NHS Resolution

23 January 2025

FILE REF: **SHA/26286**

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DECISION MAKING BODY: **NHS LANCASHIRE AND SOUTH CUMBRIA INTEGRATED CARE BOARD ("THE COMMISSIONER")**

GMS CONTRACTOR : **DR P K JOSEPH**

DISPUTE RESOLUTION – NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES CONTRACT) REGULATIONS 2015

RE: TERMINATION OF CONTRACT

1. Outcome

1.1 I determine that the Remedial Notice dated 1 December 2023 was valid on the grounds of Clause 26.13.2 and 26.13.3. I also determine that the Termination Notice dated 12 December 2023 was valid on the grounds of Clause 26.13.4 and 26.18.2.

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RE: TERMINATION OF CONTRACT

1. INTRODUCTION

1.1 The above Contractor referred the dispute in relation to its General Medical Services Contract for dispute resolution under the provisions of Regulation 83 of the National Health Service (General Medical Services Contracts) Regulations 2015 (the "Regulations").

1.2 The Secretary of State for Health and Social Care has directed that NHS Resolution exercise the functions of dispute resolution on their behalf. I, as an authorised officer of NHS Resolution, have made this determination.

2. APPLICATION FOR DISPUTE RESOLUTION

2.1 By an undated letter received by email dated 22 August 2024 the Contractor applied to NHS Resolution, for dispute resolution.

2.2 I have had regard to the following documents made available to me in consideration of this matter to ensure the just, expeditious, economical and final determination of this dispute:

2.2.1 Contractor's application dated 22 August 2024 with enclosures;

2.2.2 Commissioner's letter dated 12 September 2024;

2.2.3 Contractor's email dated 6 October 2024 with enclosures;

2.2.4 Commissioner's letter dated 17 October 2024;

2.2.5 Contractor's email dated 22 October 2024; and

2.2.6 Commissioner's letter dated 22 November 2024

3. PARTIES SUBMISSIONS

The Contractor's application

3.1 "My name is Dr. Paramundayil K. Joseph. I was a single-handed GP who used to practise from Dill Hall Surgery, 6-8 Church St, Church, Accrington, Lancashire BB5 4LF. I worked until 12.12.2023 when my contract was terminated without any notice.

3.2 I was suspended from performers' list on 08.11.2023 (which was the result of clinical problems such as prescribing too many antibiotics, prescribing antipsychotics etc.) I must emphasise that there were no major issues such as patient harm/death, sexual allegations or fraud.

3.3 On 08/11/2023, I told the ICB representatives that there is a partnership agreement between myself and Dr Bello. They asked to see the partnership agreement, which I showed them and provided photocopies of.

3.4 After this, I would like inform you only of the events that transpired that led to the termination of my contract below:

1. On Friday 01.12.2023, I received the first remedial notice from Lancashire and South Cumbria ICB ([WPK] was the person I was corresponding with) which I needed to respond to by 16:00 on the very same day. 16:00 was the deadline given to me to respond to the first remedial notice. At about 14:00 on that day, Dr [LD] (from the ICB) telephoned me to inform me that what they were looking for in the first remedial notice was mainly the duty rota for the locum doctors and ancillary staff. As I was not allowed on to the surgery computer system (due to my suspension) and the fact that my practice manager was off that day, there were difficulties in supplying this information in a timely manner. Despite these challenges, I managed to supply most of the information requested by 16:00, but a few remaining items were outstanding, which were sent only 58 minutes later than the imposed deadline. The information requested was mainly about locum doctor's rota and the named locum doctors in question who would provide locum cover for me for the following week. There was no change in any other staff rota such as receptionists or nurses, only the doctors. Therefore, given the time-sensitive circumstances I did not feel it was necessary to provide the ancillary staff rota as there were no changes to that whatsoever.

2. On same day Friday the 01.12.2023 about 8.50 pm I received a second remedial notice from Mr [K] because I 'did not comply' to the first remedial notice, despite the fact I did provide all the requested information, albeit 58 minutes later. I find this unreasonable as the time stamp for the delivery of second remedial notice is well after 16:58, so he would have received/seen that I have sent all the information he requested before he sent the second remedial notice. This second remedial notice gave me time to rectify the situation by 01.01.2024. The second remedial notice involved reviewing patients who have learning disabilities, patients who are on strong opioids and patients who are on anti-psychotic medications etc. The total count of patients would be 116, which is a very difficult task to be finished by 01.01.2024 considering the festive season in between. This, as well as the fact I was suspended from the performer's list and barred from patient contact as well as access to the patient notes would make this an impossible task. I contacted my PCN lead Dr. [RH] who offered help by providing clinical pharmacists to do medication reviews. I was going to arrange extra locum doctors to help me complete this task. To be expected to do this when I was not allowed to work and within such a short time, is what I personally believe are extremely unfair circumstances.

3. On Monday, 11.12.2023 after office hours at around 5.30 pm I received a phone call from Dr. [LD] (from the ICB), requesting an urgent meeting in-person with ICB on 12.12.2023 at 09.00. Despite asking what it was for, they refused to tell me what it was until we met in person. I immediately notified LMC representative [RMD].

4. Two representatives from the ICB – [CW] and [WK] met me and my wife and the above mentioned LMC rep at 9.00am on 12.12.2023. I was told that my contract is terminated from that minute due to my failure to comply with the first remedial notice. They also gave me the typed letter of the termination. I reminded them of my partnership agreement with Dr [B], which they dismissed. I mention this because if this partnership agreement is considered legally binding then the termination of my contract also becomes illegal. In presence of all the people present I asked [CW] 'What is the appeal process for this?' where I was then told that I have no right of appeal. Within minutes a few people came through the front door- some IT men, staff from East Lancashire Alliance and Dr. [RR] from East Lancashire Alliance. Without asking anybody's permission the IT men began to dismantle the IT systems and equipment such as computers and telephones. As a result of the abrupt and dismissive way I was dealt with, staff were distressed and some with tears in their eyes. Patients awaiting their appointments were also present, as well as myself and my wife, as we all looked on helplessly. The lack of humanitarian regard for all present bore striking resemblance to a criminal investigation.

5. Therefore, I decided to tell my work colleague, Dr. [GB] what had happened. Like myself, he also had no warning about what was happening. However, Mr. [WK] physically restrained me by getting in the way and holding on to door insisting he must accompany me to Dr. [B]'s room. He physically stopped me from informing my colleague personally about the events that had transpired. He also did not allow me to speak to my colleague in private and physically forced his way into the room. I felt harassed and treated like a criminal. As he was physically a lot stronger and taller than me, I felt intimidated by the whole experience. Then Mr. [K] proceeded to go upstairs to the room where staff files are kept, and I unlocked the cabinets at his request, except the one which I did not have the key for. He was pulling on the cabinet, and it did not open and then he started whacking the cabinet making huge noise. He also used a crowbar. Then Mrs [B] (business manager of the other practice in the building) ran to the room wondering what was happening (as she has some files of their surgery in the same room) and asked him to stop as it was her cabinet.

6. I felt that I was treated very unfairly by the ICB, and I complained to you on 21.01.2024 and you advised me to appeal to ICB against the termination of contract.

