

## **GUIDANCE NOTE**

### **Termination of primary medical services contracts**

#### **Paragraphs 64 to 71 of Schedule 3 of the National Health Service (General Medical Services Contracts) Regulations 2015**

NB – Excerpts from past decisions are included in this guidance note. The full version of a decision may not be available as NHS Resolution only retains past decisions for up to 6 years, in line with its file retention policy.

### **Introduction**

1. There are three main types of primary medical services contracts. These are:
  - 1.1 the general medical services (“GMS”) contracts, which are entered into and are regulated by the National Health Service (General Medical Services Contracts) Regulations 2015 (“GMS Regulations”);
  - 1.2 personal medical services (“PMS”) agreements, which are entered into and regulated by National Health Service (Personal Medical Services Contracts) Regulations 2015 (“PMS Regulations”); and
  - 1.3 the alternative provider medical services contracts (“APMS”) which are entered into pursuant to the Alternative Provider Medical Services Directions 2019 (the APMS Directions”).
2. The GMS Regulations, PMS Regulations and the APMS Directions all contain provisions relating to termination that must be incorporated into the relevant primary medical services contracts.
3. This guidance note focuses on NHS Resolution’s determinations of applications for dispute resolution against termination notices. Its purpose is to provide guidance based on past decisions.
4. All recent determinations issued by NHS Resolution that are covered in this note and which relate to terminations of primary medical services contracts are in respect of terminations of GMS contracts. This note therefore refers only to GMS contract terminations. Careful consideration should be given before applying any principles derived from these determinations to non-GMS contract terminations.
5. All references to regulations, schedules and paragraphs in this guidance note are references to the relevant provisions of the GMS Regulations as at the date of this note unless otherwise stated.
6. All references to “contractor” in this guidance note are references to the contractor who applied for dispute resolution against the commissioner’s decision to terminate the GMS contract.

7. All references to “commissioner” in this guidance note are references to NHS Commissioning Board (now NHS England), or a clinical commissioning group (“CCG”) managing the relevant GMS contract under delegated authority from NHS England or since 1 April 2023, integrated care boards (ICBs) unless otherwise stated which issued the termination notices.
8. All references to NHS Resolution are references to the operating name of the NHS Litigation Authority acting on the direction of the Secretary of State for Health and Social Care to determine the application for dispute resolution.
9. The grounds for termination by the commissioner are set out in paragraphs 64 to 71 of Schedule 3 of the GMS Regulations. As this guidance note is based on past determinations, only the grounds for termination which were the subject of the past decisions are set out in the Annex to this guidance note.
10. This guidance note splits NHS Resolution’s past determinations into the following topics:
  - 10.1 Grounds for termination, including:
    - 10.1.1 provision of untrue information;
    - 10.1.2 dissolution of the partnership;
    - 10.1.3 remedial and breach notices;
  - 10.2 Taking action against the partnership; and
  - 10.3 Establishing the date of termination.

## **Grounds for termination**

### Provision of untrue information

11. In SHA/18517 (30 May 2017), the commissioner learned that one of the partners in the partnership holding the GMS contract was subject to two individual voluntary arrangements (“IVAs”). Regulation 6 of the current GMS Regulations (regulation 5 in the pre-2015 GMS Regulations) lists the circumstances in which a commissioner must not enter into a GMS contract with a partnership. This includes at Regulation 6(2)(o) where:

*“the contractor has made a composition agreement or arrangement with, or granted a trust deed for, the contractor’s creditors and the contractor has not been discharged in respect of it”*
12. NHS Resolution determined that there was no dispute that IVAs are, to use the language of the GMS Regulations, “*composition agreements or arrangements with ... creditors*”.
13. The commissioner considered that the relevant partner was prevented from holding a GMS contract and that the commissioner was entitled to terminate the GMS contract pursuant to:

- 13.1 paragraph 66 of Schedule 3 of the GMS Regulations relating to provision of untrue information – as the partner had been subject to the IVAs when the contractor had added that person to the partnership and had indicated at the time that the person satisfied the relevant provision of the then regulations; and
  - 13.2 paragraph 67 of Schedule 3 of the GMS Regulations relating to “other grounds of termination”.
14. NHS Resolution determined that:

*“Regulation 66 of Schedule 3 makes clear that provided the information was, when given, untrue, which I accept is the case here and which I note the Contractor does not dispute, then NHS England has the right to terminate.”*
15. One of the contractor’s grounds of dispute was that the commissioner should have terminated the GMS contract when it first became aware that the relevant partner was not eligible to be a party rather than 7 months later.
16. The commissioner put forward a number of reasons for the delay including:
  - 16.1 the need to obtain legal advice and internal approvals before terminating;
  - 16.2 that the contractor was prevented at the time from providing services due to the Care Quality Commission suspending the practice’s registration and so urgent action was not necessary to protect patient safety;
  - 16.3 that the commissioner provided the contractor with the opportunity to discuss and put forward a response to the commissioner’s stated intention to terminate; and
  - 16.4 that the partnership replaced the partner shortly before the timescale for response as above.
17. NHS Resolution considered that the timescale was reasonable taking into account the reasons above. NHS Resolution determined that:

*“NHS England acted reasonably in meeting with [the relevant partner] and the practice to discuss the matters, giving [the relevant partner] and the practice time to consider how to proceed. I consider that the appointment of [the new partner] and removal of [the relevant partner] from the partnership meant [the commissioner] had to reconsider the matter. It was reasonable, given the complexities of the matter, for NHS England to take a reasonable amount of time to obtain legal advice and arrange its internal affairs to make a decision on termination.*

*... I determine that NHS England was not required to terminate the Contract when it first became aware that [the relevant partner] was not eligible to be a party to the Contract.”*

