

# HILL DICKINSON

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LEGAL SERVICES FOR PRIMARY CARE CONTRACTING AND REGULATION



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Primary care trusts and local health boards have a duty to ensure that primary care services are effectively commissioned and provided.

Primary care organisations must therefore adopt a dual role as the commissioner of primary care services and the regulator of such services. They must commission services by way of appropriate procurement and contractual processes, ensuring the appropriate use of NHS resources, and they must regulate those services by means of the contract with the provider and/or through

the maintenance and monitoring of medical, dental and ophthalmic performer lists and pharmaceutical lists so as to safeguard the interests of patients.

Our specialist team can assist you to ensure you are undertaking your dual role in accordance with the relevant legislation and guidance, to achieve the intended result and to make the most of the rights that you have as commissioner and regulator to insist on the optimum provision of primary care services to your patients.

## Our services



### Procuring primary care services

The way in which primary care services are procured is extremely important to avoid legal challenges in the procurement process.

It is essential that procurement rules, regulations and procedures, as they affect the NHS, are followed to ensure a fair, open and transparent procurement process.

Hill Dickinson offers specialists in the complex field of procurement law, advising on all procurement issues arising from the commissioning of primary care services.

We can assist with:

- Advice on when it is necessary to make use of a competitive procurement process to procure primary care services
- Identifying and advising on procurement risks
- Advising throughout the procurement process, from the initial stages (including formulation of selection and award criteria), through the advertisement process, competitive stage and contract award
- The drafting of procurement documentation, including contract notices, pre-qualification questionnaires, and invitations to tender

## Contracting for primary medical and dental care services

Contracting for primary medical and dental care services involves the consideration of numerous types of contractual structure: GMS, PMS, APMS etc.

Our specialist team can advise on the contractual structure that best meets your commissioning needs and assist you in drafting a contract which meets both the relevant legislative requirements and local service requirements.

We can assist with:

- Interpreting the relevant legislation and guidance, including the Statements of Financial Entitlements
- Initial advice regarding such issues as the optimal contract form for the planned service, who may legally enter into such contracts to provide the services required, and public consultation on the proposals for the services
- The drafting of contracts, incorporating both mandatory terms and, where applicable, additional provisions
- The development of customised service specifications for services such as out-of-hours, prison health and specialist care for vulnerable groups in the community
- Advice on the performance management of contracts and enforcement action, including the imposition of contract sanctions, the service of remedial and breach notices, and termination
- The amending of contracts, and the drafting of variation notices, notices to terminate, breach notices and remedial notices
- Advising on a proposed change of contractor and whether such a change would give rise to the need for a competitive procurement process
- Providing practical advice and guidance in respect of disputes, including providing assistance during informal negotiations through to preparing written representations and providing representation at oral hearings before the Family Health Services Appeal Unit (FHSAU), Welsh Assembly or courts
- Advising on issues arising from a contractor's insolvency
- Advising on the variation of the contracted level of activity under a dental contract, the legislative requirements as regards the mid-year review and the annual review, and the claw back of monies overpaid due to contractual under-performance

## Medical and dental performers



The initial commissioning of primary medical and dental services is one thing; managing the individuals who perform those services is another.

If underperformance is an issue, there may be ways to deal with this under the contract and/or through use of the performers list process. We can help you to decide on the most appropriate course of action in any given circumstance and ensure that the process followed is fair and lawful.

In respect of managing performers under the performers lists regulations, we can advise on:

- The interpretation and application of the regulations and the corresponding guidance in respect of each type of performer
- Determining applications for inclusion in a performers list
- Conditional inclusion
- Investigating an individual's continued eligibility for inclusion in the list – the evidence that is

required to proceed to a decision to suspend and/or remove from the list

- Suspension, removal and/or contingent removal from the list – the requirement to offer a fair hearing and the process to be followed
- The process of suspension and/or removal in the context of an investigation by a regulatory body and/or criminal investigation
- The use of NCAS
- The requirement to review decisions
- Appeals against decisions to the FHSAA or Welsh Assembly – we can assist you to prepare your case for hearing should your decision be appealed, to include drafting the necessary documents, gathering the required evidence and representing you at the FHSAA/Assembly hearing
- National disqualifications – applying for national disqualifications and their effect

## Pharmaceutical services

The NHS (Pharmaceutical Services) Regulations 2005 [1992 in relation to Wales] are lengthy and often complex to interpret and apply. Guidance issued by the Department of Health and Welsh Assembly does not always provide the answer.

