

**GUIDANCE NOTE****Termination of primary dental services contracts****Paragraphs 64 to 74 of Schedule 3 of the National Health Service  
(General Dental Services Contracts) Regulations 2005****and****Regulation 12<sup>1</sup> of the National Health Service (Personal Dental Services Agreements)  
Regulations 2005****Introduction**

1. There are two main types of primary dental services contracts. These are:
  - 1.1 the general dental services (“**GDS**”) contracts, which are entered into and are regulated by the National Health Service (General Dental Services Contracts) Regulations 2005 (“**GDS Regulations**”); and
  - 1.2 personal dental services (“**PDS**”) agreements, which are entered into and regulated by the National Health Service (Personal Dental Services Agreements) Regulations 2005 (“**PDS Regulations**”).
2. The GDS Regulations and PDS Regulations contain provisions relating to termination that must be incorporated into the relevant primary dental services contracts.
3. This guidance note focuses on NHS Resolution’s determinations of applications for dispute resolution against termination notices and the enforceability of expiry dates. Its purpose is to provide guidance based on past decisions.
4. All references to regulations, schedules and paragraphs in this guidance note are references to the relevant provisions of the GDS Regulations and PDS Regulations as at the date of this note unless otherwise stated.
5. All references to “contractor” in this guidance note are references to the contractor who held the relevant primary dental services contract, which was the subject of dispute resolution.
6. All references to “commissioner” in this guidance note are references to the NHS Commissioning Board (operating as “**NHS England and NHS Improvement**”, previously “**NHS England**”).
7. 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.
8. The grounds for termination by the commissioner or the contractor are set out in paragraphs 64 to 74 of Schedule 3 of the GDS Regulations and paragraphs 62 to 72 of Schedule 3 of the PDS Regulations. As this guidance note is based on past determinations, only the grounds for termination or expiry which were the subject of the

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<sup>1</sup> Regulation 12 in the title is the Regulation that requires for the contract to have a duration (and which is explained in the note). It is not a termination right.

past decisions are set out in the Annex to this guidance note.

9. This guidance note splits NHS Resolution's past determinations into the following topics:
  - 9.1 grounds for termination including:
    - 9.1.1 remedial and breach notices; and
    - 9.1.2 termination by agreement; and
  - 9.2 expiry of contracts and whether this constituted a termination.

## **Grounds for termination**

### Remedial and breach notices

10. Paragraph 73 of Schedule 3 of the GDS Regulations states that where the contractor's breach of contract is not one to which paragraphs 70 to 72 of Schedule 3 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.
11. Paragraph 73(4) of Schedule 3 provides a right to terminate the GDS 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.
12. Paragraph 73(6) of Schedule 3 provides a further 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 73(7) of Schedule 3.
13. Paragraph 77 of Schedule 3 provides that where the commissioner exercises its right to terminate the contract pursuant to the above grounds, it must notify the contractor and specify the date on which the contract terminates. The date of termination must be not less than 28 days after the date of the termination notice unless a shorter period is necessary in order to protect the safety of the contractor's patients or to protect the commissioner from material financial loss.
14. In SHA/18339 (2 June 2016) the contractor was issued with a termination notice. The ground of termination was stated to be paragraph 73 of Schedule 3 of the GDS Regulations, however the exact sub-paragraph pursuant to which the commissioner sought to terminate the contract was not specified.
15. The contractor had been issued with a number of historic remedial notices; one in 2010 and nine in 2012. It was not in dispute that the contractor had remedied those remedial notices to the satisfaction of the commissioner.
16. In 2014, the commissioner asked the NHS Business Services Authority ("**NHSBSA**") to perform a record card check as part of its contract monitoring procedure. The report identified a number of failings including non-compliance with the Ionising Radiation (Medical Exposure) Regulations 2000 ("**IR(ME)R**") as well as evidence of inappropriate

claiming, poor standards of clinical care and poor standards of record keeping. In June 2015, the commissioner issued a breach notice for a repeated breach of the contract, namely failure to comply with IR(ME)R. The other issues identified by the NHSBSA were dealt with informally and were not the subject of the breach notice.