7. I appealed to Lancashire and South Cumbria ICB on 13.01.2024 and a reminder on 31.01.2024. Eventually I received a response from ICB ([WK]) on 09.02.2024 essentially telling me that I have no right of appeal.

8. On 26.02.2024 I asked, under the subject access request, for the minutes of ICB meeting supposedly held on 07.12.2023 where they decided to terminate my contract. Despite a few reminders I still have not received that information. Usually, they have a meeting once a month and minutes are published. There was a meeting on 14th of November and again on 14th of December which are published. The meeting on 7th December (if there was one) is not published. (I received an update on 08/05/2024 (after continually asking for updates) that this was an extraordinary meeting therefore the minutes were not published for the public to see, to which I asked for the minutes for this as it was a decision involving me.

However, currently I am still waiting for a response as per an email from [C] on 22/05/2024.)

9. I feel the sudden termination of my contract is one that needs to be explored thoroughly because I see no reason for such an extreme course of action to be taken depriving me of my livelihood. I would like to lodge this appeal for your kind consideration.

10. The reason given for the sudden termination of my contract is that 'the safety of your patients would be at serious risk if the contract is not terminated.' I cannot understand how they arrived at this conclusion, when the surgery was running as normal with locum doctors and the usual ancillary staff. The surgery was also supervised by Dr [AB] and Dr [GB].

3.5 I will also provide relevant information that you would need to properly consider this complaint:

1) To see a copy of the contract please see e mail dated 13.12.2023 from [P-K] of ICB – The only relevant point of this contract is 2.1.1 on page 25.

2) The Appropriate outcome that I expect is: Since ICB terminated my contract for no good reason and without giving me any notice or choice, It has to return the contract to myself or to ARG Medical Practice, Blackburn Road, Accrington. Dr [B] is a part of this practice and he is my ex- GP partner and there is a partnership agreement between myself and Dr [B] provided below. As well as bringing back the staff and patients and technological equipment to the original building and to reimburse the income that I lost.

3) If by any genuine reason the ICB cannot fulfil my above demand, I feel that we should be looking into the possibility of an acceptable compensation package.

3.6 Thank you for reading this letter and the following documents with it."

Representations

<u>The Commissioner's representations</u>

3.7 "Thank you for your letter of 26 September 2024 and we note your request for the following:

1. A copy of the relevant GMS Contract with the ODS/Practice code of P81711 ("Contract"); and

2. Representations in relation to the response.

3.8 To reduce duplication of documentation we shall refer to the bundle produced by Dr Joseph ("the Bundle") where appropriate. A supplementary bundle has been provided with this response ("the Supplementary Bundle").

3.9 **Contract**

3.10 We can confirm that the documents Dr Joseph included in the Bundle represent copies held within the ICB's records.

1. Contract dated April 2019 pages 70 to 264 of the Bundle; and

2. Signed Schedule 2 page 43 of the Bundle, we can confirm that this is the signature page for the Contract which would replace Schedule 2 located at page 247 of the Bundle.

3.11 Dr Joseph was therefore the Contractor as defined in the Contract. We can confirm that the National Health Service (General Medical Services Contracts) Regulations 2015 ("the Regulations") and the Contract, as varied in 2023/2024, were used when managing the issues with Dr Joseph.

3.12 A response to Dr Joseph's claims regarding a partnership with Dr Bello are addressed in the Representations.

3.13 **Preliminary Issues**

3.14 The ICB requests that NHS Resolution makes a determination in relation to the following preliminary issues which will help inform how the remainder of Dr Joseph's concerns were managed.

1. That the ICB had the authority and power to terminate the Contract without requiring a stay in the process where patient safety concerns are identified; and

2. The ICB responded to the concerns raised by Dr Joseph and due to the power to terminate the Contract there was no further action available to the ICB.

3.15 *Preliminary Issue 1:*

3.16 Paragraph 74 of Schedule 3 Part 8 of the Regulations governs the relationship between terminations and the NHS dispute resolution procedure. Paragraph 74(5) states the following:

3.16.1 *(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.

3.17 Sub-paragraphs (3) and (4) place a stay on any termination notice issued should the Contractor invoke the NHS dispute resolution procedure prior to the end of the relevant notice period, until a final determination under the dispute resolution procedure, a Court ruling or the contractor ceases to pursue the dispute resolution procedure.

3.18 Paragraphs 68 and 70 state the following:

3.18.1 *68. Termination by NHS England where patients' safety is seriously at risk or where there is risk of material financial loss to NHS England*

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.

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 subparagraph (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.

3.19 The ICB confirms that it was satisfied that it was necessary to terminate the contract to protect the safety of the contractor's patients with immediate effect in accordance with the powers granted under paragraphs 68 and 70. It complied with the procedures and notices required under the Regulations and at all times acted to protect patients.

3.20 The ICB is therefore seeking a determination that they had the authority under the Regulations to terminate the Contract before the NHS dispute resolution procedure had concluded to protect the safety of Dr Joseph's patients.

3.21 *Preliminary Issue 2:*

3.22 This was addressed in the ICB's letter to NHS Resolution dated 12th September 2024 a copy of which is enclosed with this letter.

3.23 For the reasons expressed within that letter the ICB is seeking a determination that the ICB did regularly communicate and engage with Dr Joseph including answering his queries and concerns as they arose. The decision to terminate in accordance with paragraph 74 was a full and final one and not subject to further appeal as patient safety takes precedence.

3.24 *Consequence of the Preliminary Issues*

3.25 If NHS Resolution makes the above determinations the ICB submits that the remainder of Dr Joseph's grounds for appeal are invalid.

3.26 The consequence of this is that Dr Joseph's subsequent appeal should be dismissed as the ICB acted in accordance with the powers they had under the Regulations.

3.27 In the alternative position the ICB would like NHS Resolution to consider the following representations in response to Dr Joseph's claims which will demonstrate that at all times appropriate actions were taken by the ICB.

3.28 **Representations**

1. Contractor Status

3.29 Dr Joseph was the sole Contractor from April 2019 following a variation which reflected the termination of the partnership between him and Dr [B].

3.30 Please note that the Contract, as included within the Bundle, has been amended throughout to reflect the fact that he was the sole Contractor and not in a partnership including the following amendments:

A. Deletion of the section in square brackets in clause 2.1.7 in accordance with the drafting note 12 located at page 94 of the Bundle;

B. Deletion of clause 26.3 in accordance with the drafting note 110 located at page 219 of the Bundle;

C. Deletion of clause 26.15 in accordance with the drafting note 116 located at page 232 of the Bundle;

D. Use of Schedule 1 (Individual) and deletion of Schedule 1 (Partnership) in accordance with drafting notes 125 and 127 located at pages 243 and 244 of the Bundle; and

E. The signed Schedule 2 located at page 43 of the Bundle.

3.31 It is therefore denied that the Contract was held by a partnership at the time of the termination.

3.32 It is acknowledged that prior to 2019 Dr Joseph and Dr [B] had held two contracts in partnership as evidenced by the contract variations for '*Dr [B]'s Surgery*' dated 4 April 2012 and for '*Dill Hall Surgery*' dated 28 August 2012 (pages 44 to 50 of the Bundle).

