeks. The invoice should be escalated to the level of Director of Finance or nominated Deputy, who should enter into discussion with the other party in order to gain resolution of the situation. During this timeframe, failure to gain resolution should result in the discussions escalating to Chief Executive Level. It is the organisations responsibility to ensure that WG NHS Financial Management is informed of any changes to lead personnel. All written correspondence during this period should be clearly addressed to these individuals.
14. Organisations should also take this opportunity to review their processes, to identify the cause of not resolving the issue within the 10 week routine follow up stage, taking remedial action where necessary.
15. WG NHS Financial Management will be monitoring the 11 - 17 week stage and will be raising concerns via the monthly Financial Monitoring Return process in order to gain confirmation that every possible action is being undertaken to resolve the dispute.

### **Invoice Arbitration - Preparation**

16. Should any invoice be outstanding for 15 weeks, it is assumed that discussions between both organisations at Director of Finance or nominated Deputy, and Chief Executive level, have failed and the invoice must now be arbitrated on by WG.
17. The Directors of Finance or nominated Deputy of each organisation should prepare cases for submission to the WG Head of NHS Financial Management ( [NHSFinancialManagement@gov.wales](mailto:NHSFinancialManagement@gov.wales) ), outlining why the payment is/is not due. A proforma has been included within

Appendix 1 which should be completed for all submissions. This includes a summary of the main points which must not exceed 2 sides of A4. Backing documentation will also be accepted in support of the case.

18. The documentation should include evidence that verbal discussions, for example notes of meetings or telephone conversations, have taken place between the parties. Evidence must also be provided of written communication between Chief Executives.
19. The Directors of Finance will be required to sign the arbitration case documentation before submission. No hard copy is required; however, the Director of Finance must also be included in the email recipients of the electronic submission.
20. The Debtor cases should be submitted by the time the invoice reaches 17 weeks old and the Creditor no later than week 18. If only the Debtor case is submitted, WG will inform the other party within two days that an arbitration case has been submitted. The organisational name, invoice number and amount will be communicated; however it will be for that organisation to obtain copies of the invoice, if required. The outstanding case must be submitted before the invoice has passed 18 weeks old. The timetable will not be extended under any circumstances. It is expected that organisations have robust systems to ensure the case is prepared and authorised irrespective of personnel availability.

#### **Invoice Arbitration - Decision/Award**

21. The WG Director/Deputy Director of Finance will make a decision in relation to the arbitration and will issue the decision to the Directors of Finance of the disputing organisations with 4 weeks of the submission.
22. The decision will allow no apportionment of an invoice (or disputed portion of an invoice) in any circumstance. The decision is final and there will be no avenue of appeal. There will be no further communication regarding the decision after this point.
23. As this process is Debtor led, where a case is not submitted by the Debtor organisation (invoice issuer), it will be automatically assumed that the invoice is not valid and they will therefore be instructed to issue a credit note within fourteen days. If however, a Debtor case is received and a case is not submitted by the Creditor, it will be assumed that the organisation is not disputing payment and they will therefore be instructed to settle the invoice within fourteen days.
24. The WG Director/Deputy Director of Finance is not required to justify the decision taken in any way. Organisations must recognise that arbitration is never the best way to resolve disputes and should

therefore make use of their best efforts to ensure that issues never reach this stage.

25. The decision awarded does not set a precedent for any future decisions.

### **Invoice Arbitration - Year End**

26. The accurate agreement of balances between Welsh NHS bodies is an essential element of the production of the Welsh Government's core Accounts and the summarised Accounts of NHS Wales.
27. The arbitration process timeline outlined above must therefore be revised at the year end to ensure that Debtors and Creditors recorded in the Accounts are either agreed or arbitrated upon before the Draft Accounts are submitted to the WG.
28. Organisations are required to agree balances at the year end. All outstanding Debtors and Creditors will therefore fall into one of three categories:
  - a. **Agreed.** This means that the organisation has agreed to pay the invoice in full without question. The organisations involved will place a corresponding accrual in its Accounts. Payment must be made no later than 4 weeks after agreement has been provided or sooner; to ensure the revised 17 week deadline is not exceeded. This will ensure that invoices agreed for payment at year end, are paid promptly and that no further resources are incurred on following up non payment. WG should be notified immediately if this timescale is exceeded.
  - b. **Agreed for Accounting Purposes.** This means that the agreeing organisation recognises that the invoice is valid in principle, but requires further information in order to satisfy itself that the quantum of the invoice is accurate. The organisation involved will place a corresponding accrual in its Accounts. However, the 17 week deadline still applies. Therefore, if the debt remains unpaid, irrespective of the agreement for accounting purposes, an arbitration case is to be submitted. The decision scenarios relating to submission and non submission of cases will apply.
  - c. **Disputed.** This means that the agreeing organisation disputes the content of the invoice and does not believe that it is liable to pay the invoice at all.
29. Where an invoice is disputed at the time of the final Agreement of Balances Exercise in April each year, no matter what the age of the invoice, the Director of Finance must ensure their staff prepares a case regarding the disputed debt for arbitration. The case should be submitted to the WG Head of NHS Financial Management no later than the 10<sup>th</sup> working day of April. This year end deadline is applicable whether you are the Debtor or Creditor organisation.