17. Prior to issuing this breach notice, the commissioner requested a further record card check from the NHSBSA but did not receive the report until after the June 2015 breach notice was served. NHSBSA's second report identified further concerns which the commissioner shared with the contractor. The contractor provided its comments and assurances, however the commissioner concluded that the contractor had not provided adequate evidence of actions taken to address the concerns in the reports.

18. The commissioner served a termination notice to the contractor on 11 January 2016 which stipulated that the contractor's GDS contract would terminate on 31 March 2016. The notice stated that:

*“further evidence of breaches of the GDS contract have been evidenced in relation to:*

- *Inappropriate claiming;*
- *Poor standard of record-keeping;*
- *Non-compliance with the Ionising Radiation (Medical Exposure) Regulations; and*
- *Failure to provide the full range of NHS Dental Services.”*

19. The contractor disputed the termination on the basis that:

19.1 the purported grounds of termination were unclear from the notice, contrary to the commissioner's policy on termination of primary dental care contracts, and the notice did not particularise the evidence that was being relied upon;

19.2 the contractor understood that the evidence relied upon was the NHSBSA's second report which looked at evidence collected between December 2014 and May 2015. This evidence pre-dated the breach notice served in June 2015, and could not be used as evidence of a repeated breach after June 2015;

19.3 the breach of the IR(ME)R regulations, inappropriate claiming, poor standard of record-keeping, or a failure to provide the full range of NHS dental services, was not a repeat breach; none of the historic remedial notices issued to the contractor identified this failing as a breach;

19.4 even if it had been a repeat of a previous breach, the commissioner did not properly consider the question of whether the cumulative effect of the breach and remedial notices satisfied the commissioner that continuing the contract would prejudice the efficiency of the services; and

19.5 there had not been further notification of breaches identified in the NHSBSA report by means of a breach notice or a remedial notice so as to give the contractor an opportunity to remedy them.

20. NHS Resolution considered the documentation that both parties provided on the dispute and determined that:

*“I do not consider, having reviewed the breach and remedial notices that the Contractor has repeated a breach that has been the subject of an earlier breach or remedial notice. The Contractor has otherwise breached the contract resulting in a breach notice however I am not satisfied that the cumulative effect of the breach notices that have been served are such that it would be prejudicial to the efficiency of the services to allow the contract to continue.”*

21. NHS Resolution further stated that:

*“It appears to me that NHS England’s CRP, in considering whether to terminate this contract has relied upon two reports from BSA record card checks, without the deficiencies identified in those reports being particularised to the Contractor as breach or remedial notices.”*

*“I do not consider that they may be relied upon as evidence supporting a right to terminate pursuant to paragraph 73(6) of the NHS (General Dental Services Contracts) Regulations 2005.”*

22. This case confirms the process that the commissioner must follow prior to issuing a termination notice pursuant to paragraph 73(6) of Schedule 3 of the GDS Regulations. Firstly, the commissioner must be sure that a contractor has either repeated a breach, that was the subject of a previous breach or remedial notice, or has otherwise breached the contract. Secondly, the commissioner must particularise these breaches clearly to the contractor in a breach/remedial notice. Thirdly, the commissioner must be satisfied that to allow the contract to continue would be prejudicial to the efficiency of the services provided under the contract.
23. In this case, the commissioner appeared to have terminated the contract following the NHSBSA’s second report which suggested that the contractor was in breach of contract. However, the commissioner did not issue a breach or remedial notice to the contractor in respect of those breaches. The breaches identified in the second report pre-dated the June 2015 breach notice and so could not be deemed “repeat” breaches following this notice.
24. To satisfy paragraph 73(6), the commissioner was required 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. NHS Resolution was not satisfied that this was the case based on the breach notice issued for failure to comply with IR(ME)R regulations and taking the previous remedial notices into account. The conclusion was that the commissioner did not satisfy the ground for termination pursuant to paragraph 73(6).
25. In SHA/18367 et al (11 July 2016) the contractor challenged the validity of the remedial, breach and termination notices issued to it.
26. The contractor was issued with a remedial notice and a breach notice on 26 February 2016, a remedial notice on 7 March 2016 and two termination notices. The first termination notice was dated 4 April 2016 with the termination date being 2 April 2016. The second notice was dated 4 April 2016 but was not issued until 12 April 2016, with the termination date being 2 May 2016.
27. The contractor challenged the validity of the breach and remedial notices, alleging that: the commissioner unlawfully gained access to its premises to obtain evidence; that there was a lack of evidence cited in the breach and remedial notices; it was not clear which clauses of the contract had been breached; the required steps to remedy the

breach, and the evidence required, were not clear; the commissioner did not give a reasonable period in which to remedy the breach; and it was not appropriate to serve a breach and remedial notice on the same date for the same breach.

