

Fee for intervention – query and dispute process

Introduction

1. HSE operates a Fee for Intervention (FFI) cost recovery scheme, which came into effect on 1 October 2012. Under the Health and Safety and Nuclear (Fees) Regulations 2016 ('the Fees Regulations'), those who break health and safety laws are liable for recovery of HSE's related costs, including inspection, investigation and taking enforcement action.
2. Under Regulation 24(5) of the Fees Regulations, HSE must provide a procedure by which disputes relating to FFI will be considered.
3. This guidance sets out the procedure for responding to queries and resolving disputes promptly, fairly and in a transparent way.
4. Dutyholders should initially read HSE47 *Guidance on the application of Fee for Intervention (FFI)* (<http://www.hse.gov.uk/pubns/hse47.htm>), which outlines the principles of FFI and explains how the scheme operates, with examples of activities where HSE recovers costs. HSE will not consider disputes where the reason for the dispute relates to:
 - **The principle that HSE should recover its costs** - the Fees Regulations place a legal duty on HSE to recover the costs of its regulation from those found to be in material breach of health and safety law. HSE has no discretion not to recover costs as set out in the Regulations so disagreements about the principle of cost recovery are not within scope of the disputes process.
 - **The FFI hourly rate** - the hourly rate is calculated using a rate-setting model in accordance with HM Treasury's Managing Public Money guidance and includes the full cost of all resources used in carrying out FFI activity (http://www.hm-treasury.gov.uk/d/mpm_ch6.pdf). The methodology for calculating the rate is set out in HSE47 *Guidance on the application of Fee for Intervention (FFI)* (<http://www.hse.gov.uk/pubns/hse47.htm>).
5. The administrative arrangements regarding payment of the invoice, such as terms of payment or changing the address to which future invoices are sent, can be discussed with the HSE FFI Team between 08:30 and 17:00 Monday to Friday by:
 - Tel: 0300 0033 190
 - Email: feeforintervention@hse.gsi.gov.uk

Queries

6. For queries relating to the invoice, including the invoice total or the reason costs have been incurred, contact the HSE FFI Team, preferably by email, as soon as possible after receipt of the invoice and no later than **21 days** after the invoice date. You will need the FFI invoice, which provides the invoice number, date and breakdown of the work undertaken.
7. All enquiries about an invoice will be treated as a query in the first instance, for which no fee is payable. The HSE FFI Team aims to resolve general enquiries on the initial contact but those relating to technical or timing issues or the opinion of the inspector are referred to the principal inspector (PI), ie the line manager of the inspector who issued the notification of contravention (NoC) or enforcement notice for consideration.
8. The PI will review the query and on occasions may speak to the dutyholder to understand better or clarify any aspect of the query. On completing their review, the PI will make a decision to uphold, partially uphold or not uphold the query. Dutyholders will be informed of the decision within **21 days**.
9. If the query is upheld in whole or in part, the dutyholder will be informed of the outcome and the process for cancelling the invoice or the timescales for payment of the varied invoice.
10. If the invoice remains unchanged, payment will be required no later than **30 days** after the invoice date or no later than **10 days** after the dutyholder has been advised of the outcome of their query.

Disputes

11. Where dutyholders are not satisfied with the response, they can dispute all or part of the invoice. Disputes must be raised as soon as possible after HSE has responded to the query and no later than **21 days** after the date of HSE's response. The dispute should include:
 - invoice number – included on the HSE invoice;
 - customer reference– included on the HSE invoice;
 - name of the organisation to which the invoice was sent;
 - name of the individual disputing the invoice;
 - specific reason(s) for disputing the invoice
 - confirmation of whether the dispute relates to the entire invoice or only part, specifying the appropriate entries.
12. Disputes should be submitted to HSE's FFI Team either by email: Feeforintervention@hse.gov.uk or in writing to Fee for Intervention Team – Disputes, Health and Safety Executive, 6.4 Redgrave Court, Merton Road, Bootle, Merseyside L20 7HS. An acknowledgment of receipt will be sent to the dutyholder within **7 days**.

