

HCS Dispute Resolution



EFFECTIVE DISPUTE RESOLUTION FOR
HEALTHCARE CONTRACTING



About HCS

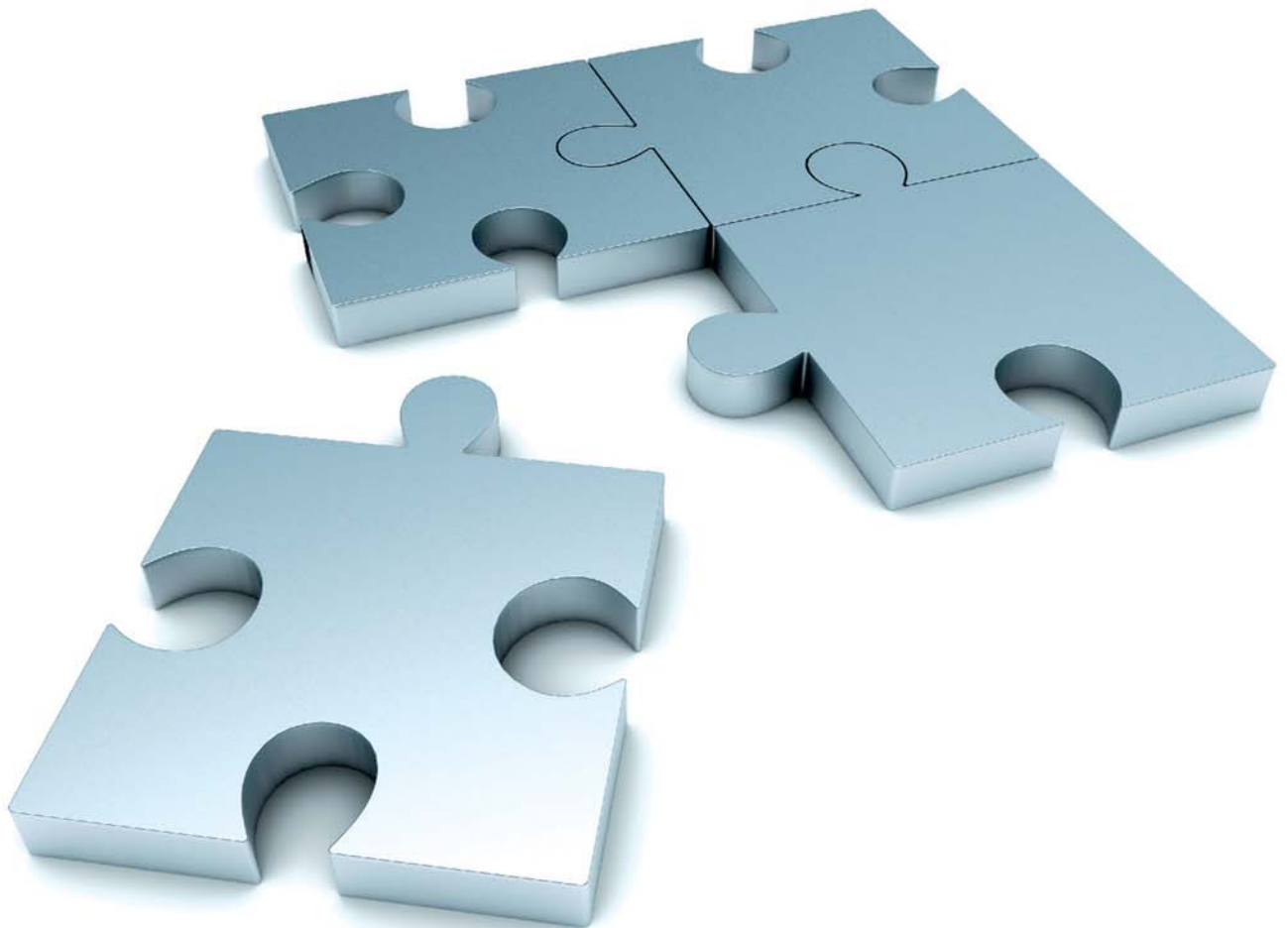
HCS is the commercial services arm of the Healthcare Financial Management Association (HFMA). HFMA has been the professional financial voice of healthcare across the UK for over 55 years. We set and promote the highest professional standards in financial management and corporate governance in healthcare.