## Dissolution of the partnership

18. SHA/18808 et al. (30 January 2018) was a complicated matter. The commissioner issued two termination notices against a background of multiple court cases focusing on partnership issues. The first termination notice was issued on the basis that the dissolution of the partnership had been ordered by a competent court, tribunal or arbitrator. During the dispute resolution process, it was acknowledged that one of the Court cases had determined that the partnership had been dissolved without the need for a court order. NHS Resolution indicated that the commissioner had agreed that the termination notice was invalid and therefore there was no dispute between the parties for NHS Resolution to determine.
19. The second notice of termination was issued in respect of Clause 565 of the GMS contract which reflected paragraph 68 of Schedule 3 of the GMS Regulations. This provides for a right of termination where:
  - 19.1 the contractor has breached a term of the contract and, as a result of that breach, the safety of the contractor's patients would be at serious risk if the contract is not terminated; or
  - 19.2 NHS England considers that contractor's financial situation is such that NHS England would be at risk of material financial loss.
20. The second notice of termination indicated that the contractor had not complied with clauses in the contract which reflect paragraphs 59(1) and 59(2) of Schedule 3 of the GMS Regulations. NHS Resolution noted that these provisions provide *“an option for the partners in a partnership which is deemed to hold a GMS Contract, in advance of the dissolution (or termination) of the partnership, to nominate one of the partners to continue the contract”*.
21. It was argued that there was no evidence of there being any concern about patient safety and material financial loss and that the provisions above do not apply where one GP leaves a partnership and the other partners carry on in partnership together which it was argued was the position in this matter.
22. NHS Resolution disagreed with the argument that this matter was simply about one GP leaving the partnership. NHS Resolution stated in circumstances where there is a dissolution of the partnership:

*“I am satisfied that it is clear that the GMS Contract shall **only** (my emphasis) continue with one of the former partners **if** (my emphasis) that partner is nominated, is a medical practitioner who meets the necessary conditions and provided the requirements in clause 539 are met. The requirements of clause 539 require a notification to the PCT (now NHS England) at least 28 days in advance of the date on which the Contactor proposes to change its status.*

*It is clear that the [partners in the partnership] did not nominate in accordance with the requirements of clause 538.*

*I am satisfied that the GMS Contract terminated as a matter of law on 14 October 2016, on the dissolution of the partnership.”*

#### Remedial and breach notices

23. Paragraph 70 of Schedule 3 of the Regulations states that where the contractor’s breach of contract is not one to which paragraphs 65 to 69 apply and that breach is capable of remedy, the commissioner must, before taking any action it is otherwise entitled to take, issue a remedial notice to the contractor requiring it to remedy the breach within the timescale set out in the remedial notice.
24. Paragraph 70 provides a right to terminate the GMS contract where the commissioner is satisfied that the contractor has not taken the required steps to remedy the breach by the end of the notice period (paragraph 79(4)).
25. It also provides at paragraph 70(6) a right of termination if, following the issue of a remedial notice, the contractor repeats the breach which is the subject of the remedial notice or otherwise breaches the contract resulting in a breach or a remedial notice. This right of termination can only be exercised if the commissioner is satisfied that the cumulative effect of the breaches is such that to allow the contract to continue would prejudice the efficiency of the services provided. The latter provision is contained in paragraph 70(7).
26. In SHA/23273 (19 May 2020) the contractor, over a period of time had been issued with three remedial notices. The commissioner issued a notice to terminate the GMS contract citing paragraph 70(4) as the ground of termination for failure to take the required steps to remedy the breach.
27. Each remedial notice set out a number of breaches and remedial actions. The first remedial notice set out a number of breaches of the GMS contract requiring remedy. The second remedial notice stated that the contractor has failed to remedy the breaches set out in the first remedial notice. The third remedial notice identified new breaches, not previously set out in either of the preceding remedial notices.
28. The contractor disputed the termination on a number of grounds, including that the termination notice was unclear on whether the grounds of termination were paragraph 70(4), paragraph 70(5) or paragraph 68 (which relates to patient safety).
29. The contractor was of the view that out of these three grounds for termination, the most appropriate ground would have been paragraph 70(6) on the basis that, by issuing the third remedial notice which referenced new breaches, the commissioner could no longer rely on paragraph 70(4). The contractor stated that if the ground for termination was in fact paragraph 70(6), then the commissioner failed to show that the cumulative effect of the breaches was such that *“to allow the contract to continue would prejudice the efficiency of the services to be provided under the contract”*. NHS Resolution stated:

*“I consider that [paragraphs 70(4) and 70(6)] are not mutually*

*exclusive. The Contract does not state that the right of termination pursuant to [paragraph 70(4)] falls away if a contractor is subsequently issued with another remedial notice. I do not consider that it was the intention of the drafter (of the Regulations) to permit [the commissioner] a single point in time where it would have had a single opportunity to terminate the Contract where the Contractor had failed to remedy the breaches set out in a remedial notice. The term of the Contract is in perpetuity. I do not consider that [the commissioner] would have only had one chance to rely on [paragraph 70(4)] to terminate the Contract during the term of the Contract.”*

30. NHS Resolution noted that the facts of this case were such that:

*“The Contractor failed to remedy the breaches in each Remedial Notice, therefore satisfying the requirement of [paragraph 70(4)]. The Contractor has also been issued with more than one Remedial Notice therefore satisfying the requirement of [paragraph 70(6)]. I consider that it is therefore open to [the commissioner] to rely on a provision that it considers most appropriate. [The commissioner] clearly chose to terminate under [paragraph 70(4)], which it was able to do.”*