3.33 The ICB considered that it was possible for them to have entered a partnership but not to have informed the ICB of the intention to vary the Contract, which would have been another breach of the Regulations. To ensure that this was not the case the ICB asked Dr [B] whether he was in partnership with Dr Joseph and he confirmed that they were not.

3.34 The ICB also confirmed that the CQC registration for Dill Hall Surgery was for Dr Joseph as a sole practitioner. It would be illegal to have operated as a partnership without the appropriate registration with CQC and he did not inform them of being in partnership during inspections. Please see the CQC report which states "*Dr Paramudayil Joseph was a single-handed GP* practice' located at page 3 of the Supplementary Bundle.

3.35 There is therefore no reason for the ICB to believe that Dr Joseph was not the sole Contractor and that there were any other individuals who should have been parties to the Contract.

3.36 We note that Dr Joseph has referenced clause 2.1.1 of the Contract. It is not clear why as this clause simply confirms that it is a commercial contract and that a Contractor is not an employee, partner or agent of the commissioners. If NHS Resolution would like the ICB to respond on this point in greater detail, we would require greater clarity as to the purpose of this reference.

2. Dr Joseph's Suspension from the Performers' List

3.37 Dr Joseph's suspension from the Performers' List on 8 November 2023 was a suspension from being a medical practitioner. He continued to be the Contractor and this suspension had no impact on the contractual obligations and liabilities.

3.38 The ICB informed him of this and undertook a process of support whilst undertaking a review of the risks and issues at the Practice. Dr Joseph was required to implement sufficient plans to ensure that he met the obligations of the Contract.

3.39 All subsequent actions taken by the ICB resulted from Dr Joseph's failure to undertake the necessary steps and the increasing evidence that there were patient safety concerns. The ICB can confirm that the suspension did not therefore directly impact upon the decision to terminate the Contract.

3. Remedial Notices

3.40 The ICB can confirm that two Remedial Notices were issued on 1 December 2023.

3.41 The first of these remedial notices is located at page 12 of the Bundle and the second is at page 23.

3.42 Paragraph 70(3) of Schedule 3 Part 8 of the Regulations states:

3.42.1 *(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.

3.43 Throughout the period between 8 November 2023 and 1 December 2023 the ICB had identified many concerns which Dr Joseph was required to resolve.

3.44 It was determined that the most serious issue was the failure of Dr Joseph to ensure there was adequate medical and clinical cover. Prior to this period Dr Joseph had entered a contract with a third party to provide cover during November, following his suspension, which is why this had not been acted upon earlier. Dr Joseph however terminated this arrangement and failed to provide any assurance that suitable alternative plans had been made.

3.45 It was therefore determined that this issue would be separated from the other ones as it represented an immediate risk to patient safety. At the time of the request on the Friday, Dr Joseph had failed to provide any details of medical or other clinical cover commencing on the Monday morning. It was therefore determined to issue a remedial notice requiring a response for later in the same day in accordance with paragraph 70(3).

3.46 The other issues remained serious and still required remedial action but it was determined that the full 28 day period would be reasonable.

3.47 It is therefore denied that the second remedial notice was in any way connected with the first remedial notice and it certainly was not ‘because I did not comply’ to the first remedial notice…’ as alleged by Dr Joseph. We note that this is a quote provided by Dr Joseph but it does not appear in any of the documentation and communication between the parties.

4. Failure to comply with the first remedial notice

3.48 Paragraph 70(4) of Schedule 3 Part 8 of the Regulations states:

3.48.1 *(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.*

3.49 The ICB refers to the requirements of the remedial notice located at pages 6 to 9 of the Bundle and the responses provided by Dr Joseph at pages 10 and 14 to 21.

3.50 It is evident that Dr Joseph failed to take the required steps when these responses are compared to the required actions located at pages 8 and 9 of the Bundle.

3.51 In response to Dr Joseph's argument that the remedial notice was issued with insufficient notice the ICB would argue that Dr Joseph had been suspended on 8 November 2023 and the notice had been sent on 1 December 2023. This represents a period of 23 days during which he was under an obligation as the Contractor to implement sufficient business continuity obligations to ensure that the Contract could be delivered without placing patient safety at risk.

3.52 The request for assurance regarding a rota and suitable clinical governance arrangements on a Friday for the following week is a very reasonable timeframe. There is no justification for Dr Joseph to not have arranged several months of cover knowing that he was subject to a suspension and should have been able to provide this on demand. It is of particular importance that he had made adequate arrangements but decided to terminate these without explanation or an alternative solution.

3.53 Dr Joseph has stated that '[t]he surgery was also supervised by Dr [AB] and Dr [GB].' No evidence of this arrangement has been provided at any time and both Dr [B] and Dr [B] denied that they had supervisory obligations or agreements with Dr Joseph. Both the ICB and CQC sought clarification on this point and neither was provided with evidence that such an arrangement existed. The doctors had confirmed that they offered ad hoc support but no commitment to undertake specific duties at the Practice. The ICB was aware that both Dr [B] and Dr [B] lacked the capacity within their own practices to offer adequate cover in Dr Joseph's practice.

3.54 The ICB was therefore satisfied that the responses to the remedial notice failed to evidence that Dr Joseph had taken the required steps to remedy the breach.

3.55 The ICB had also considered, prior to issuing the notice, whether the information being requested was reasonable in the context and whether it represented a risk to patient safety. Had these tests not been applied there may not have been a requirement for two separate remedial notices.

5. Decision to Terminate the Contract

3.56 During the week commencing 4 December 2023 the ICB undertook a review of the response to the first remedial notice and teams within the ICB continued to visit and investigate issues at the Practice.

3.57 The concerns raised in the second remedial notice, including in particular those related to serious prescribing and medicines management problems (see pages 30 to 35 of the Bundle) were investigated in far greater detail than had been possible earlier in the process.

3.58 In addition to the remedial notice the ICB considered paragraph 68 of Schedule 3 Part 8 of the Regulations which states:

3.58.1 *68. 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.

3.59 It was confirmed that:

1. paragraph 70(4) provided the ICB with the power to terminate the Contract, and paragraph 74(5) meant that this could be with immediate effect due to the risk to patient safety; and

2. paragraph 68 gave the power to terminate the Contract with immediate effect if Dr Joseph's breaches placed the safety of the patients at serious risk.

3.60 It was determined that both grounds were satisfied and it was decided that that the Contract should be terminated. It was decided that a termination notice would be served on 12 December 2023 to enable an emergency contract with a third party provider to be implemented, to ensure minimal disruption to the patients and staff.

6. Supplementary issues

3.61 Having reviewed Dr Joseph's application he is alleging that the 'ICB terminated my contract for no good reason and without giving me any notice or choice…' These Representations have therefore focused solely on the grounds for termination and the right of the ICB to terminate with immediate effect, as this appears to be Dr Joseph's principal concern.

3.62 He does however make other complaints which we do not intend to respond to in detail as they are irrelevant to the issue of whether the ICB terminated the Contract lawfully in accordance with the Contract and the Regulations. However, the ICB would like to bring the following points to NHS Resolution's attention and should further information be required it can be provided:

3.62.1 LMC engagement

At all times the LMC were fully engaged by the ICB, this included informing them of the remedial notice and the termination notice in accordance with the obligations within the Regulations.