28. The contractor disputed the first termination notice on the basis that the termination date pre-dated the date of the notice and was therefore invalid. The contractor disputed the second termination notice for a number of reasons. The contractor argued that the period between the date of service and the termination date was less than 28 days and the commissioner did not give a valid reason to terminate earlier than this. Whilst the termination notice stated that the contractor failed to remedy the breaches that were the subject of the remedial notices, the commissioner failed to specify what steps the contractor is alleged to have failed to take and it failed to provide the evidence of the contractor's failure to take the required steps. The contractor also disputed that valid notice had been served by the commissioner to notify the contractor that the termination would not be put on hold despite the contractor's application for dispute resolution, in breach of paragraph 77(4) of Schedule 3 of the GDS Regulations.
29. NHS Resolution considered the breach notice and the remedial notices in detail and provided the following comments. In relation to the breach notice dated 26 February 2016, NHS Resolution stated:

*"Taken on its own, I would have been inclined to find that this breach notice was deficient for lack of clarity however read together with the remedial notice below, my view is that the Contractor is left in no doubt as to what is required of them."*

30. In relation to the remedial notice dated 26 February 2016, NHS Resolution stated:

*"As with the breach notice, there is no direct link between the clause that has been breached, what it is said the Contractor has done to breach that clause and what they need to do to remedy that breach. Instead, NHS England has set out what they found on inspection, what steps they require the Contractor to take and then have appended a list of breach clauses.*

*On a very loose reading, albeit in the wrong order, NHS England has met the above three obligations, there is just no direct link between the breached clauses and what the Contractor has to do. However, when one looks at the notice as a whole, coupled with the breach notice above, one is left with no doubt at all as to the deficiencies in the practice and what steps the Contractor is required to take to address those deficiencies so whilst I think the construction and formulation of both letters is lacking in clarity I nonetheless uphold both notices as being valid."*

31. In relation to remedial notice dated 7 March 2016, NHS Resolution stated:

*"This notice meets the requirements of the Regulations as it sets out details of the breach (including the clauses that have been breached) the steps that need to be taken to remedy the breach and the timescale within which those steps must be taken.*

*The period given is less than 28 days, however this is permissible pursuant to clause 331 where NHS England believes the shorter period is necessary to protect the safety of patients.*

*I therefore uphold this notice as valid.”*

32. In this case, NHS Resolution carried out its analysis of the breach and remedial notices and evidence provided to it in the course of the determination, concluding that the commissioner’s concerns were warranted and stated:

*“It is clear to me, that reading the information that has been provided, that this Contractor has been unable to successfully manage this dental practice and on the basis of the information available to NHS England, the decisions to issue breach and remedial notices and then to proceed to termination were the correct decisions.”*

33. Following such analysis, NHS Resolution turned to the termination notices to establish whether the commissioner has effectively terminated the contract.

34. In relation to the first termination notice, the commissioner explained that there was an administrative error and so it issued the second termination notice to correct that error. NHS Resolution determined that the first termination notice was not effective *“as it purports to give a termination date that pre-dates the termination notice”*.

35. In relation to the second termination notice, NHS Resolution determined that it did not comply with paragraphs 77(1) to 77(3) of Schedule 3; the date of termination set out in the second termination notice was less than 28 days and no explanation was given as to whether a shorter period was required in order to protect the safety of the contractor’s patients or to protect the commissioner from material financial loss. NHS Resolution stated:

*“ the contract sets out clear processes that must be followed in order to enact such notices and I am clear that the termination notice dated 4 April but sent by recorded delivery on 12 April does not meet the requirements of the contract and therefore the contract has not been effectively terminated.”*

*“When taking steps to terminate a contract, in whatever circumstances, NHS England is obliged to adhere strictly to the terms of the contract. They have not done so in this case.”*

36. NHS Resolution also found that the letter after the termination notice, stating that the termination would not be put on hold despite the contractor commencing dispute resolution, was not deemed valid notice under the contract.