We have extensive experience of interpreting and applying the regulations and associated legislation and guidance, such as the Secretary of State Directions in relation to advanced and enhanced services, and we can therefore advise on the following:

- Control of entry - the determination of applications brought under the regulations for admission to a pharmaceutical list - how those applications should be considered in accordance with the regulations (as amended) and associated guidance
- The relevant procedure to follow on receipt of an application depending on the type of application received
- The appeal process if your decision on an application is challenged - we can assist you to prepare representations as part of the appeal process and can represent you at FHSAU or Welsh Assembly oral appeal hearings
- Ensuring compliance with terms of service and taking action for non-compliance
- Conditional inclusion, suspension and removal from pharmaceutical lists - we can advise on the appropriate processes for conditionally including, suspending and removing pharmacists from pharmaceutical lists and assist you with these processes
- The provision of pharmaceutical services by doctors - we can assist you in interpreting and applying the legislative requirements in this regard

We also advise on contracting for Local Pharmaceutical Services (LPS) in England and can assist you to interpret and apply the applicable legislation and to draft the required LPS contract.





## Ophthalmic services

The General Ophthalmic Services Contracts Regulations 2008 make provision for contracts for primary ophthalmic services. We can advise on the interpretation and application of the regulations, and associated legislation and guidance, and assist with the drafting of ophthalmic services contracts. We can also advise on the 1986 NHS General Ophthalmic Services Regulations applicable in Wales.

The performers lists regulations in England have been amended to include ophthalmic performers.

This means that the performance of primary ophthalmic practitioners is managed in a similar way to the performance of medical and dental practitioners under the performers list system.

The same principles will therefore apply as to whether action is taken for underperformance in accordance with the terms of the contract or in accordance with the performers lists regulations.

We are able to advise you on the management of primary ophthalmic practitioners under the contract and performers list system.

## Sharing our expertise with you

### Training

Hill Dickinson provides a range of seminars, workshops and breakfast meetings throughout the year, together with regular legal updates. We have previously held seminars on primary care contracting and procurement, and regulatory matters, including presentations and workshops on:

- Contractual structures
- Managing performers – the interaction of contracts with the NHS (Performers Lists) Regulations
- Enforcement: preparing your case for the FHS AU or court
- Access to information held by contractors
- Hearings under the Performers Lists Regulations – sitting as a panel member
- Case studies relating to underperformance in primary care

Delegates from these seminars provided the following comments:

“Extremely good, informative and delivered exactly what I thought it would”

“Very good refresher update and clarity of some gaps”

“Difficult subjects to make interesting – presented all relevant facts and information succinctly, and even made it interesting”

“Excellent, well thought out, highly relevant and very interesting – thank you!”

“Appropriate mix of factual, legal information; relevant, real life examples to stimulate thought and apply principles to; opportunity for discussion”

We can also provide bespoke training on request tailored to your organisation’s specific requirements, either at our offices or at your premises.

### Keep informed

We provide regular email updates on legal developments in the health sector affecting our clients’ organisations. Contact us if you are not yet on our mailing list and would like to receive our updates and information on our training programme.

## Health practice group

The complete legal solution to the health sector



*“Extremely detailed health service knowledge and commitment to strengthening client relationships.”*

*Chambers & Partners 2009 Guide to the UK legal profession*

Through our many years of experience and expertise, Hill Dickinson offers over 75 healthcare clients a specialist legal service encompassing the full spectrum of healthcare law, employment law, property law and other commercial law specialisms.

We work in partnership with our clients to offer immediate, high quality, pragmatic legal advice strengthened by our understanding of the diverse and ever-changing issues faced by the NHS.

By adopting a multi-disciplinary approach, Hill Dickinson can draw upon lawyers from across a number of practice areas including commercial and IT, property, projects, employment, health and safety and intellectual property to ensure that your legal headaches are dealt with cost-effectively and by the appropriate specialist.

## Contacts

For further details on how we might assist you in respect of primary care commissioning and contracting or in managing primary care performers, or to discuss any training that you feel we may be able to provide to individuals within your organisation on these topics, please contact:

Allan Mowat  
Head of Health  
+44 (0)151 600 8298  
[allan.mowat@hilledickinson.com](mailto:allan.mowat@hilledickinson.com)

Emma Di Giacomo  
Partner  
+44 (0)151 600 8173  
[emma.digiacomone@hilledickinson.com](mailto:emma.digiacomone@hilledickinson.com)



## About Hill Dickinson

The Hill Dickinson Group offers a comprehensive range of legal services from offices in Liverpool, Manchester, London, Chester, Piraeus and Singapore. Collectively the firms have more than 160 partners and 1,100 people.

Hill Dickinson is a major force in healthcare and public sector law, and is well respected in the company and commercial arena. The firm has a highly reputable commercial litigation practice and its marine expertise is internationally renowned. Hill Dickinson is also widely regarded as a leader in the fields of insurance, intellectual property and wealth management.

As a recognised leader in energy and procurement, commercial property and employment law, Hill Dickinson won the Innovation Award at the Combined Heat and Power Association Awards 2009, the Insider North West's Property Law Firm of the Year 2009, as well as The Liverpool Law Society's Employment Team of the Year 2009.

# HILL DICKINSON

### WINNER

National law firm of the year  
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