3.62.2 Allegations against Mr [K-P]

The ICB is aware of allegations against Mr [K-P] specifically in relation to the events on 12 December 2023. This is subject to an ongoing investigation and did not impact upon any decision related to terminating the Contract which was made the previous week. We can confirm the decision to terminate was made at an executive level which did not include Mr [K-P].

3.62.3 Management of staff and patients during the transition

A detailed engagement plan was implemented as part of the transition which happened immediately upon the termination of the Contract. Whilst there was understandable concern about the perceived suddenness and the uncertainty of what the termination meant, this was managed in a suitable way and there were very few issues after the initial action was taken. Many of the team were not surprised as they had been assisting the various investigations and were aware of the problems at the Practice. They also had job security with the new arrangements.

3.62.4 Subject Access Request

The ICB can confirm that this has been received and it is subject to an ongoing process to determine what is and is not disclosable. It is being managed separately.

7. Dr Joseph's lack of insight

3.63 It is of concern that in Dr Joseph's application he has stated the following:

> *'The reason given for the sudden termination of my contract is that 'the safety of your patients would be at serious risk if the contract is not terminated.' I cannot understand how they arrived at this conclusion, when the surgery was running as normal with locum doctors and the usual ancillary staff.'*

3.64 This highlights the lack of insight he has and had about the serious failings at the Practice and the risks to patient safety. The way in which he had been running the Practice '*as normal*' had led to his suspension from the Performers List and the large number of contract breaches identified within the two remedial notices.

3.65 If, following his suspension, Dr Joseph had demonstrated that the multiple contract breaches, could have been managed and resolved the termination of the Contract may have been avoidable.

3.66 **Conclusion**

3.67 The ICB is confident that at all times it has acted in accordance with the Regulations and the Contract. It was necessary to take the action of terminating the Contract for the reasons detailed above and ultimately it felt it had no alternative but to take this action to avoid Dr Joseph's patients being at serious risk.

3.68 Please advise whether there is any additional information which would assist NHS Resolution in responding to this application."

<u>The Contractor's representations</u>

3.69 "Thank you for your email dated 26.09.2024 enclosing the ICBs response.

3.70 There are a few points I would like to address, and I will list them below:

3.71 I believe that clause 26.18.2 being enforced as the reason for my termination was inappropriate. I am unclear as to why safety is mentioned as the main reason for termination. As I was suspended from the Performer's list by NHS England, I was no longer clinically practicing from 08/11/2023 and so the practice was run by locums appointed by me and their work was being supervised by two other local GPs, namely Dr [GB] and Dr [AB]. I was in the surgery every day anyway to supervise it all and deal with the administrative tasks, not clinical duties. So from 08/11/2023 until my termination on 12.12.2023, the safety of patients was not an issue as I was not clinically practicing so therefore I could not endanger said patients. However, despite the fact the surgery was running smoothly for those 5 weeks, the ICB then suddenly decided to issue me the first remedial notice on 01/12/2023 giving me only a few hours to comply. After this, the second remedial notice was sent at night on the same day, giving me 28 days to comply this new remedial notice.

3.72 I was complying with the remedial measures suggested in the second remedial notice, however I was given an impossible timeframe, especially when I am denied access to patient medical records. Considering the fact there was no help offered from the ICB to comply with the second remedial notice. As mentioned in my original complaint to you (NHS Resolutions) that I contacted Dr [RH] (my PCN Lead) who offered me help

through the PCN Clinical pharmacist. I personally feel that this contract termination must have been planned well in advance because of the timeframe in which my practice was closed down and shifted to another site (Acorn medical centre.)

3.73 There was no consultation with patients and staff regarding this relocation. The Acorn building was virtually empty due to the incompetence of the ICB, and so used my practice to utilise this previously unused premises. The speed at which they transferred the computer equipment, patients and staff clearly shows intentional pre-planned organisation that had been in place for some time. For reasons known to only to the ICB alone, they thought my patients were at serious risk and they convened an emergency meeting on 07/12/2023 (ICB does not reveal who attended the meeting, admits there are no minutes of the meeting and also do not say who was involved in the decision to terminate my contract – please see attachment of email sent to me from [CW] where I enquire about the minutes of this meeting.)

3.74 Contrary to what the ICB states, I was absolutely not given any support. By their own admission, looking at the table of supposed communications you can see that there is no communication or offer of help from 01/12/2023 onwards i.e. from the date of my first remedial notice until the termination of my contract on 12/12/2023. The table provided by the ICB does not accurately show how much support was provided. In the table of dates that the ICB offered support, they only mention 2 dates. The first is 06/11/2023, which is the date that a letter was sent to me from the ICB thanking me for enabling their visit on 02/11/2023. This letter stated that the ICB wishes to support me however there was no mention of what kind of support, how or when this would be provided to me. The next date they mention is 09/11/2023, an email was sent on that date from Dr [LD] advising me that I can get help from the LMC, and that was all. Although the LMC offered me the help of 2 part-time practice managers to help me run the practice (as my practice manager was off sick) during the period of my suspension, this offer of help was dependent on the ICB providing the necessary funding to the LMC to help me. In the end, the ICB did not provide the funding and I did not get the help that was initially suggested (please see attached the letter from [RM] of the LMC to [CW] of the ICB.)

3.75 Thank you for your time in reading this email and I look forward to your response."

Observations

<u>The Commissioner's observations</u>

3.76 "We understand that Dr Joseph has raised additional points in two emails, one dated 6 October and the second dated 22 October 2024. It is not known whether he had sight of our representations prior to sending the second email but to avoid duplication we shall address each point raised with reference to our letter dated 17 October 2024 ("our Representations").

3.77 **Patient Safety**

3.78 Dr Joseph has challenged the decision to rely on patient safety as one of the grounds for termination the Contract and for accelerating the notice periods. He refers to Drs [B] and [B] providing supervision of the staff. He does not address the incomplete rota and periods during which there was no medical cover and limited clinical cover to manage the needs of the patients.

3.79 He also does not address the issues set out in the second remedial notice, which identified a number of high risks to patients at the practice.

3.80 These points are addressed in our Representations at points 3, 4 and 5.

3.81 Please note that, whilst there was an ongoing investigation by NHS England into the safety of Dr Joseph's practice, it was not the remit of the ICB to investigate or to pre-determine the process managed by NHS England. It was the ICB's obligation to assess whether Dr Joseph was delivering the GMS services in accordance with the Contract and to determine whether he was acting as a capable provider of general practice services.

3.82 The assessment of patient safety was made following a review of Dr Joseph as a contractor of services and not linked to the investigation initiated by NHS England to determine whether he was fit to remain on the Performers List. It is our belief that Dr Joseph has failed to recognise the difference between his role as a medical performer and as a contractor.

3.83 **Second remedial notice**

3.84 Dr Joseph is concerned that the second remedial notice contained '*an impossible timeframe*'. The ICB was satisfied that giving one month notice to comply with the second remedial notice was reasonable. Furthermore, had there been evidence that Dr Joseph was willing to work with the ICB and to make progress on the matters requiring remedy, it is likely that an extension could have been agreed.

