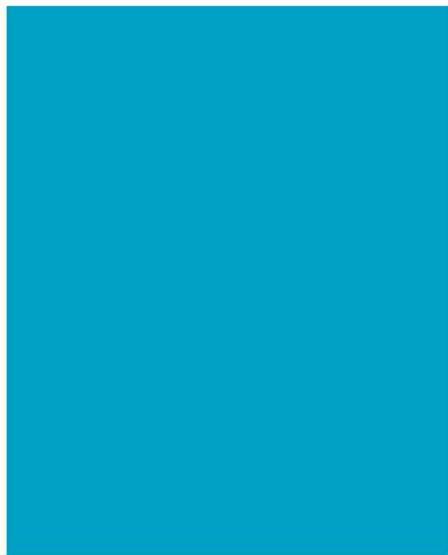


**Standard  
operating policies  
and procedures  
for primary care**



**Policy for  
termination of  
primary dental care**



# Policy for termination of primary dental care

*Standard operating policies and procedures for primary care*

First published: 27 March 2013

**Prepared by Primary Care Commissioning (PCC)**

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# Purpose of policy

- 1) The NHS Commissioning Board (NHS CB) is responsible for direct commissioning of services beyond the remit of clinical commissioning groups, namely primary care, offender health, military health and specialised services.
- 2) This document forms part of a suite of policies and procedures to support commissioning of primary care. They have been produced by Primary Care Commissioning (PCC) for use by NHS CB's area teams (ATs).
- 3) The policies and procedures underpin NHS CB's commitment to a single operating model for primary care – a “do once” approach intended to ensure consistency and eliminate duplication of effort in the management of the four primary care contractor groups from 1 April 2013.
- 4) All policies and procedures have been designed to support the principle of proportionality. By applying these policies and procedures, Area Teams are responding to local issues within a national framework, and our way of working across the NHS CB is to be proportionate in our actions.
- 5) The development process for the document reflects the principles set out in *Securing excellence in commissioning primary care*<sup>1</sup>, including the intention to build on the established good practice of predecessor organisations.
- 6) Primary care professional bodies, representatives of patients and the public and other stakeholders were involved in the production of these documents. NHS CB is grateful to all those who gave up their time to read and comment on the drafts.
- 7) The authors and reviewers of these documents were asked to keep the following principles in mind:
  - Wherever possible to enable improvement of primary care
  - To balance consistency and local flexibility
  - Alignment with policy and compliance with legislation
  - Compliance with the Equality Act 2010
  - A realistic balance between attention to detail and practical application
  - A reasonable, proportionate and consistent approach across the four primary care contractor groups.
- 8) This suite of documents will be refined in light of feedback from users.

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<sup>1</sup> *Securing excellence in commissioning primary care* <http://bit.ly/MJwrfA>

The other documents in the suite are:

- *Mid-year and year-end;*
- *Variations policy;*
- *Incorporation;* and
- *PDS to GDS.*

# Background

The following section of the policy looks at contract termination and the approach that NHS CB area teams (ATs) need to take when terminating contracts or agreements that they hold.

## Scope of the policy

The following section looks at what would constitute a contract or agreement termination and provides detailed guidance and template letters on issuing the termination notice, allocation of patients part way through treatment, financial recovery and adjustments required to payments on line.

# Termination

National Health Service (General Dental Services Contracts) Regulations 2005, schedule 3, part 9 and The National Health Service (Personal Dental Services Agreements) Regulations 2005 deal specifically with the termination of contracts and agreements and state the requirements and processes that need to be followed in each instance.

Termination is a highly significant action to take, on the part of the NHS CB and of the contractor, and is an area of high risk for both parties in respect of financial impact and continuity of services. It is, therefore, essential that the NHS CB AT maintains thorough and accurate records of all communications and discussions in respect of all notices under this policy.

Contractors have the right to appeal against notices, sanctions and termination so it is essential that NHS CB follows, and can demonstrate that they have followed due process in investigating, communicating and implementing actions in this respect.

There are recorded cases where a commissioner organisation decision has been overturned owing to a lack of evidence through poor administrative processes, or having not followed correct procedure and this can lead to a time-consuming, costly and complex outcome for the NHS CB.

It is essential that, before moving to terminate a contract or agreement, the NHS CB is satisfied that it is fully within its rights to do so.

There are a number of grounds for termination within either the GDS contract or PDS agreement. It might be by agreement, in which case there is a notice period, or it could be immediate, depending on the circumstances or type of breach to the contract or agreement particularly if there are patient safety, contractor competency or financial issues.

Consideration needs to be given to any patients who are part-way through a course of treatment and the implications of this, as the patient will become liable for additional fees and charges when having to move practices mid-course of treatment due to the termination of the contract.

In all cases there is a requirement for a financial reconciliation to be carried out on the contract and closure on the payments on line system.

The subsection below details the circumstances as set out by the regulations and looks at how to deal with a termination when either a contractor or the NHS CB exercises its appeal rights.

### **Termination by agreement**

The contractor and the AT may agree in writing to terminate the contract. If this is the case, they must agree the date on which that termination should take effect and any further terms upon which the contract should be terminated.

On notice of termination the AT should discuss with the contractor the prioritisation of the completion of current patients in treatment before starting any new courses of treatment to minimise the financial impact on the current contractor, the patient and the NHS CB.

When considering opening any new course of treatment during the notice period, the contractor should inform the patient before starting any course of treatment that the contractor may not be able to complete because of the contract ending and the likelihood of this occurring. For instance, if what is proposed is complex band 2 or 3 treatment and it is not completed, the patient will need to seek treatment at a new dental practice, which will incur a cost to him or her. The patient is then able to make an informed decision regarding treatment. Patients should be supported in finding a new dental practice by directing them to local practices accepting NHS patients, to NHS choices or to the area team dental helpline.