31. NHS Resolution concluded that that the commissioner lawfully terminated the contract.
32. In SHA/23361 (26 June 2020) the contractor was issued with a joint remedial notice and termination notice. The ground of termination was stated to be paragraph 70(6) – repeated breaches of the terms of the GMS contract.
33. The commissioner indicated that the contractor had been issued with four remedial notices, had been in CQC special measures for a long period and was subject to a CQC notice of proposal to cancel the contractor’s registration.
34. The contractor disputed the termination on the basis that:
- 34.1 the CQC’s inspection that resulted in the proposal to cancel registration was flawed.
  - 34.2 as such, the report published about the contractor by the CQC was flawed; and
  - 34.3 as the termination notice relied to an extent on the CQC’s report, the termination notice was also flawed.
35. The contractor also argued that it had satisfied all past remedial notices, it was in the process of challenging the enforcement action proposed by the CQC and it continued to implement sufficient improvements to satisfy the commissioner that the terms of the GMS contract were being met.
36. NHS Resolution considered the large body of documentation that both sides provided on the dispute and stated that:

*“I am satisfied that the Commissioner had served remedial notices on the Contractor, requiring it to remedy breaches of the Contract prior to 21 February 2020 notice. The service of notice requiring the remedy of breaches prior to 21 February 2020 is not disputed by the Contractor. Whilst the Contractor states that these breaches had been remedied and I note the evidence provided in this regard, the Commissioner has the ability to terminate the Contract where, following a breach notice or a remedial notice, the Contractor otherwise breaches the Contract resulting in either a remedial notice or a further breach notice.”*

37. The commissioner and the contractor disagreed on whether the qualification to this ground of termination set out in paragraph 70(7) of Schedule 3 of the GMS Regulations was satisfied, namely that the commissioner has to be satisfied that the cumulative effect of the breaches is such that to allow the contract to continue would prejudice the efficiency of the services provided.

38. On this point, NHS Resolution determined that:

*“Whilst the Contractor has complied with requirements to remedy breaches of the Contract prior to 21 February 2020, it is clear that there is a history of the Commissioner serving remedial notices, requiring improvements in the service delivery, to the Contract standard. I also note the history of CQC special measures prior to the CQC Notice of Proposal to cancel the Contractor’s CQC registration on 14 January 2020. I am satisfied that the Commissioner had regard to clause 26.13.7 [which reflects paragraph 70(7) of Schedule 3 of the GMS Regulations] of the contract and that the decision it reached was reasonable. I am not persuaded by the Contractor’s arguments in that allowing the contract to continue would not be prejudicial to the efficiency of the services. I do note the succession plan in place by the Contractor, to establish two relatively young doctors in practice, however I am not satisfied that this is sufficient to counter the arguments of the Commissioner. In particular, the Contractor has not clearly evidenced that these doctors were in place in line with a succession plan, presumably in relation to the leadership of the Contractor prior to 21 February 2020. I have not been provided with evidence that this succession plan was agreed and or made available to the Commissioner and that the parties understood how this was intended to operate, particularly having regard to ensuring the delivery of the Contract, to the Contract standard.”*

39. NHS Resolution concluded that it was satisfied that the commissioner had the right to terminate the GMS contract.

### **Taking action against the partnership**

40. Regulation 15 of the GMS Regulations states that where a GMS contract is with two or more individuals practicing in a partnership, the GMS contract is to be treated as made with the partnership as it is constituted from time to time.

The commissioner is therefore deemed to hold the GMS contract with the partnership. The contractor is considered to be the partnership and not the individuals that constitute the partnership.

41. In SHA/18517 (30 May 2017) discussed elsewhere in this guidance note, the partner who was subject to the IVAs resigned from the practice partnership after the commissioner informed the contractor of its intention to terminate the GMS contract for provision of untrue information pursuant to paragraph 66 of Schedule 3 of the GMS Regulations (and the corresponding provision of the GMS contract). Two of the contractor's grounds of dispute were:

*“that, in not terminating until October 2016, NHS England used its discretion to allow the Contract to continue and allowed a new partner to join; and*

*that terminating the Contract after [the relevant partner] has resigned from the partnership and after [the new partner] had joined the partnership was inappropriate, illogical and did not follow the Regulations.”*

42. In relation to the first ground of dispute above, NHS Resolution considered that paragraph 51 of Schedule 3 of the GMS Regulations, which requires the contractor to notify the commissioner of any change in partnership, does not afford any discretion to the commissioner in respect of that partnership change. Provided the requirements of paragraph 51 are satisfied, it must accept that a new partner is joining and/or an existing partner is leaving.

43. NHS Resolution determined that the commissioner:

*“did not have the power to allow or prevent the partner changes and so it cannot be argued that the basis on which the Contract continued after the partner changes was that NHS England had allowed the changes.”*

44. In relation to the second ground of dispute above, the contractor further argued that a termination notice based solely on a former partner's previous history was not an appropriate course of action and did not follow the GMS Regulations.

45. NHS Resolution noted that the contractor did not indicate which provision of the GMS Regulations was not followed.

46. The commissioner argued that:

46.1 the right of termination applied to the contractor which is the partnership as it is constituted from time to time and the partnership continues despite the departure of any one individual; and

46.2 the grounds for termination did not solely relate to the actions of the former partner as the provision of untrue information came from the partnership as it was constituted at that time which included a partner that remained in the partnership after the relevant partner left.