With a volunteer network of hundreds of service professionals and a 13-strong Branch network around the UK we offer personal and professional development by providing access to tailored education and training, offering a professional network for members and a greater contribution to national policy.

The Healthcare Market

With the advent of a pluralistic provider market and the relative independence afforded to Foundation Trusts, contractual and commercial relationships are growing more varied and complex day by day. Inevitably the likelihood of disputes arising between health organisations is likely to grow. HFMA is ideally placed to offer a reliable independent dispute management service.

All members of HCS's Dispute Resolution Team are experts in the healthcare market and professionally qualified mediators through CEDR.



Our Approach to Dispute Resolution

The aim of our Dispute Resolution team is that healthcare organisations avoid expensive dispute escalation and ensure a speedy and effective conclusion to issues which affect our clients' business. We therefore offer a mediation service specifically tailored to resolving disputes in the healthcare sector.

Our mediators are professionally qualified through the Centre for Effective Dispute Resolution (CEDR), widely considered to be the centre of excellence for mediation in the UK. All of them are professionally qualified CCAB accountants who are regulated and adhere to a strict code of ethics.

With significant contracting experience at the highest level in the NHS, and specifically in the healthcare finance community, our team's in-depth understanding of our clients' business and objectives gives us background knowledge which is not found in other mediation providers.

Clearly it is in the interest of the NHS to avoid the need to resort to Arbitration (where an independent Arbitrator will decide on the outcome of a dispute), or Court Proceedings (both of which can be expensive and time-consuming). Increasingly, there are also incentives to avoid panel adjudications by SHAs/Monitor.

We have developed a confidential and independent service which, when delivered by any one of our experienced experts, gives our clients the best opportunity to avoid these routes and resolve their dispute quickly.

Our mediators are experienced in dealing with all types of NHS service contracts including:

- Commissioning Contracts for Acute and Primary Care Services



- Education and Training Contracts
- Shared Service Contracts
- All Service Level Agreements
- Managed service agreements
- Outsourcing contracts
- Partnering and joint venture arrangements

Each dispute on which we are asked to act is headed by one of our Senior Associates who will have overall responsibility for the running of the matter. No part of the service is delegated and one point of contact for all matters relating to the dispute is maintained throughout, guaranteeing quality of service and consistency in our approach.

Our approach is solution driven, with an assumption that arbitration and litigation can be avoided and with disputes being resolved collectively between disputing parties. We work with both parties to a dispute to

investigate thoroughly all aspects of a particular problem. Our aim is to provide an innovative and commercially effective solution which both parties consider to be workable and realistic.

We provide guidance and support for both parties through all aspects of any contentious process. We move the emphasis away from strict legal rights and positions to the parties' commercial interests, including, for example, a continuing business relationship.

We believe our services, coupled with the team's expertise and enthusiasm, allow us to provide positive, commercial solutions to the contractual problems our clients face.

To speak to us confidentially about our dispute resolution services, call Martin Walsh on 07976 179 563 or email: martin.walsh@hcsLtd.org.uk.

Our Services

Providing a detailed case plan and costs estimate:

Both the preparatory stage and the conduct of the mediation can, and often are, adapted to suit the needs of the parties.

With our expert knowledge in the field, we will facilitate a process where all parties to the dispute are actively involved. We will provide guidance to the parties in terms of:

- Setting out each stage of the mediation process;
- Providing a costs estimate so the parties can budget adequately for the mediation and decide whether or not to proceed on the basis of that estimate;
- Explaining what papers the parties will need to prepare, and on what principles these should be drafted, and providing template documents where necessary;
- Providing the parties with the opportunity to enter into the mediation on written terms, to ensure that both parties adopt a positive and prepared approach to the mediation.
- Providing templates for settlement agreements.

