

Cost Recovery – HSE Queries and Disputes Procedure for COMAH, Offshore, Gas Transportation, Boreholes, Explosives Licensing

Contents

Scope

Level 1 – Routine Queries

Level 2 – Unresolved queries

Action if only part of an invoice is under dispute

Level 3 - Dispute Panel

Annex 1 – Guidance on queries/disputes process

Scope

1. This guide outlines the procedure to answer queries and resolve disputes arising from HSE recovering costs for work carried out under COMAH, Offshore, Gas Transportation, Boreholes, and Explosives Licensing. It also includes HSE's recovery of costs for relevant statutory provision work as appropriate. Other members of the Competent Authority use their own procedures for handling cost disputes.
2. This procedure aims to ensure that queries and disputes are resolved promptly, transparently and fairly.

Level 1 – Routine Queries

3. Queries from duty holders about information contained in the invoice including:
 - composition of charge;
 - amount of the invoice;
 - method of payment;
 - terms of payment;
 - invoicing arrangements; and
 - the propriety of the charge

These should be addressed or emailed to:

Health & Safety Executive
Cost Recovery and Expenses Team
Building 2.3
Redgrave Court
Merton Road
Bootle
Merseyside
L20 7HS
E-mail: hidcostrecovery@hse.gov.uk

4. Queries should be raised by the operator as soon as possible after receipt of the invoice and no later than twenty working days after the invoice date. Queries should be sent to the HSE Cost Recovery Team who will forward to the relevant Operational Team.
5. HSE will consider queries promptly and provide the duty holder with a response within ten working days of receipt. To facilitate this, the Cost Recovery Team will trigger liaison with the Operational Team to provide the Level 1 response.

Level 2 – Queries unresolved at Level 1

6. If the duty holder is not satisfied with the response under Level 1 they should send their reasons to HSE using the email or postal address above. This should be within twenty working days of the date of the invoice in dispute; or within ten working days of the date of the Level 1 response (where applicable).
7. HSE's Cost Recovery Team will acknowledge receipt of the submission within five working days and confirm the name of the person dealing with the Level 2 query. This will be a Senior Manager in the relevant HSE Division, who has not been involved in the work giving rise to the disputed cost (s).
8. If the duty holder is dissatisfied with the response at Level 1 but does not invoke Level 2 within the specified time, HSE may do so on their behalf. Where it does so, the duty holder will be informed and the same procedure followed.
9. The nominated Senior Manager will consider, as appropriate, whether:
 - the work performed was a cost recoverable function within the meaning of the regulations;
 - the work was done in accordance with the relevant policies and procedures;
 - the costs invoiced to the duty holder reflect the costs reasonably incurred in carrying out that function.
10. The Senior Manager will set out the reasons for the decision taken, including whether the queried invoice is upheld, cancelled or varied. The decision will be sent to the duty holder no later than fifteen working days following receipt of the duty holder's case.

Action if only part of an invoice is under dispute

11. If only part of an invoice is under dispute the operator should agree with HSE the value of the disputed amount and pay the undisputed amount within the usual twenty working days from the date of the invoice.

Level 3 – Dispute Panel

12. If the duty holder is not satisfied with the Level 2 response they may refer the matter to a Disputes Panel.

13. A panel will consist of;
 - senior HSE official as Chair
 - The Head of the relevant HSE Division
 - The Head of HSE's Planning, Finance and Procurement Division
 - An External Member
14. Any HSE member of staff involved in Level 1 or 2 determinations of a case will be precluded from being a member of the Level 3 Dispute Panel.
15. The duty holder will be informed of the composition of the Panel prior to the case being considered.
16. The Panel shall determine, where applicable, whether;
 - The work performed was a cost recoverable function within the meaning of the Regulations
 - The work was done in accordance with the relevant policies and procedures;
 - The costs invoiced to the duty holder reflect the costs reasonably incurred by cost recoverable work done by HSE in carrying out that function.
17. The duty holder should set out the reasons for disputing the cost (s), and the reasons for disputing the decision made at Level 2. This will need to be available to HSE in advance of the case being considered.
18. Initially, the Panel Chair and External Member will consider all the correspondence on the case and decide whether the disputed matter has sufficient merit to be put before the Panel. If they conclude there is no issue for determination within the scope of the Panel, the Chair will inform the duty holder of the decision and the reasons why. This decision will be sent no later than twenty-five working days following receipt of the request to refer the matter to Level 3.
19. If the Panel Chair and External Member conclude that a case has been made for submission to the Panel, a meeting will be convened within thirty-five working days of receiving the request to refer the matter to Level 3.
20. The duty holder has the right to appear before the Panel to support their submission. If they intend to appear in person they should notify HSE at the same time as they make the request to refer the matter to Level 3.
21. Where possible, a decision will be made on the day of the Panel meeting with all sides informed of the reasons for the decision verbally. If this is not possible both parties will be notified of the decision in writing.
22. The Panel may uphold or reject the dispute and confirm, vary or cancel the cost in dispute. To vary or cancel an invoice the Panel must be of the view that; the functions were not cost recoverable and / or the cost contained in the invoice did not represent the costs reasonably incurred by HSE for the performance of the