47. NHS Resolution noted that the relevant right of termination did not give a time limit for exercising that right and that this meant that the right accrues until it is waived or until it may be unreasonable for the commissioner to exercise it. NHS Resolution determined that

*“As the conditions in Regulation 66 are satisfied, I do not accept that the Contractor can escape that responsibility simply by removing the partner to whom the untrue information related. As such, I do not consider that it is inappropriate or unreasonable for NHS England to exercise the right to termination in this regard.”*

48. In SHA/21098 (18 July 2019), the constitution of the partnership changed, with four partners exiting the partnership and three new partners joining the partnership. The notice of termination was issued to the contractor at the same time that the three new partners joined the partnership. A remedial notice had previously been sent to the contractor, prior to the three new partners joining.
49. The contractor raised as part of the dispute *“whether the partnership of the Applicants are bound by the remedial notice served on the predecessor partnership of [the partners that exited]”*.
50. With reference to regulation 15 of the GMS Regulations, NHS Resolution stated:

*“I am satisfied that the GMS contract is to be treated as made with the partnership as it is constituted from time to time. I am therefore satisfied that NHS England had the ability to serve a termination notice on the contractor on 19 March 2019, regardless of this also being the date that additional persons became partners in the partnership. I do not accept that the contractor was a different organisation prior to 19 March 2019.”*

**What is the date of termination where the contractor invokes dispute resolution?**

51. In SHA/18517 (30 May 2017), discussed elsewhere in this guidance, the commissioner terminated the contract pursuant to paragraph 66 of Schedule 3 of the GMS Regulations. Paragraph 66 states that the commissioner may give notice in writing to the contractor terminating the contract with immediate effect or from such date as may be specified by the commissioner. In this case, the commissioner set a date for termination which was 28 days after the date on which the commissioner provided notice of termination.
52. The contractor invoked the NHS dispute resolution procedure prior to the date the termination took effect. Paragraph 74 of Schedule 3 of the GMS Regulations states that where the contractor invokes the NHS dispute resolution procedure before the end of the notice period given in the termination notice, then the contract does not terminate until there has been a final determination of the dispute or the contractor ceases to pursue the NHS

dispute resolution procedure.

53. NHS Resolution was satisfied that the date of termination would therefore be the date of its determination of the dispute.
54. However, the commissioner had issued a second termination notice while the NHS dispute resolution procedure relating to the first termination notice was underway. The second termination notice was issued by the commissioner on the basis that as the new partner had resigned from the partnership, a non-clinical practice manager was the sole contractor and that person did not satisfy the requirements of the GMS Regulations to be eligible to hold the GMS contract.
55. NHS Resolution noted that at the time of determining the first termination notice, the contractor had not indicated on what grounds it is disputing the second termination notice but that:

*“various emails were exchanged between the parties around this time in which the Contractor was querying the lawfulness of issuing a second termination notice while the first termination notice was being considered under the NHS dispute resolution procedure.”*
56. Paragraph 74 does enable the commissioner to notify the contractor that the date of termination is the date in the termination notice and not the date the dispute is finally determined if the commissioner considers that it is necessary to terminate before the conclusion of the dispute resolution process to protect patient safety or protect NHS England from material financial loss.
57. The commissioner argued that the date of termination of the GMS contract should be the date the second termination notice was issued (as the notice stated that termination was with immediate effect), which would have been considerably earlier than the date of the dispute determination.
58. NHS Resolution rejected this argument on the basis that:
  - 58.1 at the point the contractor invoked the NHS dispute resolution procedure in relation to the first termination notice, paragraph 74 applied;
  - 58.2 paragraph 74 clearly recognises that there may be circumstances when a GMS contract needs to be terminated earlier than the determination of the dispute;
  - 58.3 those circumstance are expressly limited to patient safety and material financial loss;
  - 58.4 it was open to the authors of the GMS Regulations to include any other circumstances that might warrant termination earlier than the determination of the dispute including ineligibility to hold the contract pursuant to paragraph 65 but clearly the authors did not include any other circumstances;

- 58.5 as such, the only circumstances that could lead to termination earlier than the determination of the dispute were patient safety and material financial loss; and
- 58.6 the commissioner in SHA/18517 had not, in the second termination notice or other notice to the contractor, indicated that it was satisfied that termination earlier than the determination of the dispute was necessary as a result of patient safety or material financial loss.
59. NHS Resolution determined that as paragraph 74 applied by virtue of the first termination notice being disputed, and because the only circumstances stated in paragraph 74 that enable the GMS contract to be terminated earlier than the determination of the dispute were not met, the date of termination of the GMS contract was as set out in paragraph 74, namely the date of NHS Resolution's determination.

#### Document Control - Change Record

| Date        | Author                                       | Version | Reason for Change                                                       |
|-------------|----------------------------------------------|---------|-------------------------------------------------------------------------|
| 21 May 2024 | Technical Case Manager, Primary Care Appeals | 2       | Amended Annex wording to reflect Regulations in force as at 20 May 2024 |

## **Annex**

### **GMS Regulations**

**The provisions below are correct as at 20 May 2024**

#### **6.— General condition relating to all contracts**

- (1) NHS England must not enter into a contract with—
  - (a) a medical practitioner to whom paragraph (2) applies; or
  - (b) two or more persons practising in partnership, where paragraph (2) applies to any person who is a partner in the partnership; or
  - (c) a company limited by shares where paragraph (2) applies to—
    - (i) the company,
    - (ii) any person both legally and beneficially owning a share in the company, or
    - (iii) any director or secretary of the company.
- (2) This paragraph applies if—
  - (a) the contractor is the subject of a national disqualification;
  - (b) subject to paragraph (3), the contractor is disqualified or suspended (other than by interim suspension order or direction pending an investigation) from practising by any licensing body anywhere in the world;
  - (c) the contractor has, within the period of five years before the signing of the contract or commencement of the contract (whichever is the earlier), been dismissed (otherwise than by reason of redundancy) from any employment by a health service body, unless—
    - (i) if the contractor was employed as a member of a health care profession at the time of the dismissal, the contractor has not subsequently been employed by that health service body or by another health service body, and
    - (ii) the dismissal was the subject of a finding of unfair dismissal by any competent tribunal or a court;
  - (d) the contractor has, within the period of five years before the signing of the contract or commencement of the contract (whichever is the earlier), been removed from, or refused admission to, a primary care list by reason of inefficiency, fraud or unsuitability (within the meaning of section 151(2), (3) and (4) of the Act (disqualification of practitioners)), or a performers list held by NHS England by virtue of regulations made under section 91(3)