30. Organisations should be aware of the dates for submission, and if both parties agree, an arbitration case can be submitted before the deadline. An earlier decision can then be provided; however, both parties must agree to the early submission date and this must be agreed by the Head of NHS Financial Management.
31. A decision will be taken on the disputed invoice and communicated to the disputing organisations no less than two working days before the Draft Accounts are due to be submitted to HSSG Finance. Due to the reduced timescales for the year end arbitration process, there will be no opportunity for WG to request further details in support of the cases, from the submitting organisations. The arbitration decision will be made based only on the information contained within the submitted case on the 10<sup>th</sup> working day of April.
32. Organisations must then make the necessary adjustments to their Draft Accounts in order to reflect the decision taken.

#### **Long Term Agreements / Service Level Agreements Arbitration Process**

33. A two staged approach will be taken to bring forward the deadline for the signing off of LTA/SLA documents. In 2019/20, the deadline has been set as the last working day of May, with the submission of arbitration cases, from both parties, set as the first working day of June. In 2020/21, the deadline has been set as the last working day of March, with the submission of arbitration cases, from both parties, set as the first working day of April. Organisations are to report on the status of obtaining signed agreements via the Financial Monitoring Return process.
34. As per the invoice process, the LTA/SLA arbitration process should be seen as a last resort, it is therefore expected that immaterial values will be resolved between parties. If organisations fail to reach an agreement and require WG intervention, then cases should be submitted, irrespective of the value.
35. When a dispute arises, but the invoice arbitration process is not applicable as it is not yet directly linked to an invoice, organisations can submit a case for arbitration at any point on a date agreed between the two parties and the WG Head of NHS Financial Management. However, this agreed date will not exceed the arbitration submission deadline of first working day of June (for 19/20) or April (for 20/21) for SLA/LTA disputes.
36. When disputes arise on invoices associated with signed LTA/SLAs, then the invoice arbitration process should be followed.

37. The WG Director/Deputy Director of Finance will make a decision in relation to the arbitration and will issue the decision to the Directors of Finance of the disputing organisations with 4 weeks of the submission.
38. The arbitration process does not preclude the submission of cases where, although a dispute was settled in a previous financial year without resorting to the WG for arbitration, the issue remains disputed for the current year. WG will not arbitrate on the retrospective period and any previous year agreement will not influence the current year arbitration.
39. The Director/Deputy Director of Finance is not required to justify the decision taken in any way. As with disputed invoices, organisations must recognise that arbitration is never the best way to resolve disputes and should therefore make use of their best efforts to ensure that issues never reach this stage
40. The decision awarded does not set a precedent for any future decisions. The Director of Finance is required to sign off the Dispute Arbitration documentation, before it is submitted to the WG.

Appendix 1

## NHS Wales Dispute Arbitration Submission Proforma

<b>Submitting Organisation:</b>	
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<b>Debtor/Provider Organisation:</b>	
<b>Creditor/Purchaser Organisation:</b>	
<b>Summary of Invoice/LTA/SLA</b>	
<b>Summary of Dispute:</b>	

Invoice/LTA/SLA Number/Reference	Invoice/LTA/SLA Date	Period of Charge	Invoice/LTA/SLA Amount £

<b>Arbitration due date:</b>	<b>Case Submission date:</b>

Additional Documents/Evidence Attached	Reference


**Evidence of verbal discussions between parties : Confirm if included within Attachment or Within Main Case Section**

**Evidence of written discussions between Chief Executives : Confirm included within Attachment**

**Director of Finance Signature:**  
  
**Date:**

**Details of case:-**

A large, empty rectangular box with a thin black border, occupying most of the page below the 'Details of case:-' heading. It is intended for the user to provide details of a case.