37. This case illustrates that the procedural requirements set out in the contract (and the GDS Regulations) must be adhered to, in order to effectively terminate the contract. While NHS Resolution agreed with the grounds of termination and the commissioner’s decision to terminate, it could not determine that the termination notices were valid. Neither termination notice gave the contractor 28 days’ notice of termination, nor did they provide any legitimate reason for a shorter termination period. In the case of correspondence after termination, this was not compliant with the “notice” provisions of the contract and was not deemed valid notice.

#### Termination by agreement

38. In SHA/19969 (28 November 2018) the contractor sought to retire and sell its practice by “transferring” its general dental services contract to another primary dental services provider in the neighbouring area. The contractor applied to the commissioner with its proposal and a business plan to achieve the same, however that proposal was

rejected by the commissioner on the basis that there was a wider piece of work to develop a strategy across the area with the aim of reducing inequalities and that entering into a new contract in the proposed area was not part of this strategy. The commissioner also drew the contractor's attention to a clause of the contract which stated that "*the Contractor shall not give, sell, assign or otherwise dispose of the benefit of any of its rights under this contract*". As such, the commissioner said that this was not a request to transfer the contract, but a request to terminate the contract, which the commissioner refused.

39. The contractor appealed the commissioner's rejection.
40. NHS Resolution noted that in this case, "transferring" the GDS contract meant terminating the contract by mutual agreement in accordance with paragraph 64 of Schedule 3 of the GDS Regulations and awarding a new contract to the buyer of the contractor's dental business. In this case, the commissioner did not agree to terminate the contract. NHS Resolution determined that:

*"NHS England is not required to agree to a termination, this agreement is discretionary. In exercising its discretion to agree to the termination of the GDS Contract and by extension, approve the Contractor's proposal, NHS England must take into account all relevant factors that could have an impact on this decision."*

41. NHS Resolution considered whether the commissioner has exercised its discretion in a reasonable manner required by a public body and concluded that:

*"...regard to reducing inequalities and concern around patient access to NHS dental care is a valid concern and that in the absence of assurances that the population served by Canterbury Dental Care practice would retain access to NHS care; NHS England has validly exercised its discretion to reject the proposal to move services away from Fulwood."*

42. This case demonstrates that the commissioner can exercise its discretion when considering whether to agree to a contract termination but that such discretion must be exercised reasonably.

### **Expiry of contracts and whether this constituted a termination**

43. Regulation 12 of the PDS Regulations states that a PDS agreement must specify the duration of the agreement.
44. In SHA/18336 (22 June 2016) the contractor had entered into a PDS agreement in 2006 (when the new PDS agreements came into force) where the duration of the agreement was not populated in the agreement. In subsequent years from 2009 to 2015, the contractor either entered into new PDS agreements each year with the commissioner or entered into a variation to extend a PDS agreement each year. The subsequent agreements and/or variations contained agreement end dates. The latest agreement stated that its end date would be 31 March 2016.
45. The commissioner informed the contractor that his agreement was due to come to an end on 31 March 2016 by effluxion of time. The contractor stated that the commissioner's actions amount to de facto termination without cause and appealed the termination of his agreement on the basis that:

45.1 his original agreement was not procured as part of a tender process, it came

about because it was a conversion of an existing, pre-2006 GDS contract, which did not have a post-2006 GDS contract equivalent;

- 45.2 the fact that there was no end date in the 2006 version of the agreement supports there being an intention for the agreement to subsist unless terminated;
  - 45.3 the agreement may and can be brought to an end only by an active intervention on the part of the parties; the contractor has not breached any of the terms of the agreement and so there is no basis to terminate; and
  - 45.4 there are no provisions in the PDS Regulations or the agreement that permit the commissioner to bring the agreement to an end by effluxion of time and so the commissioner's actions were unlawful.
46. NHS Resolution acknowledged that there had been a number of unfortunate administrative irregularities that had created significant confusion, however it concluded that:

*"In the face of a clear expiry date with no option to extend and no contractual obligation to extend, the contract must therefore come to an end on the prescribed date, by the simple effluxion of time."*

47. In SHA/18337 (22 June 2016), a case with similar facts, the contractor appealed the commissioner's decision that the agreement would end by effluxion of time on the basis that:
- 47.1 there was a verbal contract between the commissioner and the contractor that the agreement would roll on beyond the three year term set out in the agreement;
  - 47.2 there was custom and practice that the agreement would run beyond the three year term set out in the agreement; and
  - 47.3 the agreement had been terminated without agreement of both parties or otherwise not in accordance with any other termination provisions pursuant to which the commissioner could terminate the agreement.