(persons performing primary medical services) of the Act, unless the contractor's name has subsequently been included in such a list;

- (e) the contractor has been convicted in the United Kingdom of murder;
- (f) the contractor has been convicted in the United Kingdom of a criminal offence other than murder committed on or after 14th December 2001 and has been sentenced to a term of imprisonment of longer than six months;
- (g) subject to paragraph (3), the contractor has been convicted outside of the United Kingdom of an offence which would, if committed in England and Wales, constitute murder and—
  - (i) the offence was committed on or after 14th December 2001, and
  - (ii) the contractor was sentenced to a term of imprisonment of longer than six months;
- (h) the contractor has been convicted of an offence, referred to in Schedule 1 to the Children and Young Persons Act 1933 (offences against children and young persons, with respect to which special provisions of this Act apply), or in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (offences against children under the age of 17 years to which special provisions apply), committed on or after 1st March 2004;
- (i) the contractor has at any time been included in—
  - (i) any barred list within the meaning of section 2 of the Safeguarding Vulnerable Groups Act 2006 (barred lists), or
  - (ii) any barred list within the meaning of article 6 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (barred lists),

unless the contractor was removed from the list either on the grounds that it was not appropriate for the contractor to have been included in it or as the result of a successful appeal;

- (j) the contractor has, within the period of five years before the signing of the contract or commencement of the contract (whichever is the earlier), been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission, the Charity Commission for Northern Ireland or the High Court, and that order was made on the grounds of misconduct or mismanagement in the administration of a charity for which the contractor was responsible or to which the contractor was privy, or which was contributed to, or facilitated by, the contractor's conduct;
- (k) the contractor has, within the period of five years before the signing of the contract or commencement of the contract (whichever is the earlier), been removed from being concerned with the management or control of any body in a case where the removal was by virtue of section 34(5)(e) of the Charities and Trustee Investment (Scotland) Act 2005 (powers of Court of

Session);

- (l) the contractor—
  - (i) has been made bankrupt and has not been discharged from the bankruptcy or the bankruptcy order has not been annulled, or
  - (ii) has had sequestration of the contractor's estate awarded and has not been discharged from the sequestration;
- (m) the contractor is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986 (bankruptcy restrictions order and undertaking), Schedule 2A to the Insolvency (Northern Ireland) Order 1989 (bankruptcy restrictions order and undertaking), or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985 (bankruptcy restrictions order, interim bankruptcy restrictions order and bankruptcy restrictions undertaking), unless the contractor has been discharged from that order or that order has been annulled;
- (n) the contractor—
  - (i) is subject to moratorium period under a debt relief order under Part VIIA of the Insolvency Act 1986 (debt relief orders), or
  - (ii) is the subject of a debt relief restrictions order or an interim debt relief restrictions order under Schedule 4ZB to that Act (debt relief restrictions orders and undertakings);
- (o) the contractor has made a composition agreement or arrangement with, or granted a trust deed for, the contractor's creditors and the contractor has not been discharged in respect of it;
- (p) the contractor is subject to—
  - (i) a disqualification order under section 1 of the Company Directors Disqualification Act 1986 (disqualification orders: general) or a disqualification undertaking under section 1A of that Act (disqualification undertakings: general),
  - (ii) a disqualification order or disqualification undertaking under article 3 (disqualification orders: general ) or article 4 (disqualification undertakings: general) of the Company Directors Disqualification (Northern Ireland) Order 2002, or
  - (iii) a disqualification order under section 429(2) of the Insolvency Act 1986 (disabilities on revocation of an administration order against an individual);
- (q) the contractor has had an administrator, administrative receiver or receiver appointed in respect of the contractor;

- (r) the contractor has had an administration order made in respect of the contractor under Schedule B1 to the Insolvency Act 1986 (administration); or
  - (s) the contractor is a partnership and—
    - (i) a dissolution of the partnership is ordered by any competent court, tribunal or arbitrator, or
    - (ii) an event happens that makes it unlawful for the business of the partnership to continue, or for members of the partnership to carry on in partnership.
- (3) Paragraph (2)(b) or, as the case may be, paragraph (2)(g), does not apply to a person where—
- (a) that person—
    - (i) has been disqualified or suspended from practising by a licensing body outside of the United Kingdom, or
    - (ii) has been convicted outside of the United Kingdom of a criminal offence; and
  - (b) NHS England is satisfied that the disqualification, suspension or, as the case may be, the conviction does not make that person unsuitable to be—
    - (i) a contractor,
    - (ii) a partner, in the case of a contract with two or more persons practising in partnership, or
    - (iii) in the case of a company limited by shares—
      - (aa) a person who both legally and beneficially owns a share in the company; or
      - (bb) a director or secretary of the company.
- (4) For the purposes of paragraph (2)(c)—
- (a) where a person has been employed as a member of a health care profession, any subsequent employment must also be as a member of that profession; and
  - (b) a health service body includes a Strategic Health Authority or a Primary Care Trust which was established before the coming into force of section 33 (abolition of Strategic Health Authorities) or 34 (abolition of Primary Care Trusts) of the Health and Social Care Act 2012.
- (5) In this regulation, “contractor” includes a person with whom NHS England is proposing to enter into a contract with.

## **15. Contracts with individuals practising in partnership**

Where a contract is with two or more individuals practising in partnership—

- (a) the contract is to be treated as made with the partnership as it is from time to time constituted, and the contract must make specific provision to this effect; and
- (b) the terms of the contract must require the contractor to ensure that any person who becomes a partner in the partnership after the contract has come into force is automatically bound by the contract whether by virtue of a partnership deed or otherwise.