function(s) in question.

23. The decision of the Disputes Panel shall be sent to the duty holder by the Panel Chair within ten working days of their meeting.
24. HSE will commence debt recovery action where an invoice has not been settled within ten working days of notification that;
 - an invoice has been disputed under the Level 3 procedure and the cost has been upheld by the Panel;
 - the Panel Chair and External Member concluded that there is no issue for determination; or
 - the Level 3 process not being invoked.
25. HSE is committed to meeting the timescales set out in this procedure. However, there may be occasions when this is not possible. Where such circumstances arise, HSE (at its discretion) may vary the timescales in consultation with the duty holder.

ANNEX 1

Guidance to duty holders on taking a dispute through the queries and disputes procedures

Introduction

1. The Queries and Disputes Procedure has been in place since 1 April 2000. The notes which follow draw on experience of operating the procedure since then.

What is included in the costs?

2. Each of the cost recovery schemes seeks to recover HSE's costs in carrying out regulatory activities. These costs include, but not exclusively
 - time spent on site; and
 - work back at the office

Guidance on HSE cost recoverable activities can be found here:

<http://www.hse.gov.uk/charging/>

General advice applying to all Levels of the Queries and Disputes Procedure

Using the disputes procedure

3. When a duty holder wishes to query an invoice, they should initially (pre- Level 1) try and resolve this through informal discussion with their relevant primary HSE contact.
4. The Queries and Disputes Procedure was introduced to resolve queries at an early stage. There are three Levels in the process and skipping one of these Levels is not appropriate – unless agreed by the Chair of the Disputes Panel.

Confidentiality of queries and disputes information

5. Information provided by duty holders and the appropriate Operational Division in response to a query or dispute is handled in confidence.

Specify the basis of your case clearly

6. If you decide to query your invoice, please
 - specify clearly the grounds on which your case is being referred;
7. For Level 3 referrals, please also specify under which of the bullet points below you wish your dispute to be considered (see paragraph 16 of the Procedure):
 - the work performed by HSE or the Agency was a cost recoverable function within the meaning of the regulations;
 - the work was done in accordance with HSE's or the Agency's relevant policies and procedures (on assessment, inspection, investigation and enforcement);
 - the costs invoiced to the duty holder reflect the costs reasonably incurred by cost recoverable work done by HSE in carrying out that function.

Be aware of the time limits in the procedure

8. There are time limits at all Levels for submitting a request and response times required by HSE and/or the Agencies. Please keep to these. The time limits are:
 - raise your Level 1 query no later than **20 working days** after the date of the invoice;
 - request referral to Level 2 within **20 working days** of the date of the invoice in dispute or within **10 working days** of the date of the Level 1 response;
 - request referral to Level 3 within **15 working days** of the date on which you received the Level 2 decision from the Senior Manager.

Do not rely on HSE's/Agencies published examples of how long a particular piece of work will take

9. For COMAH, Gas, Offshore, Boreholes and Explosives Licensing the duration of work will vary depending on the work being carried out

Set out the basis of the case and the arguments supporting it clearly

10. For a Level 3 submission the Chair and External Member are required to decide whether the case presented to them merits consideration by a full Disputes Panel. A clear statement of case is essential for an informed and equitable decision. Simply submitting previous correspondence about the disputed invoice(s) will not be especially helpful although letters should be attached to support the case (where these exist).

The Disputes Panel

11. You or your representative should be prepared to present your case succinctly and to respond to questions from the Panel. Questions are usually to seek clarification, so the facts are clearly understood by the Panel. You or your representative should also be prepared to respond to the comments made by the Operational Division of HSE.

This document is available at www.hse.gov.uk/charging/queries.htm

© Crown copyright. If you wish to reuse this information visit www.hse.gov.uk/copyright.htm for details. First published xx/18. Published by the Health and Safety Executive xx/18 [Series number?]