

## High Court confirms alternative provider medical services contracts can take effect as “NHS Contracts”

In *SSP Health Ltd v NHS Litigation Authority* [2019] EWHC 3291 (Admin), Browne Jacobson LLP successfully acted for NHS England in relation to a judicial review challenge brought by SSP Health Ltd (“the Claimant”) following a decision made under the NHS Dispute Resolution Procedure not to award the Claimant interest in relation to a breach of the terms of 22 Alternative Provider Medical Services (“APMS”) contracts.

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In the High Court the Claimant argued, amongst other things, that the adjudicator erred in concluding that an APMS contract could take effect as an NHS contract. The Claimant submitted that it was not a “Health Service Body” as defined by the section 9 of the NHS Act 2006 (the “Act”) because there was no statutory provision which permitted APMS Contracts to take effect as NHS Contracts. Further, it was not part of the statutory scheme that a GP practice could be forced to become an NHS contractor. Accordingly, the Secretary of State had no vires to permit or to require an APMS Contract to be set up as an NHS Contract.

The Court rejected this argument. Mrs Justice Cockerill accepted NHS England’s submissions to the effect that the PMS Regulations and GMS Regulations provided a means for a contractor to have the status of an Health Service Body, not merely for the purposes of a specific PMS or GMS agreement (the entering into of which had the effect of its becoming regarded as such a body) but generally from the date of making such an agreement for the purposes of section 9 of the Act.

As the Claimant was already an HSB by reason of its other existing PMS and GMS contracts for the purpose of s.9 of the Act at the time it entered into the 22 APMS contracts, these were to be properly regarded as NHS Contracts.

The Court also rejected the Claimant’s other arguments that interest was otherwise payable under the law of England and Wales (in equity and by reason of the Late Payment of Commercial Debts (Interest) Act 1998) and/or the failure to award interest constituted a breach of the Claimant’s A1P1 rights.

Fenella Morris QC and Tom Cross were instructed by Browne Jacobson to appear at the hearing for NHS England.

## Contact

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