### **Schedule 3, paragraph 51.— Notice provisions specific to a contract with two or more individuals practising in a partnership**

- (1) Where a contractor is a partnership, the contractor must give notice in writing to NHS England as soon as—
  - (a) any partner in the partnership—
    - (i) leaves the partnership, or
    - (ii) informs the other partners in the partnership that they intend to leave the partnership; or
  - (b) a new partner joins the partnership.
- (2) A notice under sub-paragraph (1)(a) must confirm the date on which the partner left or proposes to leave the partnership.
- (3) A notice under sub-paragraph (1)(b) must—
  - (a) state the date on which the new partner joined the partnership;
  - (b) confirm that the new partner is—
    - (i) a medical practitioner, or
    - (ii) a person who satisfies the conditions specified in section 86(2)(b)(i) to (iv) of the Act (persons eligible to enter into GMS contracts);
  - (c) confirm that the new partner meets the conditions imposed by regulations 5 and 6; and
  - (d) state whether the new partner is a general or a limited partner in the partnership.

### **Schedule 3, paragraph 65.— Termination by NHS England for breach of conditions in regulation 5**

- (1) Subject to paragraph (2), NHS England must give notice in writing to the contractor terminating the contract with immediate effect where, in any case, a contractor who is an individual medical practitioner has ceased to be a general medical practitioner.
- (2) Where the contractor referred to in sub-paragraph (1) has ceased to satisfy the condition specified in regulation 5(1)(a) by reason of a suspension of the type described in sub-paragraph (7), NHS England is not required to give notice to the contractor under sub-paragraph (1) unless—
  - (a) the contractor is unable to satisfy NHS England that it has in place adequate arrangements for the provision of clinical services under the contract for so long as the suspension continues; or
  - (b) NHS England is satisfied that the circumstances of the suspension are such that if the contract is not terminated with immediate effect—
    - (i) the safety of the contractor's patients would be at serious risk, or
    - (ii) NHS England would be at risk of material financial loss.
- (3) Sub-paragraph (4) applies where—
  - (a) except in a case to which paragraph 59(4) applies, the contractor consists of two or more persons practising in partnership and the condition specified in regulation 5(1)(b) is no longer satisfied; or
  - (b) the contractor is a company limited by shares, and the condition specified in regulation 5(1)(c) is no longer satisfied.
- (4) Where this sub-paragraph applies, NHS England must—
  - (a) give notice in writing to the contractor terminating the contract with immediate effect; or
  - (b) give notice in writing to the contractor confirming that NHS England is prepared to allow the contract to continue, for a period specified by NHS England, in accordance with sub-paragraph (5) (“the interim period”).
- (5) The period specified by NHS England under sub-paragraph (4)(b) must not exceed—
  - (a) six months; or
  - (b) where the failure of the contractor to continue to satisfy the condition in regulation 5(1)(b) or 5(1)(c), is by reason of a suspension described in sub-paragraph (7), the period for which that suspension continues.
- (6) NHS England must, during the interim period and with the consent of the contractor, employ or supply the contractor with one or more general medical practitioners for the interim period to assist the contractor in the provision of clinical services under the contract.

- (7) The suspensions described in this sub-paragraph are suspension—
- (a) by a Fitness to Practise Panel under—
    - (i) section 35D of the Medical Act 1983 (functions of a fitness to practise panel) in a health case, other than an indefinite suspension under section 35D(6) of that Act, or
    - (ii) section 38(1) of the Medical Act 1983 (power to order immediate suspension etc. after a finding of impairment of fitness to practise); or
  - (b) by a Fitness to Practise Panel or an Interim Orders Panel under section 41A of the Medical Act 1983 (interim orders).
- (8) Before deciding which of the options in sub-paragraph (4) to pursue, NHS England must, if it is reasonably practicable to do so, consult the Local Medical Committee (if any) for the area in which the contractor provides services under the contract.
- (9) If the contractor does not, in accordance with sub-paragraph (6), consent to NHS England employing or supplying a general medical practitioner during the interim period, NHS England must give notice in writing to the contractor terminating the contract with immediate effect.
- (10) If, at the end of the interim period, sub-paragraph (3)(a) or (b) continues to apply to the contractor, NHS England give notice in writing to the contractor terminating the contract with immediate effect.
- (11) In this paragraph—
- (a) “health case” has the meaning given in section 35E(4) of the Medical Act 1983 (provisions supplementary to section 35D); and
  - (b) “general medical practitioner” has the meaning given in regulation 5(2).

**Schedule 3, paragraph 66.— Termination by NHS England for the provision of untrue etc. information**

- (1) NHS England may give notice in writing to the contractor terminating the contract with immediate effect or from such date as may be specified by NHS England in the notice where sub-paragraph (2) applies.
- (2) This sub-paragraph applies if, after the contract was entered into, it comes to NHS England's attention that written information—
- (a) provided to NHS England by the contractor before the contract was entered into; or
  - (b) included in a notice given to NHS England by the contractor under paragraph 50(1)(a) or (b) or 51(1), relating to the conditions set out in regulations 5 and 6 (and compliance with those conditions) was, when

given, untrue or inaccurate in a material respect.

