

Welcome

**BMA Law Webinar:
Mediation & Dispute Resolution**

Mediation – ignore at your peril!

CIVIL PROCEDURE RULES – PRACTICE DIRECTION (PRE ACTION)

- Litigation should be a last resort!
- Parties should continue to consider the possibility of reaching a settlement at all times, including after proceedings have been started.

COURT OF APPEAL CASE :

PGF II SA v OMFS Company 1 Limited 2013

Lord Justice Briggs :

“that silence in the face of an invitation to participate in ADR(Mediation) is, as a general rule, of itself unreasonable...”

Overview

- What is a dispute?
- What are the common types of dispute in General Practice?
- Why do they need to be resolved?
- Tips for avoiding disputes altogether

Dispute = disagreement

- Inevitable part of life
- Partnership, PCN, employment and workplace
- The impact: profits, staff turnover, morale, CQC rating, strained relationships, recruitment issues, sickness, performance issues, handing the contract back etc.

How to Avoid a Dispute

- Primary Care Network Agreements, Partnership Agreements: don't just have one – make sure it is up to date and relevant
- Governance around decision making is crucial
- Communicate effectively
- Socialise regularly

How to Resolve a Dispute Early

- Early intervention
- Involve your LMC ASAP
- Avoid seeking a legal remedy to begin with
- Try to understand wants, needs and worries of those involved. Even better, what would they be prepared to accept

How to Resolve a Dispute Early

- Find the common ground – it's ALWAYS there.
- Address the issues one at a time – starting with those that have common ground.
- Be CREATIVE in how you attempt to resolve the issues – anything is worth a try.
- Any agreement/plan needs to be precise and reviewed regularly.

The Principles of Mediation

- The mediator is completely independent
- It is voluntary (but requires mutual participation to be successful)
- It is confidential
- It is 'without prejudice'
- There is no obligation to reach an agreement
- The agreement is legally-binding once signed

How does Mediation Work in Practice?

- The mediator facilitates / coaches the parties to come to *their own* agreement
- The process is tailored to the circumstances of the dispute
- Agreements are unique, creative and far reaching
- In addition to having a more pragmatic outcome, the process of mediation is also much faster and cheaper than legal proceedings

Example 1: A Partnership Dispute

- Large 8 partner practice, working across two sites, no deed.
- Dr A, partner of 10 years, has always been 'difficult'.
- All of the other partners feel that his clinical performance, note-keeping and prescribing is poor – they have evidence and there have been complaints.

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Example 1: A Partnership Dispute

- The whole team (clinical and non-clinical) avoid asking Dr A for help as he is often unpleasant to deal with, and as a result he is given less than his fair share of urgent work.
- Dr A fills some of his patient-facing slots with admin tasks or phone calls with patients that never seen to get documented.
- The partners no longer want to be in a partnership with Dr A.

Example 1: A Partnership Dispute

Dr A claims he is being discriminated against because of his sexuality and has threatened to take the partners to court if he is expelled from the partnership.

Dr A wants to stay at the practice until he retires. He feels his performance is good.

He is the bread-winner and does a lot of additional CCG, locum and hub work to make ends meet.

Example 1: How it was resolved

The partners appreciated that as a partnership at will, they were unable to expel Dr A.

Dr A's interests were financial and reputational (he did not want the wider community to know about the clinical concerns, the probity issues etc.)

The partners presented Dr A with their evidence of poor clinical performance, probity issues etc. They explained that they would prefer to end their relationship amicably rather than have to report their concerns and have the practice, and Dr A, brought into disrepute.

Example 1: How it was resolved

Dr A was only willing to leave the partnership if he had a long notice period so he could find a new job and some financial security.

At mediation they negotiated:

- a six month notice period, where Dr A would receive full drawings but was essentially on gardening leave, with the partnership covering the locum costs.
- a reference that stated only the facts about Dr A's time as a partner and what his duties had been.
- the messaging to staff and patients

A solicitor was instructed to draft a partnership deed and deed of retirement.

Example 2: A PCN Dispute

- 3 practice PCN, 28,000 patients, rural location.
- Practice A handed in its notice to leave the PCN in March 2021.
- According to the Network Agreement, they will leave the PCN 31/3/22.
- Reason given to the CCG was 'breakdown of the relationship'. The CCG recommended (and were prepared to fund) mediation.

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Practice A do not trust the CD (partner at practice B). Practice B and C tend to 'get what they want', largely because practice A only has 6000 patients and voting is based on list-size.

Practice A want to leave asap and not wait until 2022.

BUT they want to continue with the PCN DES and receive the income from it i.e. they want to be in a PCN.

Example 2: A PCN Dispute

Practice A wants to join the neighbouring PCN BUT there is no guarantee that this PCN want that to happen.

Practices B and C have been told by the CCG that they would be unviable as a PCN if practice A was to leave (22,000 patients). They also want to stay signed up to the PCN DES.

So what was the common ground here? If they don't make this work, they are all out on a limb and could lose the ability to be in the PCN DES...

Example 2: A PCN Dispute

Practice A could not convince B and C to agree to them leaving the PCN earlier than March 2022, so they agreed in the interim that...

- Practice A would not rescind its notice (so it could still leave in 2022 if things don't improve).
- The CD would step down and a new CD would be appointed - a job share between a CD of practice A's choosing and a CD of practice B and C's choosing.

The governance around decision making is still being worked through...

Any Questions?

Contact Us

Please contact us if you have any queries or need advice on a dispute:



Call: 0300 123 2014

Email: info@bmalaw.co.uk



Thankyou