3.85 However, this became irrelevant once the decision to terminate Dr Joseph's contract on patient safety grounds was made. That decision was made on the basis of Dr Joseph's failure to adequately respond to the first remedial notice and to subsequent concerns about patient safety following further investigations at the Practice.

3.86 **Alleged lack of support from the ICB**

3.87 Dr Joseph has raised concerns about the ICB failing to provide support to him following his suspension. This is denied by the ICB and the following support was provided:

3.87.1 The East Lancashire Alliance (ELA) which is a not-for-profit Federation of the 9 PCNs in Lancashire East was sourced to provide immediate support for the practice. This support included locum cover, clinical expertise and support for managerial/back-office functions from experienced professionals.

3.87.2 Contact was maintained throughout with the LMC who provide support to practices.

3.87.3 ICB staff attended at the practice to reassure staff.

3.88 When Dr Joseph terminated the cover being provided by the East Lancashire Alliance on 13.11.23 the ICB was concerned that there was a lack of medical cover and no evidence of business continuity arrangements to ensure the safety of the practice.

3.89 At this point the ICB felt that it had no alternative but to commence the remedial notice procedure as it believed that Dr Joseph had breached the Contract and had failed to undertake any mitigation to manage the situation.

3.90 On being served with a Remedial Notice, many contractors work with the ICB to address the problems and to find solutions. Dr Joseph failed to do so and showed no intention of resolving the issues. For example, when Dr Joseph was notified that he had not complied with the first remedial notice on the evening of 1 December 2023, he took no further steps to subsequently rectify these issues. It is highly likely that, had he

identified appropriate medical and clinical cover on or before 4 December 2024, the ICB would not have issued the first remedial notice.

3.91 Instead, by the time of the termination there had been a recurrence of the same issues and Dr Joseph had made no attempts to resolve the problems identified.

3.92 Dr Joseph states that the LMC could have provided additional support had funding been made available. Whilst he may have been eligible for support under section 96 of the NHS Act 2006, no application was made by Dr Joseph for such support.

3.93 It is further denied that the ICB had a duty to provide additional support to Dr Joseph but, despite this, it did try to work with him between 8 November and 1 December 2023 to help identify and resolve the issues at the Practice. The ICB did not receive the required engagement from Dr Joseph as detailed in the Representations and the remedial notices. The ICB therefore had no alternative but to manage the contract failures in accordance with the Contract.

3.94 **Alleged planning of the contract termination**

3.95 The ICB can confirm that the caretaking contract with the East Lancashire Alliance was signed and dated 12 December 2023.

3.96 As a responsible commissioner of general practice services, the ICB complied with Part C of the *Policy and Guidance Manual (V4) – May 2022* for the management of '*Unplanned / Unscheduled and Unavoidable Practice Closedown*'.

3.97 Clause 2.3.1 confirms that the roles and responsibilities of the ICB include the following:

3.97.1 2.3.1.1 The Commissioner will take the lead in the following actions:

- *Ensure appropriate interim measures are put in place (e.g. a caretaker GP) to keep people safe after the identification of concerns or issues or at the very latest, the point it is informed of the closure.*
- *Establish a team with specialist skills to oversee the closure, including contracting and communications staff, and lead on arranging meetings / consultations with any partners.*
- *Establish a task and finish group to oversee the process.*
- *Co-ordinate assessments of the practices' registered list to ascertain patient needs and preferences. This should be completed by individuals with the relevant skills and governance to access patient records (where this is required) or by those brought in for their specialist skills (risk-stratified e.g. vulnerable patients, children in care, end of life patients, etc).*
- *Communicate to patients the details of alternative GP Practices which could provide essential and additional services, including any details on the current quality of the service (i.e. links to MyNHS, NHS Choices Practice Website).*
- *Maintain ongoing consultative relations with patients, their families, other local GP practices and any other system partners to ensure they are kept informed at each step of the process.*

- *Commission new services and arrange people to move and resettlement, including a review of the placement after a reasonable timeframe.*

- *Identify a lead to coordinate communications.*

- *Engage with Local Medical Committee (LMC)*

3.98 Clause 2.4 confirms the process:

3.98.1 *2.4 The Process*

2.4.1 The process for a planned practice closedown commences between 9 and 15 months prior to the scheduled end date of the contract. For unplanned closure(s), it will be necessary to undertake a rapid assessment and determine the most appropriate course of action.

2.4.2 In the large majority of cases where closure is rapid (i.e. immediate removal of CQC registration), the most appropriate course of action will likely involve an initial 'caretaker' arrangement (another GP or GP Practice team) temporarily overseeing the practice at the closing practice's existing premises and the care of its registered list. Please refer to the section on Urgent Contracts in Part B, chapter 1 <Urgent Contracts>.

3.99 It was therefore a requirement on the ICB to commence discussions with alternative providers and to identify a method of '*keep[ing] people safe after the identification of concerns or issues'*. The ICB can confirm that the team involved had no authority to make any binding decisions and that no agreements or commitments were made prior to the decision of the Primary Care Commissioning Committee and the Board of the ICB.

3.100 It is denied that any decision was pre-determined and that any agreement had been entered into with a caretaker provider prior to the decision to terminate the Contract.

3.101 **Disclosure requests**

3.102 The disclosure requests are in the process of being responded to separately.

3.103 **Conclusion**

3.104 The ICB hopes that these responses to Dr Joseph's additional comments, read in conjunction with the Representations, provide sufficient information for NHS Resolution to progress this matter.

3.105 We would reiterate that the ICB is of the view that their actions were necessary to avoid Dr Joseph's patients being placed at serious risk."

<u>The Contractor's observations</u>

3.106 "Further to my email dated 06/10/2024, I would like to add something.

3.107 As mentioned in my previous email, I believe my termination was pre-planned. The ICB has claimed that there was an emergency meeting of the PCCC (Primary Care Commissioning Committee) on 07/12/2023, which they have provided no minutes for or mentioned anyone who participated in said meeting.

3.108 I have recently learned from a reliable source that my contract was given to East Lancashire Alliance (ELA) on 05/12/2023, 2 days before the so-called decision was taken to terminate my contract.

3.109 This reinforces my belief that this was all arranged beforehand and I feel it would be appropriate to pose the question to the ICB whether this was/was not the case, by providing all communication between themselves, Dr [FF] (chair of ELA at that time), [NS] (CEO of ELA) and Dr [RR] (ELA Clinical Lead.)

3.110 I have already requested for this information from the ICB under the Freedom of information act, so I wonder if you could ask them to provide this information to provide some clarity on this issue."

4. CONSIDERATION

4.1 From the information before me, I am of the view that local dispute resolution has been exhausted. In the Commissioner's letter of 12 September 2024 it has provided a table which sets out all of the communication between itself and the Contractor between 25 October 2023 and the termination notice. I also note the letter dated 6 February 2024 from the Commissioner to the Contractor in which it responded to the Contractor's email entitled 'Appeal against unfair dismissal'. Having had regard to this record of interparty communication and noting that there is no dispute between the parties that local dispute resolution has not been entered into, I will proceed to consider the matters before me.