48. Similar to SHA18336 (22 June 2016), in this case, NHS Resolution determined that:

*"there is no commitment within the contract for the term to be extended and therefore no contractual obligation on the part of NHS England to extend it"*

49. In relation to the contractor's claim that there had been a verbal contract, NHS Resolution noted:

*"I have not been provided with any evidence of such an assurance from the PCT, and specifically the Contractor has not adduced evidence from the person they allege made that assurance."*

*Even if the Contractor had produced that evidence, the contract, which the contractor explains that it signed after that conversation, contains clauses within it that specifically exclude any assurance or agreement outside the terms of the written contract. No amendments were made to the contract to reflect the assurance the Contractor alleges, and therefore as a matter of contract*

*construction I must determine that there was no verbal agreement which would mean that NHS England had committed itself to extend the contract beyond the term stated in the written terms.*

*Even if there was evidence of a verbal agreement that the term would be extended beyond that written into the contract, clauses 344 and 345 of the contract, known as the “entire agreement” clauses, would ensure that any such assurance was excluded from the agreement.*

*In addition, the Contractor states that the assurances were made before the PDS contract was signed in 2004. There have been two subsequent PDS contracts signed which contain “entire agreement” clauses since that contract, so it is difficult to see how the Contractor could argue that the verbal contract would remain from 2004 despite those later signatures.”*

50. The above cases illustrate one of the fundamental differences between GDS contracts and PDS agreements; PDS agreements must set out the duration of the term of the agreement whereas GDS contracts (in accordance with Regulation 13 of the GDS Regulations) must “provide for it to subsist until it is terminated in accordance with the terms of the contract or the general law”.
51. The above cases demonstrate the importance of ensuring that contracts are populated properly and contain all of the provisions the parties have agreed upon before commencement. The contract is a record of the agreed terms and the “entire agreement” clause, here, was deemed to have overridden claims to any contrary terms that were agreed before the contract was entered into.

#### **Document Control - Change Record**

<b>Date</b>	<b>Author</b>	<b>Version</b>	<b>Reason for Change</b>
25 March 2021	Head of Operations, Primary Care Appeals	1	New document

## Annex

### GDS Regulations

The provisions below are correct as at 25 March 2021

#### Regulation 13.— Duration

- (1) Except in the circumstances specified in paragraph (2), a contract must provide for it to subsist until it is terminated in accordance with the terms of the contract or the general law.
- (2) The circumstances referred to in paragraph (1) are that [ the Board ] has terminated the contract of another provider of primary dental services, and as a result of that termination, it wishes to enter into a temporary contract for a period specified in the contract for the provision of services.
- (3) Where a contract is entered into pursuant to paragraph (2)—
  - (a) paragraph 66 (termination by the contractor) of Schedule 3 shall not apply to the contract; and
  - (b) the parties to the temporary contract may include such terms as to termination by notice as they may agree.

#### Schedule 3

##### 64.— Termination by agreement

[ The Board ] and the contractor may agree in writing to terminate the contract, and if the parties so agree, they shall agree the date upon which that termination should take effect and any further terms upon which the contract should be terminated.

##### 70. — Termination by [ the Board ] for the provision of untrue etc. information

[ The Board ] may serve notice in writing on the contractor terminating the contract forthwith, or from such date as may be specified in the notice if, after the contract has been entered into, it comes to the attention of [ the Board ] that written information provided to [ the Board ] by the contractor—

- (a) before the contract was entered into; or
- (b) pursuant to paragraph 42(2),

in relation to the conditions set out in regulation 4 or 5 (and compliance with those conditions) was, when given, untrue or inaccurate in a material respect.