Payment of that part of the invoice not in dispute

13. Where only some of the costs on the invoice are in dispute, the elements of the invoice being disputed should be clearly stated. The undisputed amount remains payable no later than **30 days** from the date of the invoice or no later than **10 days** after the dutyholder has been notified of the outcome of their query if that is later.

Disputes process

14. Disputes will be considered by a Disputes Panel which is independent of HSE. This consists of a lawyer as chair, together with two other members with practical experience of health and safety management. Details of the panel members and their experience will be provided to the dutyholder before the panel meeting.

15. HSE will provide to the dutyholder, within **21 days** of the dispute being raised, all the relevant information that was available to the inspector on which their decision was based, and why a contravention was considered to be a material breach. Depending on the nature of the dispute, it will include:

- what provisions have been contravened;
- why HSE is of that opinion;
- evidence upon which the opinion is based (additional information that was not available or known to the inspector at the time the NoC or enforcement notice was issued will not be provided or submitted to the panel);
- why contraventions are considered to be material breaches relating to legislation for which HSE is required to recover its costs;
- an explanation of the decision in the context of the Enforcement Management Model (EMM), or a copy of the EMM1;
- what functions have been performed as a result of the contravention;
- how the performance of those functions can be attributed to the dutyholder;
- HSE's opinion as to how and why the costs have been reasonably incurred within the meaning of the Fees Regulations, ie the time taken to undertake the intervention was appropriate and accurately recorded;
- HSE's response to any issue raised by the dutyholder as a query or in requesting the dispute;
- any information in HSE's possession which could reasonably be considered to indicate that the fees were not payable.

16. Most of the above information should be in the documents provided to the dutyholder but, if not, HSE will provide a summary. In some cases, it may be necessary for HSE to redact sensitive information from certain documents.

17. On receipt of this information, the dutyholder may provide any further representations or information to HSE for the panel to consider within **21 days**.
18. HSE will send all the documents/information provided pursuant to paragraphs 11, 15, 16 and 17 to the panel for consideration.
19. The panel will meet to consider the dispute at a time and place arranged by HSE. Their decision will normally be based only on the basis of the written information provided to them. However, if necessary, they may request additional written information either from HSE or the dutyholder.
20. In exceptional circumstances when the panel considers the case cannot be decided on written information alone, they will have the discretion to convene a meeting with the dutyholder and HSE but this will only be in agreement with both parties and to expedite a decision. This is not a 'hearing' and there will be no opportunity for witnesses to be called or questioned.
21. On consideration of the facts, the Disputes Panel will uphold, partly uphold or reject the dispute. The chair of the panel will record the decision together with the reasons for it in writing. The dutyholder will be notified of the decision of the Disputes Panel within **21 days** of the panel decision, together with the written reasons for the decision.
22. Where the dispute is:
 - upheld in whole – HSE will inform the dutyholder of the process for cancelling the invoice;
 - partly upheld – HSE will inform the dutyholder of the timescales for payment of the varied invoice.
 - not upheld - HSE will expect payment of the invoice to be made no later than **10 days** of the date of the written outcome of the dispute. HSE will also issue an invoice to cover the costs reasonably incurred in handling the dispute as provided by Regulation 24(6) of the 'Fees Regulations'. These costs will only relate to the costs incurred by the panel considering the dispute and not to any costs incurred by HSE in preparing for or providing information to the panel.
23. The decision of the disputes panel does not bind the dutyholder or HSE (although HSE will normally accept the decision of the panel).

Debt recovery

24. Debt recovery action will not proceed for costs that are subject to query and dispute process. Once the query or dispute process is complete and the dutyholder notified of the outcome, HSE expects any outstanding invoices to be paid within the specified time period. HSE will initiate the civil debt recovery process where there is a failure to pay outstanding invoices.

Suspension of dispute process

25. HSE will suspend the dispute process when it is related to an ongoing investigation or appeal against an enforcement notice. Once the outcome of the appeal or enforcement action is known, the process and timescales set out in this guidance will commence.

Variation of period in which action is to be taken

26. HSE is committed to meeting the timescales set out in this guidance and expects dutyholders to do likewise. However, HSE retains the discretion to vary timescales where it is fair and necessary for the dispute to be properly considered.

Query and dispute process