4.2 Since 1 July 2022, Integrated Care Boards have taken on delegated responsibility for the commissioning of primary medical services. NHS Resolution will issue this decision to the Commissioner which has responded to this dispute.

4.3 I note that on 20 December 2024 the Contractor provided a further response to the Commissioner's observations dated 22 November 2024. I did not invite any further comment on these observations from the Contractor, and the deadline for receiving any observations was, as indicated to the Contractor, 22 November 2024. The Contractor has not provided any explanation as to why additional comments were necessary or why they were received after the date for the submission of observations. In the absence of any compelling reason why I should have regard to them, and in reliance on the procedure known to both parties for this dispute resolution, I have disregarded these comments and shall make no further mention of them.

4.4 As part of this consideration of the application for NHS dispute resolution, I required an up-to-date version of the contract in dispute containing all variations agreed since the contract (the "Contract") was signed. This was provided and has not been disputed by the Commissioner. However, I note that there is a dispute between the parties as to whether the Contractor was practicing as part of a partnership as at the date of termination of the Contract.

4.5 The Contractor has stated that there was a partnership agreement in place between himself and a Dr [B] and that this is legally binding. However, he has also described himself as a "singled-handed GP", which I am given to understand only refers to GP's who are providers that practise without any other partner. I also note the reference in the Contractor's application to Dr [B] being his "*ex-GP partner*". I find these contractions to be somewhat confusing. The Commissioner has stated that the Contractor's partnership with Dr [B] was terminated in April 2019, and that the Contract thus reflects these changes. The Commissioner states that the Contract has been amended throughout to reflect that it related to a sole Contractor. I consider that this is the case, as any optional language that would relate to a partnership has been removed. I also

note the CQC Inspection Report dated 9 May 2024 (the "CQC Report") which indicates that the Contractor is not part of a partnership, as referred to by the Commissioner.

4.6 I note that in support of the Contractor's position, a copy of a standard general medical services contract Schedule 2 has been provided, with signatures from both Dr [B] and the Contractor, dated 26 March 2012, in relation to the same premises as the Contract. I note that the date of commencement of the Contract is 1 June 2019, and that in its correspondence with the Contractor, the Commissioner had explained that the previous partnership agreement had been superseded. I consider that there is no evidence of any current partnership that the Contractor is engaged in concerning the premises to which this determination relates. I consider that the Contract, which itself has not been disputed, is clear on the nature of the Contractor's position as a sole practitioner, and as such, will proceed to treat him as one. Therefore, I do not consider that any partnership was in existence at the time of the termination notice, dated 12 December 2024 (the "Termination Notice"), which could have, as suggested by the Contractor, rendered the termination "illegal".

4.7 I will now proceed to consider the dispute between the parties. I note the Contractor's position that the Termination Notice was invalid, however the grounds upon which he considers this to be so are not clearly set out, therefore, I have attempted to extrapolate them from the statements made. I note that the Commissioner has issued two remedial notices, both are dated 1 December 2024, with the first being issued at around 10:00 ("Remedial Notice 1") and the second at around 20:50 ("Remedial Notice 2"). These were then followed up by the Termination Notice. I note that from 18 November 2023 the Contractor was suspended from the Performers List.

4.8 I note that the Contractor has made several statements in relation to Remedial Notice 2. In his Representations he describes it as having an "impossible timeframe" and that it was made because he "did not comply" with the first remedial notice. The Contractor has also stated that there was no help offered by the ICB in relation to his compliance with Remedial Notice 2. I note that the Commissioner has highlighted the irrelevance of these issues once the decision to terminate was made on the basis of the failure to comply with Remedial Notice 1.

4.9 I have had regard to the Termination Notice and note that there is no reference therein to Remedial Notice 2 and that the termination occurred before the deadline specified in Remedial Notice 2 whereby the breaches were required to be remedied. I note that the Commissioner has disputed that Remedial Notice 2 was made in consequence of Remedial Noice 1 and I consider this to be correct, as there is no wording in Remedial Notice 2 or its covering email to suggest that one notice was contingent on the other. I, therefore, consider that Remedial Notice 2 is irrelevant to the dispute resolution process at hand, as the Termination Notice is not contingent on it and compliance with it had no bearing on the decision made by the Commissioner to terminate. In consequence of this I will not consider further any potential issues raised in relation to Remedial Notice 2.

4.10 I will, therefore, turn my attention to Remedial Notice 1. I note that the Contractor has not disputed the breaches referred to in Remedial Notice 1. I will consequently consider if the notice meets the requirements for a remedial notice under clause 26.13.2 of the Contract. These requirements are that it must provide details of the breach, the steps that the Contractor can take to remedy the breach and the period under which those steps must be taken. I note that Remedial Notice 1 provides that the Contractor has breached clauses 8.1.1, 7.6.1, and 20.1.1 of the Contract, the evidence of the breach (that there had been a CQC inspection on 29 November 2023 during which the Contractor had been unable to provide documentation relating to the services to be delivered for the week commencing 4 December 2023) and clear steps to remedy the

breach by providing details of the services to be provided. Therefore, I consider that the first two requirements of the remedial notice were met.

4.11 I note that Remedial Notice 1 did not provide for the minimum 28 day period during which the required steps were to be taken, as specified in clause 29.13.3 of the Contract, but instead provided a shorter period of roughly 6 hours (the deadline being 16:00 that day, with the email delivering Remedial Notice 1 timestamped as being received at 10:08). This shorter period for remediation is permitted under clause 29.13.3 a) of the Contract where it is necessary to protect patient safety. I note that Remedial Notice 1 stated this to be the case. The Commissioner has stated that the Contractor has argued that Remedial Notice 1 was issued with insufficient notice, however, I note that none of the statements made by the Contractor in relation to this dispute indicate such a position. Whilst there are references to an "impossible timeframe" and an "impossible task" these comments appear to be in relation to Remedial Notice 2, rather than Remedial Notice 1.

4.12 However, I have noted the Contractor's comments about the duration of the remedial period in correspondence with the Commissioner, and due to the fact that 6 hours is an exceptionally short amount of time to respond to a remedial notice, I will consider if this was appropriate. I firstly note that it is unlikely that Remedial Notice 1 could have been issued any earlier as the circumstances are quite unique. The potential contractual breaches in relation to the provision of services by the Contractor for the week commencing 4 December 2023 were only discovered by the CQC on the 29 November 2023. It is unclear to me exactly when this information was then relayed to the Commissioner. Regardless, even if this was communicated immediately, this would have left very little time for the Commissioner to consider the information and to take the decision as to whether a remedial notice was necessary to ensure that the Contractor had remedied the breaches to guarantee that services were being provided safely. As such, I consider it reasonable that Remedial Notice 1 was issued when it was.

4.13 Next, I have had regard to the time period for the response. Having reviewed the remedial actions required by the Commissioner, I consider that the information required should all have been reasonably accessible to the Contractor at the time the request was made. Given that the information was requested on a Friday I would expect that a contractor would have already prepared rotas and staff information for the following week, of its own volition, as part of business as usual. As per the clauses in the Contract cited by the Commissioner, the Contractor is responsible for ensuring that services are provided during core hours. In order to do so I consider that having an organised and available rota, which sets out who was responsible for what, would be necessary in order to ensure contractual compliance or at the very least to allow staff to know what they were supposed to be doing and who to report to. As I have noted, the Contractor has not overtly stated this period to be insufficient or set out any reasons why this would be so. Therefore, in the absence of any specific reasons why this notice period was inappropriate and for the clear reasoning why the information should have existed, I must consider that it was, in fact, appropriate.