**Schedule 3, paragraph 67.— Other grounds for termination by NHS England**

- (1) NHS England may give notice in writing to a contractor terminating the contract with immediate effect, or from such date as may be specified in the notice, if sub-paragraph (3) applies to the contractor—
  - (a) during the existence of a contract; or
  - (b) if later, on or after the date on which a notice in respect of the contractor's compliance with the condition in regulation 6 was given under paragraph 50(1)(a) or (b) or 51(1).
- (2) Sub-paragraph (3) applies—
  - (a) where the contract is with a general medical practitioner, to that general medical practitioner;
  - (b) where the contract is with two or more persons practising in partnership, to the partnership or any partner in the partnership; and
  - (c) where the contract is with a company limited by shares to—
    - (i) the company,
    - (ii) any person both legally and beneficially owning a share in the company, or
    - (iii) any director or secretary of the company.
- (3) This sub-paragraph applies if—
  - (a) the contractor does not satisfy the conditions prescribed in sections 86(2) or 86(3) of the Act (persons eligible to enter into GMS contracts);
  - (b) the contractor is the subject of a national disqualification;
  - (c) subject to sub-paragraph (5), the contractor has been disqualified or suspended (other than by an interim suspension order or direction pending an investigation or a suspension on the grounds of ill health) from practising by a licensing body anywhere in the world;
  - (d) subject to sub-paragraph (6), the contractor has been dismissed (otherwise than by reason of redundancy) from employment by a health service body unless, before NHS England has given notice to the contractor terminating the contract under this paragraph, the contractor is employed by the health service body from which the contractor was dismissed or by another health service body;
  - (e) the contractor has been removed from, or refused admission to, a primary care list by reason of inefficiency, fraud or unsuitability (within the

meaning of section 151(2), (3) and (4) of the Act respectively) unless the contractor's name has subsequently been included in such a list;

- (f) the contractor has been convicted in the United Kingdom of murder;
- (g) the contractor has been convicted in the United Kingdom of a criminal offence other than murder and has been sentenced to a term of imprisonment of longer than six months;
- (h) subject to sub-paragraph (7), the contractor has been convicted elsewhere of an offence which would, if it were committed in England and Wales constitute murder, and—
  - (i) the offence was committed on or after 14th December 2001, and
  - (ii) the contractor was sentenced to a term of imprisonment of longer than six months;
- (i) the contractor has been convicted of an offence, referred to in Schedule 1 to the Children and Young Persons Act 1933 (offences against children and young persons, with respect to special provisions of this Act apply), or in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (offences against children under the age of 17 years to which special provisions apply);
- (j) the contractor has at any time been included in—
  - (i) any barred list within the meaning of the Safeguarding Vulnerable Groups Act 2006, or
  - (ii) any barred list within the meaning of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (barred lists), unless the contractor was removed from the list either on the grounds that it was not appropriate for the contractor to have been included in it or as the result of a successful appeal;
- (k) the contractor has, within the period of five years before the signing of the contract, been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission, the Charity Commission for Northern Ireland or the High Court, and that order was made on the grounds of misconduct or mismanagement in the administration of a charity for which the contractor was responsible or to which the contractor was privy, or which was contributed to, or facilitated by, the contractor's conduct;
- (l) the contractor has, within the period of five years before the signing of the contract or commencement of the contract (whichever is earlier), been removed from being concerned with the management or control of a body in any case where removal was by virtue of section 34(5)(e) of the Charities and Trustees Investment (Scotland) Act 2005 (powers of Court of Session); or

- (m) the contractor—
  - (i) has been made bankrupt and has not been discharged from the bankruptcy or the bankruptcy order has not been annulled, or
  - (ii) has had sequestration of the contractor's estate awarded and has not been discharged from the sequestration;
- (n) the contractor is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986 (bankruptcy restrictions order and undertaking), or Schedule 2A to the Insolvency (Northern Ireland) Order 1989 (bankruptcy restrictions order and undertaking) or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985 (bankruptcy restrictions order, interim bankruptcy restrictions order and bankruptcy restrictions undertaking), unless the contractor has been discharged from that order or that order has been annulled;
- (o) the contractor—
  - (i) is subject to a moratorium period under a debt relief order under Part VIIA of the Insolvency Act 1986 (debt relief orders) applies, or
  - (ii) is the subject of a debt relief restrictions order or an interim debt relief restrictions order under Schedule 4ZB to that Act (debt relief restrictions orders and undertakings), unless that order has ceased to have effect or has been annulled;
- (p) the contractor has made a composition agreement or arrangement with, or a trust deed has been granted for, the contractor's creditors and the contractor has not been discharged in respect of it;
- (q) the contractor is a company which has been wound up under Part IV of the Insolvency Act 1986 (winding up of companies registered under the Companies Acts);
- (r) the contractor has had an administrator, administrative receiver or receiver appointed in respect of it;
- (s) the contractor has had an administration order made in respect of the contractor under Schedule B1 to the Insolvency Act 1986 (administration);
- (t) the contractor is a partnership and—
  - (i) a dissolution of the partnership is ordered by any competent court, tribunal or arbitrator, or
  - (ii) an event happens that makes it unlawful for the business of the partnership to continue, or for members of the partnership to carry on in partnership;
- (u) the contractor is subject to—

- (i) a disqualification order under section 1 of the Company Directors Disqualification Act 1986 (disqualification orders: general) or a disqualification undertaking under section 1A of that Act (disqualification undertakings: general),
    - (ii) a disqualification order or disqualification undertaking under article 3 (disqualification orders) or article 4 (disqualification undertakings: general) of the Company Directors Disqualification (Northern Ireland) Order 2002, or
    - (iii) a disqualification order under section 429(2) of the Insolvency Act 1986 (disabilities on revocation of administration order against an individual); or
  - (v) the contractor has refused to comply with a request by NHS England for the contractor to be medically examined because NHS England is concerned that the contractor is incapable of adequately providing services under the contract and, in a case where the contract is with two or more individuals practising in partnership or with a company, NHS England is satisfied that the contractor is taking adequate steps to deal with the matter; or
  - (w) the contractor's registration with the Care Quality Commission has been cancelled in accordance with section 17(1) of the Health and Social Care Act 2008, and that cancellation is the final decision of the Commission, or, where an appeal has been launched, is the outcome of that appeal.
- (4) NHS England must not terminate the contract under sub-paragraph (3)(c) where NHS England is satisfied that the disqualification or suspension imposed by a licensing body outside the United Kingdom does not make the person unsuitable to be—
- (a) a contractor;
  - (b) a partner, in the case of a contract with two or more persons practising in a partnership; or
  - (c) in the case of a contract with a company limited by shares—
    - (i) a person legally and beneficially holding a share in the company, or
    - (ii) a director or secretary of the company,
 as the case may be.
- (5) NHS England may not terminate the contract under sub-paragraph (3)(d)—
- (a) until a period of at least three months has elapsed since the date of the dismissal of the person concerned; or
  - (b) if, during the period specified in paragraph (a), the person concerned brings proceedings in any competent tribunal or court in respect of the