Run and oversee the conduct of the mediation from start to finish:

We will assign you a Senior Associate who will be your main point of contact throughout the process, so you are always dealing with someone who is familiar with you and your dispute. We will co-ordinate the parties, and see to the administrative arrangements for the mediation.

During the mediation itself, we will use our sector experience to guide the parties

towards a sound, impartial and business-focussed resolution. In our experience, this gives your dispute the best chance of being resolved quickly and cost-effectively.

The process is entirely confidential and without prejudice and the clients can walk away from the process at any time. Only if terms of a settlement are agreed are the parties bound.

HCS's Dispute Resolution team have all been senior healthcare professionals and are qualified as mediators through CEDR. We also use Bevan Brittan LLP, expert legal advisers to the NHS, to provide additional expert Mediation Mentoring and quality assurance training for our trained mediators.

It is anticipated that the vast majority of disputes relating to service contracts in the NHS can be managed by one individual. The size and experience of our team does allow us to handle complex disputes where teams are required to manage effectively a dispute to a satisfactory resolution or with an accelerated deadline.

We also set ourselves the highest quality standards, which are regularly audited.



Frequently Asked Questions

There are no set rules governing the preparation for, or conduct of, mediation. The parties may either set up the arrangements themselves or could use HCS, which would have experienced accredited mediators. Parties that have used Alternative Dispute Resolution organisations have found that using them to prepare a case can be a cost effective and efficient option.

The mediation of a commercial dispute will often follow a typical pattern with a model procedure adopted, but this can always be varied to suit the particular circumstances of the case. Set out here are some considerations and steps in a typical dispute.

1 When and for how long will the mediation take place?

It may not be appropriate to mediate until the parties have defined the issues involved and made their cases clear. If this is not possible or practicable, a HCS Mediator will assist the parties in identifying and clarifying the issues. Usually, a day is sufficient time, but this will depend on the nature of the dispute and the number of parties involved. It is often possible to arrange mediation within a few weeks. Once all parties to a case have agreed to use the HCS service, terms of engagement will need to be signed to take the process forward.

2 Where will the mediation take place?

The venue will be neutral, although if the parties agree to use one of their facilities it will save costs. There should be a room for

each of the parties and one room large enough for all parties and the Mediator.

3 Who will participate?

It is important that one representative of each party has sufficient authority to settle the dispute on the day without having to refer to anybody else. Solicitors may be present, and experts may attend, but generally teams should be kept as small as possible to help speed up discussions and keep costs down.

4 What documents should be produced, and when?

The documents tend to consist of a brief case summary and a set of key supporting documents. They should be kept short and agreed where possible. They are exchanged

and supplied to the mediator at least a week before the mediation.

5 Costs

The fees are shared equally between the parties, and each party bears its own costs of preparing for, and participating in, the mediation – unless it is agreed otherwise.

6 Appointment of a mediator

HCS have available a number of fully trained mediators, and will only appoint a person agreed by all parties.

7 Pre-mediation meeting

Each party will need to prepare for the mediation, often in conjunction with their solicitors. The strategy for the mediation will need to be discussed, including consideration of a range of possible acceptable outcomes and the alternatives to a mediated agreement.



HFMA Ltd is registered in England and Wales no. 4815434. HFMA Commercial Services Ltd (HCS Ltd) is registered in England and Wales no. 6384842. It is a wholly owned subsidiary of the Healthcare Financial Management Association which is a registered Charity, no. 1114463 and a limited company registered in England, Company no. 5787972.



The contents of this brochure are intended as guidelines for clients and other readers. Consequently we cannot accept any responsibility for this information or for any errors or omissions.