4.14 The only issue specifically raised by the Contractor was in relation to whether 'patient safety' was indeed jeopardised due to the breaches. If it was not, then the Commissioner would not have been entitled to issue a remedial notice with anything less than a 28 day period for the Contractor to remedy the breaches. The Commissioner has not explicitly stated what satisfied it that the shorter notice period was necessary to protect patient safety. I do consider that it would have been necessary for the Commissioner to assure itself that services were being provided in accordance with the Contract for the following week given the information it had. This is on the basis that Remedial Notice 1 indicates that on 16 November 2023 the

Commissioner had visited the Contractor and noted that there were issues regarding services which were similar to the issues later discovered by the CQC i.e. there being no rota, no clinics and no business continuity plan to manage the Contractor's suspension. If the management of the practice is in doubt, resulting in there not being the right services available to patients, I can understand how this represented a potential risk to patient safety.

4.15 Further to this, I note that a key issue reflected in Remedial Notice 1 by the Commissioner, and repeated in its Representations, is the lack of senior cover in place regarding complex matters and safeguarding concerns, and that one of the actions required was to set out the names and GMC numbers of those responsible for clinical governance. I consider that there is an inherent link between having both clinical governance and senior cover in place and patient safety, as these elements are key to preventing and responding to incidents. To that end, the Commissioner has stated that the business continuity obligations would ensure the Contract could be delivered without risking patient safety. Given that Remedial Notice 1 was in relation to the following week, and it was issued on Friday morning, and taking into account the concerns held by the Commissioner, I consider that the only possible deadline for a response would have been 16:00 of the same day or thereabouts, to ensure that services were being delivered safely the next week.

4.16 I therefore consider that, in relation to Remedial Notice 1, a shorter notice period was justified given the Contractor's suspension, the existing conditions and the available information, which would have been sufficient to satisfy the Commissioner that it was necessary to protect the safety of the Contractor's patients, as per clause 26.13.3. I thus consider that the requirements for a remedial notice contained in clause 16.13.2 were met by Remedial Notice 1. As I have noted, the parties are not in dispute regarding the existence of the breaches and their being capable of remedy, hence, I consider that 26.13.1 was also complied with, meaning that Remedial Notice 1 was a valid remedial notice under the Contract.

4.17 As I have considered Remedial Notice 1 as valid, I will now proceed to consider the Termination Notice itself. I note that the Termination Notice specifies that the reason for termination was due to the Contractor's failure to sufficiently remedy the breaches indicated in Remedial Notice 1, citing clause 26.13.4 of the Contract, which provides for this right. I also note that the Termination Notice cites clause 26.11.1 which provides that the Commissioner may also terminate the Contract with immediate effect where the Commissioner considers the Contractor's patients to be at serious risk.

4.18 I note that termination for a failure to comply with a remedial notice, or under clause 26.11.1 of the Contract, requires that the termination notice specify a date at least 28 days after the date on which the notice is given when the Contract will terminate, as per clause 26.18.1. However, clause 26.18.2 of the Contract provides that this period may be reduced if it is necessary to protect the safety of the Contractor's patients. As the Termination Notice specifies that the termination was to be immediate, and given the Commissioner's references to patient safety, I consider that this clause was being relied upon by the Commissioner.

4.19 Consequently, for the Termination Notice to be valid I consider that the Contractor must both have failed to comply with Remedial Notice 1 (clause 26.13.4) and that there must also have been a risk to patient safety which justified its immediacy (clauses 26.11.1 and 26.18.2).

4.20 I note that the Contractor has contended that Remedial Notice 1 was indeed complied with, albeit with some items being sent after the 16:00 deadline. I also note that the Commissioner, in its letter of 1 December, confirmed that it would have regard to the

information received after 16:00. Therefore, I do not consider that the provision of additional information after 16:00 was the reason why the Commissioner considered that Remedial Notice 1 had not been complied with, I also note that it was not suggested in the Termination Notice that this was the case either.

4.21 The Commissioner has stated that, when the responses of the Contractor are compared with the requirements of Remedial Notice 1, it is "evident" that the Contractor had failed to take the required steps. I note that it has not elaborated on what elements the Contractor had failed to meet. I have therefore reviewed the Contractor's responses against the steps required in Remedial Notice 1.

4.22 I note that Remedial Notice 1 required the provision of the following information in relation to the week commencing 4 December 2023, in order to remedy the breaches:

> "*a. The names and GMC numbers of the general medical practitioners appointed to work sessions during that week.*
>
> *b. A rota showing the sessions that each of them will cover during that week, ensuring a minimum of 9 sessions are covered.*
>
> *c. The names and GMC numbers of the general medical practitioner(s) appointed to have responsibility for ensuring the effective operation of the system of clinical governance in the practice during that week.*
>
> *d. The number of face-to-face and/or telephone appointments scheduled during each session of that week, including a copy of the EMIS rota showing the slot availability for each session.*
>
> *e. The number of appointments available for visits to patients' homes or other appropriate locations, to meet the needs of patients in accordance with clause 7.6.1*
>
> *f. The names and roles of the clinical workforce.*
>
> *g. A rota for the clinical workforce during that week.*
>
> *h. The number and nature of appointment for each of the clinical members of the team*
>
> *i. The Contractor must provide a copy of the terms of engagement for any locum and or other arrangement with the general medical practitioners who are providing the cover detailed in the rota referred to at 1 b above. These terms will be reviewed to ensure that they are consistent with the requirements set out in 1 above.*"

4.23 I note that an email setting out each of the names and GMC numbers of the medical practitioners for the week was provided by the Contractor, meeting the requirements of "a." I note that a rota has also been provided, which sets out which practitioner is covering what for the same week, by reference to their name, meeting requirements "b.". I also consider that the information in both requirements "d." and "f." have been provided.

4.24 However, I have not been provided with any information about who was responsible for the system of clinical governance for the week, and there is no indication that such information was provided by the Contractor to the Commissioner, as required by "c.". I

also note that there does not appear to be any information provided regarding appointments available for visits to patients' homes, as required by "e.".

4.25 The Contractor states in his Representations that he decided not to provide a rota for any of the other staff, such as receptionists or nurses, as required by "g." since there was "no change" and taking into account the "time-sensitive circumstances" of the request. I also note that this was not stated in the covering email to the Commissioner when the information was provided in response to Remedial Notice 1.

4.26 Having had regard to this statement, the contents of the information provided, and the circumstances of the Contractor, I do not consider this argument convincing. Firstly, the email does not clearly set out the role of the staff members, other than the duties they will carry out. It is not immediately obvious who is a nurse and who is a receptionist. I note that if a rota existed, and it was unchanged, that this should have made the information easier to provide, rather than more difficult or time-consuming. I consider that if there were no changes it would simply be a case of sending a copy of the current weeks rota, as was, and explaining this to be the case. It is not explained why this rota was not available to the Contractor, or why it would have been difficult to either obtain or provide. I also note that it was not provided after the deadline, or as part of this dispute resolution procedure. As I have noted, information continued to be provided by the Contractor until 17:00. Therefore, I consider that even if the Contractor did consider the information somehow of lesser importance he could still have provided them post the deadline, prioritising the information he perceived as more necessary.