person's dismissal, until proceedings before that tribunal or court are concluded,

and NHS England may only terminate the contract at the end of the period specified in paragraph (b) if there is no finding of unfair dismissal at the end of those proceedings.

- (6) NHS England must not terminate the contract under sub-paragraph (3)(h) where NHS England is satisfied that the conviction does not make the person unsuitable to be—
- (a) a contractor;
  - (b) a partner, in the case of a contract with two or more persons practising in partnership; or
  - (c) in the case of a contract with a company limited by shares—
    - (i) a person both legally and beneficially holding a share in the company, or
    - (ii) a director or secretary of the company,
- as the case may be.

**Schedule 3, paragraph 68. Termination by NHS England where patients' safety is seriously at risk or where there is risk of material financial loss to Board**

NHS England may give notice in writing to the contractor terminating the contract with immediate effect or with effect from such date as may be specified in the notice if—

- (a) the contractor has breached a term of the contract and, as a result of that breach, the safety of the contractor's patients would be at serious risk if the contract is not terminated; or
- (b) NHS England considers that contractor's financial situation is such that NHS England would be at risk of material financial loss.

**Schedule 3, paragraph 70.— Termination by NHS England: remedial notices and breach notices**

- (1) Where a contractor's breach of the contract is not one to which any of paragraphs 65 to 69 apply and that breach is capable of remedy, NHS England must, before taking any action it is otherwise entitled to take by virtue of the contract, give notice in writing to the contractor requiring it to remedy the breach (a "remedial notice").
- (2) A remedial notice must specify—
  - (a) details of the breach;
  - (b) the steps that the contractor must take to the satisfaction of NHS

England in order to remedy the breach; and

- (c) the period during which those steps must be taken (the “notice period”).
- (3) The notice period must not be less than a period of 28 days beginning with the date on which the notice is given unless NHS England is satisfied that a shorter period is necessary to protect—
  - (a) the safety of the contractor's patients; or
  - (b) itself from material financial loss.
- (4) Where NHS England is satisfied that the contractor has not taken the required steps to remedy the breach by the end of the notice period, NHS England may give a further notice in writing to the contractor terminating the contract with effect from such date as NHS England specifies in the notice.
- (5) Where the contractor's breach of the contract is not one to which any of paragraphs 65 to 69 apply and the breach is not capable of remedy, NHS England may give notice in writing to the contractor requiring the contractor not to repeat the breach (a “breach notice”).
- (6) If, following a breach notice or a remedial notice, the contractor—
  - (a) repeats the breach that was the subject of the breach notice or the remedial notice; or
  - (b) otherwise breaches the contract resulting in either a remedial notice or a further breach notice,NHS England may give notice in writing to the contractor terminating the contract with effect from such date as NHS England specifies in the notice.
- (7) NHS England may not exercise its right to terminate the contract under sub-paragraph (6) unless NHS England is satisfied that the cumulative effect of the breaches is such that to allow the contract to continue would prejudice the efficiency of the services to be provided under the contract.
- (8) If the contractor is in breach of any obligation under the contract and a breach notice or a remedial notice in respect of the default giving rise to the breach has been given to the contractor, NHS England may withhold or deduct monies which would otherwise be payable under the contract in respect of the obligation which is the subject matter of the default.

### **Schedule 3, paragraph 74. Termination and the NHS dispute resolution procedure**

- (1) Where NHS England is entitled to give notice in writing to the contractor terminating the contract under paragraphs 66, 67, 68, 70(4) or (6) or 71, NHS England must, in the notice given to the contractor under those provisions, specify a date on which the contract terminates that is at least 28 days after the

date on which NHS England gives notice to the contractor, unless sub-paragraph (2) applies.

- (2) This sub-paragraph applies if NHS England is satisfied that a period of less than 28 days is necessary in order to protect—

- (a) the safety of the contractor's patients; or
- (b) itself from material financial loss.

- (3) Where—

- (a) sub-paragraph (1) applies, but the exceptions in sub-paragraph (2) do not apply; and
- (b) the contractor invokes the NHS dispute resolution procedure before the end of the notice period referred to in sub-paragraph (1) and gives notice in writing to NHS England that it has done so,

the contract does not terminate at the end of the notice period but instead only terminates in the circumstances described in sub-paragraph (4).

- (4) The circumstances described in this sub-paragraph for the termination of the contract are if and when—

- (a) there has been a final determination of the dispute under the NHS dispute resolution procedure (or by a court) and that determination permits NHS England to terminate the contract; or
- (b) the contractor ceases to pursue the NHS dispute resolution procedure, whichever is the earlier.

- (5) If NHS England is satisfied that it is necessary to terminate the contract before the NHS dispute resolution procedure is (or any court proceedings are) concluded in order to protect—

- (a) the safety of the contractor's patients; or
- (b) itself from material financial loss,

sub-paragraphs (3) and (4) do not apply and NHS England may confirm, by giving notice in writing to the contractor, that the contract will nevertheless terminate at the end of the period of the notice given under paragraphs 66, 67, 68, 70(4) or (6) or 71.