##### 71. – Termination by [the Board] on grounds of suitability etc.

- (1) [The Board] may serve notice in writing on the contractor terminating the contract forthwith, or from such date as may be specified in the notice if—
  - (a) in the case of a contract with a dental practitioner, that dental practitioner;
  - (b) in the case of a contract with two or more individuals practising in partnership, any individual or the partnership; . . .
  - (c) in the case of a contract with a dental corporation—

- (i) the corporation; or
  - (ii) any director, chief executive or [secretary of the corporation; and]
- (d) in the case of a contract with a limited liability partnership—
- (i) the limited liability partnership; or
  - (ii) any member of the limited liability partnership,

falls within sub-paragraph (2) during the existence of the contract or, if later, on or after the date on which a notice in respect of his compliance with the conditions in regulation 4 or 5 was given under paragraph 42(2).

- (2) A person falls within this sub-paragraph if—
- (a) he or it is the subject of a national disqualification;
  - (b) subject to sub-paragraph (3), he or it is 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 any licensing body anywhere in the world;
  - (c) subject to sub-paragraph (4), he has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless before [the Board] has served a notice terminating the contract pursuant to this paragraph, he is employed by the health service body that dismissed him or by another health service body;
  - (d) he or it is removed from, or refused admission to, a primary care list by reason of inefficiency, fraud or unsuitability (within the meaning of section 49F(2), (3) and (4) of the Act respectively) unless his name has subsequently been included in such a list;
  - (e) he has been convicted in the United Kingdom of—
    - (i) murder; or
    - (ii) a criminal offence other than murder, committed on or after 14th December 2001, and has been sentenced to a term of imprisonment of over six months;
  - (f) subject to sub-paragraph (5), he has been convicted outside the United Kingdom of an offence—
    - (i) which would, if committed in England and Wales, constitute murder; or

- (ii) committed on or after 14th December 2001, which would if committed in England and Wales, constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
- (g) he 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 apply) or Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (offences against children under the age of 17 years to which special provisions apply);
- (h) he or it has—
  - (i) been [made] bankrupt or had sequestration of his estate awarded [or is a person in relation to whom a moratorium period under a debt relief order (under Part 7A of the Insolvency Act 1986) applies] unless . . . he has been discharged [from the bankruptcy or the sequestration] or the bankruptcy order has been annulled;
  - (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A[, or a debt relief restrictions order or interim debt relief restrictions order under Schedule 4ZB,] to the Insolvency Act 1986, unless that order has ceased to have effect or has been annulled;
  - (iii) made a composition or arrangement with, or granted a trust deed for, his or its creditors unless he or it has been discharged in respect of it; or
  - (iv) been wound up under Part IV of the Insolvency Act 1986;
- (i) there is—
  - (i) an administrator, administrative receiver or receiver appointed in respect of it; or
  - (ii) an administration order made in respect of it under Schedule B1 to the Insolvency Act 1986;
- (j) that person 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;
- (k) he has been—
  - (i) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the

charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated; or

(ii) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (powers of the Court of Session to deal with management of charities) [or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of Court of Session)], from being concerned in the management or control of any body;

(l) he is subject to a disqualification order under the Company Directors Disqualification Act 1986, the Companies (Northern Ireland) Order 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order); or

(m) he has refused to comply with a request by [the Board] for him to be medically examined on the grounds that it is concerned that he 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[, with a dental corporation or a limited liability partnership] [the Board] is not satisfied that the contractor is taking adequate steps to deal with the matter.

(3) [The Board] shall not terminate the contract pursuant to sub-paragraph (2)(b) where [the Board] 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 individuals practising in partnership; . . .

(c) in the case of a contract with a dental corporation, a director, chief executive or secretary of the corporation[; or

(d) in the case of a contract with a limited liability partnership, a member of that limited liability partnership].

(4) [The Board] shall not terminate the contract pursuant to sub-paragraph (2)—

(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 of time specified in paragraph (a), the person concerned brings proceedings in any competent tribunal or court in respect of his dismissal, until proceedings before that tribunal or court are concluded,

and [the Board] 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.

(5) [The Board] shall not terminate the contract pursuant to sub-paragraph (2)(f) where [the Board] 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 individuals practising in partnership; . . .
- (c) in the case of a contract with a dental corporation, a director, chief executive or secretary of the corporation[; or
- (d) in the case of a contract with a limited liability partnership, a member of that limited liability partnership].