4.27 I note that it is not the role of the Contractor to decide what is important or not in responding to a remedial notice. I also consider that if he had deemed it unimportant this needed to be explained to the Commissioner at the time, not as part of the dispute resolution process. I have also had regard to the CQC Report provided by the Commissioner. I note that this highlights issues with the nursing staff, specifically that there was insufficient nurse staffing hours and that there was insufficient clinical supervision. Therefore, contrary to the suggestion of the Contractor, it would have been necessary for the Commissioner to have access to this information to assess if the Contractor was in beach of the Contract, and to assess if these breaches had been remedied.

4.28 I also note that requirement "h." was not complied with. There is no provision for the nature and number of appointments for the clinical members of the team. As I have indicated, this information was necessary, based on the CQC Report, to assess if there was an ongoing breach of contract. There is no reason given as to why this information was not provided.

4.29 Finally, requirement "i." was not responded to either. No terms of engagement or other arrangement was provided in relation to any of the practitioners who were supposed to be working the next week. Again, there is no explanation for this absence.

4.30 Therefore, I consider that the breaches set out in Remedial Notice 1 had clearly not been remedied, as the steps set out therein had not been complied with due to a significant amount of the information requested not being provided. As I have indicated, the Contractor has suggested that it was complied with, but has otherwise not explained why this information was not provided, other than the reasoning which I have already considered. I thus consider that the Commissioner was entitled to terminate the Contract in accordance with clause 26.13.4 due to a failure to comply with a remedial notice.

4.31 I will, therefore, next consider if the issuing of the Termination Notice immediately was appropriate in the circumstances. As I have stated, in order to utilise a termination

period of less than 28 days the Commissioner must have been satisfied that it was necessary in order to protect the safety of the Contractor's patients. I note that the Commissioner has not explicitly detailed what about these breaches it considered to represent a risk to patient safety, only that it was satisfied that it was necessary to do so. However, in its Observations it does make reference to the incomplete rota and periods in which there was no medical or clinical cover. The Commissioner also alludes to the lack of supervision and clinical governance in both its Representations and Observations.

4.32 I have already noted that a lack of clinical governance and supervisory responsibility represents an obvious risk to the safety of patients. I note the Contractor's statements in his Application and Representations that Dr [B] and Dr [B] were supervising the medical practitioners who were operating at the practice. I also note the Commissioner's statements regarding the fact that neither of these individuals overtly confirmed this to be the case. I refer back to Remedial Notice 1's requirement "i." that arrangements with practitioners be provided, and that names and numbers of practitioners responsible for clinical governance be provided in requirement "c.". If the Contractor did consider that these individuals were the appropriate supervisor then I consider it unclear why their details were not provided in response to Remedial Notice 1.

4.33 I also consider that if these two individuals were acting in a supervisory capacity it would have been necessary or at the very least sensible to have a formal arrangement specifying exactly what their roles and responsibilities where. I do not consider there to be any evidence that this was the case. I consider that even if there was some informal arrangement this would not be sufficient to allow for the safe operation of the practice, as were something to arise, it would be impossible to ascertain what exactly their role was intended to be or how this "supervision" would operate. In the absence of any evidence of a formal agreement, statements by the individuals regarding their role, or actual details of their responsibility, I cannot consider that they were, as a matter of fact, acting as supervisors of the medical aspects of the practice, leaving the practice without appropriate supervision and creating a risk to patient safety.

4.34 As I have noted, no clinical governance documentation was provided by the Contractor. I also note that this issue is evident in the CQC Report. I thus consider that there was no clinical governance, similarly creating a risk to patient safety.

4.35 I also note that the Contract indicates that the core hours of the practice are from 8.00 to 18:00 Monday to Friday, except Good Friday, Christmas Day or Bank Holidays. I consider that the information provided in the rotas that were sent by the Contractor only cover some of this time, and do not make it clear who is doing what outside of the locum medical practitioners hours of 10:00 – 16:00 (10:00 – 12:00 on Wednesday). Thus, I consider the Commissioner's statements regarding a lack of both clinical and medical coverage to be correct, which would, again, inherently impact patient safety. I also note the lack of information regarding clinical staff, and that the CQC Report flags this as an issue.

4.36 I note that clauses 8.1.1, 7.6.1 and 20.1.1 of the Contract were in breach by the Contractor based upon the information provided to the Commissioner and that this has not been disputed. As I have indicated, the lack of supervision, and clinical governance, alongside the lack of information in relation to clinical staff, and both clinical and medical cover, all represent issues which justified immediate termination in order to protect the safety of the Contractor's patients. As such, I consider that the immediate termination was in compliance with clause 26.18.2.

4.37 Due to the fact that the Commissioner was entitled to terminate the Contract immediately on this basis I do not consider it relevant to examine the additional basis under clause 26.11.1 of the Contract. Consequently, I consider that both Remedial Notice 1 and the Termination Notice were wholly valid.

4.38 I note that the Contractor has stated that the Commissioner repeatedly stated that there was "no right of appeal". I feel it necessary to clarify that the Commissioner was not wholly correct in its statements. Due to the patient safety issues, which I have already established, clause 26.18.2 applied, this meant that the clause 26.18.3 did not apply. Clause 26.18.3 of the Contract establishes that where the dispute resolution procedure is invoked, in relation to a termination notice, the contract does not terminate on the date indicated in the termination notice but instead in the circumstances specified in clause 26.18.4. I consider that it was this process that was disapplied due to the patient safety elements, but that this does not impact the Contractor's right to dispute resolution. The dispute resolution process continued to apply, but the Contract would remain terminated during that time. Therefore, as a matter of fact the Commissioner was incorrect to state that there was no appeal right, and instead should have signposted the Contractor to the dispute resolution process. However, I do not consider this fatal to either Remedial Notice 1 or the Termination Notice as the Contractor was able to engage in both local dispute resolution and the current NHS dispute resolution process.

4.39 Finally, I note that the Contractor, in its Observations, has raised concerns regarding the timeline of the termination. He has stated that his contract was handed over to East Lancashire Alliance two days before the decision was taken to terminate the contract. I note that the Commissioner has stated that it had obligations to commence discussions with providers and that the actual contract was only signed on 12 December 2023 (the date of termination). Given the nature of the concerns and the patient safety elements, I consider that it was appropriate for the Commissioner to prepare for a worst case scenario of termination, in the event that immediate action was required, and engage in initial discussions with alternative providers. I have not been shown any evidence to suggest that anything untoward was occurring during this interaction. As such, I do not consider that this demonstrates any reason to invalidate the termination decision.

5. Decision

5.1 I determine that the Remedial Notice dated 1 December 2023 was valid on the grounds of Clause 26.13.2 and 26.13.3. I also determine that the Termination Notice dated 12 December 2023 was valid on the grounds of Clause 26.13.4 and 26.18.2.

Head of Appeals
NHS Resolution