STATUTORY DEMANDS TO NHS ENGLAND: A BRIEF GUIDE

Introduction

Primary Care Support England (PCSE), provided by Capita, has been responsible for the delivery of NHS England’s[1] primary care support services since September 2015. One of the services PCSE is responsible for processing is NHS England’s payments to GP practices for the services they have provided. We know that these payments are not being processed properly or promptly and therefore, practices are suffering significant operational challenges as a result of not being paid. As NHS England is the commissioner of services by Capita, and the funding originates with NHS England, it is NHS England who is responsible for ensuring practices and doctors receive the money they are owed.

Below is a guide to assist practices to make a legal written request, called a statutory demand, to have undisputed debts paid by NHS England within 21 days.

Some GPs and GP practices may not be able to use the statutory demand procedure. If you are operating under the General Medical Services Contract 2015 and you elected in the contract to be regarded as a ‘health service body’ then your contract is classified as an ‘NHS Contract’. GPs practising under NHS Contracts cannot enforce their rights under the contract in the Courts, instead they must use an alternative procedure under which the dispute gets determined by the Secretary of State. If you’re unsure whether you have an NHS Contract, please check your contract.

GPs are entitled to change the status of their contract so that it becomes legally enforceable in the courts. If they do this, they can then use and rely on a statutory demand. Changing status is done by agreeing a change to your GMS contract. The change must be in writing and signed by you and the Commissioner or someone on their behalf. The change should have effect from the moment both parties have signed.

*NHSEngland is the operational name for the National Health Service Commissioning Board which is a company created by statute. This means that although it is not a company registered at Companies House, it is nonetheless a company and, under section 222 of the Insolvency Act 1986, it can be served with Statutory Demands and can be wound up if it fails to comply.

What is a statutory demand?

A statutory demand is a written legal demand for payment of an undisputed debt.

Any person or organisation who is owed money can make a statutory demand. The person or company who is owed money is called ‘the creditor’. The company that owes the money is called ‘the debtor’. In this case the debtor is NHS England.

The effect of a statutory demand is it puts pressure on a debtor to pay the debt. The debtor legally has 21 days to respond. To comply with the demand, they must either:

a. Pay the debt; or

b. Reach an agreement with the creditor to pay the debt at some point in the future.
Alternatively, a debtor can dispute the debt, i.e. tell the creditor that they disagree that there is a debt or disagree with the amount of the debt. If the debt is genuinely disputed, the statutory demand should be withdrawn immediately.

If NHS England fails to comply, and does not dispute the debt, it is open to the creditor to go to court. The court will likely order NHS England to pay the debt within a set time frame or face further legal action. If NHS England fails to comply with the court’s order, the creditor can ask the court to make a finding that NHS England is unable to pay its debts (i.e. is insolvent) and order it to be wound up. It is the threat of a ‘winding up petition’ to court which encourages companies to comply with statutory demands when they receive them.

We hope that NHS England can and will pay its debts and therefore a court would not find it necessary to wind NHS England up. We hope that receiving statutory demands will concentrate its attention on settling the debts which have come to our attention. It should also focus NHS England on ensuring payments are correct in the first place.

Making a statutory demand

Before making a statutory demand, you should contact PCSE to highlight that there has been a non-payment or an incorrect payment.

You should email them including details of the payment that has been made and details of what was expected, specifying the debt sum owed. In the email you should state that you believe there is no dispute about the fact that the debt is due and you require payment within 7 days.

If the debt remains unpaid and not disputed, you can make a statutory demand.

You can only make a statutory demand to a company if the debt is at least £750.

The debt must be undisputed, which is to say: if NHS England has previously informed you that they believe they do not owe you the money (for example, it has been paid already), or they owe you a different amount, then they have effectively disputed the debt.

If there is an understanding or agreement between you and NHS England that the money is owed and it has not been disputed, then this would normally be an ‘undisputed debt’.

A statutory demand can be made using Form SD-1, which can be downloaded here [https://www.gov.uk/statutory-demands/forms-to-issue-a-statutory-demand](https://www.gov.uk/statutory-demands/forms-to-issue-a-statutory-demand). We have created a Form SD-1 template, which you can modify for your particular circumstances and use. We have also created a cover letter which should be sent with the Statutory Demand. The following information must be clearly included on the SD-1 form (as indicated on our template):

- The correct identity of the creditor and debtor
- The details of the debt, (including what services or products the payment relates to)
- The details of any interest of other charges that are accruing.

The statutory demand must be signed and dated by the creditor or someone authorised to make the demand on the creditor’s behalf.

You should make a copy of the statutory demand for your records.
Serving a statutory demand

The statutory demand and cover letter should be delivered to NHS England ('served') directly, by hand according to specific requirements, but this is not practical. Therefore, we advise that all statutory demands are sent by Royal Mail Signed For post and email. The address to send to is supplied on the accompanying template letter.

Do not send your statutory demand by standard post because it will not be considered legally served.

We also recommend that you send at the same time a copy of your cover letter, statutory demand and any evidence of the debt to PCSE by email at pcse.complaints@nhs.net.

NHS England may ignore your statutory demand, in which case you would need proof that the statutory demand was served. You must keep a copy of the final signed statutory demand that you served and evidence that NHS England received it. If you use Signed For post you can get proof of delivery including when it was delivered and a signature from the receiver.

What happens next?

Ideally NHS England will pay the debt and the issue will be resolved. However, this might not necessarily be the case.

If the demand is ignored

If NHS England doesn’t pay the debt or agree to pay it within 21 days, you should send them a letter enclosing a copy of your proof of delivery and ask them for their response. You should make reference in the letter to the 21-day time limit and inform them that the debt remains unpaid.

After 21 days a creditor can apply to court to force the payment and/or have the debtor wound up. This must be done within 4 months of the date the Statutory demand was served on the NHS England.

Before applying to the court, we recommend you contact your LMC and the BMA’s GPC to notify them of the situation, and to ask for any further advice.

If the debt is disputed

NHS England may respond to your statutory demand and dispute the debt. They may say: the amount of money claimed is incorrect; the original invoices/requests for payment were incorrectly issued; the payments have already been made; or, for some other reason, they are not under a legal obligation to pay some or all of the money demanded.

If NHS England genuinely dispute the debt on reasonable grounds, you must withdraw the statutory demand. This is done by simply writing to NHS England to the say the statutory demand has been withdrawn because NHS England has disputed the debt.
If NHS England applies to court

If the statutory demand is not complied with and it is not withdrawn, NHS England can apply to court for an injunction to prevent you from applying to have them wound up. The court may grant an injunction if any of the following apply:

- The debt is disputed on grounds which appear to the court to be substantial;
- The debtor appears to have a counterclaim, set off or cross demand which equals or exceeds the amount of the debt;
- It appears that the creditor holds some security in relation to the debt claimed by the demand; or
- The company has a *reasonable* excuse for not paying the demand.

The BMA envisages that upon receipt of the statutory demands, NHS England will arrange for all of its undisputed debts to be paid as would be reasonable and proper for a company that is not insolvent. *The BMA will look to offer discretionary legal support to members who having followed this guidance find themselves faced with legal action by NHS England seeking an injunction.*

If you have questions about this guidance you can contact [info.gpc@bma.org.uk](mailto:info.gpc@bma.org.uk)