**72. — Termination by [ the Board ] : patient safety and material financial loss**

[ The Board ] may serve notice in writing on the contractor terminating the contract forthwith or with effect from such date as may be specified in the notice if—

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

**73.— Termination by [ the Board ] : remedial notices and breach notices**

- (1) Where a contractor has breached the contract other than as specified in paragraphs 70 to 72 and the breach is capable of remedy, [ the Board ] shall, before taking any action it is otherwise entitled to take by virtue of the contract, serve a notice on the contractor requiring it to remedy the breach (“remedial notice”).
- (2) A remedial notice shall specify—
  - (a) details of the breach;
  - (b) the steps the contractor must take to the satisfaction of [ the Board ] in order to remedy the breach; and
  - (c) the period during which the steps must be taken (“the notice period”).
- (3) The notice period shall, unless [ the Board ] is satisfied that a shorter period is necessary to—
  - (a) protect the safety of the contractor's patients; or
  - (b) protect itself from material financial loss, be no less than 28 days from the date that notice is given.
- (4) Where [ the Board ] is satisfied that the contractor has not taken the required steps to remedy the breach by the end of the notice period, [ the Board ] may terminate the contract with effect from such date as [ the Board ] may specify in a further notice to the contractor.
- (5) Where a contractor has breached the contract other than as specified in paragraphs 70 to 72 and the breach is not capable of remedy, [ the Board ] may serve notice on the contractor requiring the contractor not to repeat the breach (“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 breach notice, [ the Board ] may serve notice on the contractor terminating the contract with effect from such date as may be specified in that notice.
- (7) [ The Board ] shall not exercise its right to terminate the contract under sub-paragraph (6) unless it is satisfied that the cumulative effect of the breaches is such that [ the Board ] considers that to allow the contract to continue would be prejudicial to the efficiency of the services to be provided under the contract.
- (8) If the contractor is in breach of any obligation and a breach notice or a remedial notice in respect of that breach has been given to the contractor, [ the Board ] may withhold or deduct monies which would otherwise be payable under the contract in respect of that obligation which is the subject of the breach.

#### **77.— Termination and the NHS dispute resolution procedure**

- (1) Where [ the Board ] is entitled to serve written notice on the contractor terminating the contract pursuant to paragraph 70, 71, 72, 73(4), 73(6) or 74 , [ the Board ] shall, in the notice served on the contractor pursuant to those provisions, specify a date on which the contract terminates that is not less than 28 days after the date on which [ the Board ] has served that notice on the contractor unless sub-paragraph (2) applies.
- (2) This sub-paragraph applies if [ the Board ] is satisfied that a period less than 28 days is necessary in order to—
- (a) protect the safety of the contractor's patients; or
  - (b) protect itself from material financial loss.
- (3) In a case falling with sub-paragraph (1), where the exceptions in sub-paragraph (2) do not apply, where the contractor invokes the NHS dispute resolution procedure before the end of the period of notice referred to in sub-paragraph (1), and it notifies [ the Board ] in writing that it has done so, the contract shall not terminate at the end of the notice period but instead shall only terminate in the circumstances specified in sub-paragraph (4).
- (4) The contract shall only terminate if and when—
- (a) there has been a determination of the dispute pursuant to paragraph 56 and that determination permits [ the Board ] to terminate the contract; or
  - (b) the contractor ceases to pursue the NHS dispute resolution procedure, whichever is the sooner.
- (5) If [ the Board ] is satisfied that it is necessary to terminate the contract before the NHS dispute resolution procedure is concluded in order to—
- (a) protect the safety of the contractor's patients; or
  - (b) protect itself from material financial loss, sub-paragraphs (3) and (4) shall not apply and [ the Board ] shall be entitled to confirm, by written notice to be served on the contractor, that the contract will nevertheless terminate at the end of the period of the notice it served pursuant to paragraph 70, 71, 72, 73(4), 73(6) or 74.

## **PDS Regulations**

### **12.— Agreements: general**

- (1) An agreement must specify—
  - (a) the services to be provided by the contractor;
  - (b) the duration of the agreement;
  - (c) to whom such services are to be provided; and
  - (d) the postal address of each of the premises to be used by the contractor or any sub-contractor for the provision of such services, or, if the contractor is to provide services from a mobile surgery, that fact.
- (2) The premises referred to in paragraph (1)(d) do not include any place in which a patient is residing.