Where the termination of the contract include patients undergoing orthodontic treatment, the area team should work with other orthodontic practitioners in the area to agree a transfer of cases to them together with any associated financial considerations that may be necessary. Where the area team is undertaking a re-procurement of orthodontic services as a replacement, any service specification should include the transfer of patient cases to any new provider.

### **Termination on the death of an individual dental practitioner**

This is covered in detail in the death of a contractor policy.

## **Termination by the contractor**

A contractor may terminate the contract by serving notice in writing on the NHS CB AT at any time.

Where a contractor serves notice to the AT, the contract shall terminate on a date three months after the date on which the notice is served (the 'termination date'). If the termination date is not the last calendar day of a month, the contract shall instead terminate on the last calendar day of the month in which the termination date falls.

This is without prejudice to any other rights to terminate the contract that the contractor may have.

## **Late payment notices: leading to termination**

The contractor may give notice in writing (a 'late payment notice') to the AT if the AT has failed to make any payments due to the contractor in accordance with the terms of the contract.

The notice must specify within it, the payments that the AT has failed to make and what regulation to which it/they relate.

The contractor may, at least 28 days after having served a late payment notice, terminate the contract by a further written notice if the AT has still failed to make the payments that were due to the contractor and that were specified in the late payment notice served on them.

If, following receipt of a late payment notice, the AT refers the matter to the NHS dispute resolution procedure within 28 days of the date on which it is served with the late payment notice, and it notifies the contractor in writing that it has done so within that period of time, the contractor may not terminate the contract until:

- there has been a determination of the dispute pursuant to paragraph 56 and that determination permits the contractor to terminate the contract; or
- the NHS CB AT ceases to pursue the NHS dispute resolution procedure.

## **Termination by the AT: general**

The NHS CB AT may only terminate the contract in accordance with the following:

- the contract was entered into pursuant to section 28M(1)(a) of the Act (persons eligible to enter into GDS contracts or PDS agreements); and
- the contractor is no longer a dental practitioner.

Where a contractor ceases to be a dental practitioner by virtue of a suspension specified in sub-paragraph (6), sub-paragraph (1) shall not apply unless:

- the contractor is unable to satisfy the AT that it has in place adequate arrangements for the provision of dental services under the contract for so long as the suspension continues; or
- the AT is satisfied that the circumstances of the suspension are such that if the contract is not terminated immediately:
- the safety of the contractor's patients is at serious risk; or the NHS CB AT is at risk of material financial loss.

Except in a case to which paragraph 63(4) applies, where the contractor is two or more persons practising in partnership and the condition prescribed in section 28M(2)(a) of the Act is no longer satisfied, the NHS CB AT shall:

- serve notice in writing on the contractor terminating the contract immediately; or
- serve notice in writing on the contractor confirming that the NHS CB AT will allow the contract to continue for a period specified by the NHS CB AT in accordance with sub-paragraph (4) (the 'interim period') if the NHS CB AT is satisfied that the contractor has in place adequate arrangements for the provision of dental services for the interim period.

The period specified by the NHS CB AT shall not exceed:

- six months; or
- in a case where the failure of the contractor to continue to satisfy the condition in section 28M(2)(a) of the Act is the result of a suspension referred to in sub-paragraph (6), the period for which that suspension continues.

Where the contract was entered into pursuant to section 28M(1)(b) of the Act, but the contractor ceases to be a dental corporation, the NHS CB AT shall serve notice in writing on the contractor terminating the contract immediately.

### **Termination by NHS CB AT for the provision of untrue information**

The NHS CB AT may serve notice in writing on the contractor terminating the contract immediately, or from any such date as may be specified in the notice if, after the contract has been entered into, it comes to the attention of the NHS CB AT that written information provided to them 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.

### **Termination by the primary care trust on grounds of suitability, and so on**

The NHS CB AT may serve notice in writing on the contractor terminating the contract immediately, or from such date as may be specified in the notice if the contract holder is no longer suitable to hold that contract as set out in both the GDS and PDS regulations Schedule 3 part 9 (69) PDS and (71) GDS.

### **Termination by the primary care trust: patient safety and material financial loss**

The NHS CB AT may serve notice in writing on the contractor terminating the contract immediately or with effect from such date as may be specified in the notice if the contract holder has breached the contract and as a result of this the contractor's patient's safety is put at serious risk if the contract is not terminated or the contractor's financial situation is in a position where it could put the NHS CB at risk of a material financial loss.

### **Termination by NHS CB: remedial notices and breach notices**

Where a contractor has breached the contract and the breach is capable of remedy, the NHS CB AT should serve a notice on the contractor requiring it to remedy the breach or breaches committed.

A remedial notice needs to state:

- details of the breach or breaches;
- the steps the contractor must take in order to satisfy the NHS CB AT that the breach or breaches are satisfied; and
- the timeframe during which the steps must be taken ('the notice period').

The notice period should be at least 28 days unless the AT needs to protect itself from material financial loss or to protect patient safety in which case a shorter period, suspension or termination can be specified.

If the contractor has not taken the required steps to remedy the breach by the end of the notice period, the NHS CB AT may terminate the contract with effect from the date specified in a further notice to the contractor.

Where a contractor has breached the contract other than material financial loss or patient safety concerns and the breach is not capable of remedy, the AT may serve notice on the contractor requiring the contractor not to repeat the breach ('breach notice').

If, following a breach notice or a remedial notice, the contractor repeats the breach that was the subject of the breach notice or the remedial notice, or keeps breaching the contract creating a cumulative breach effect, the NHS CB AT can terminate the contract if it considers that to allow the contract to continue would be prejudicial to the efficiency of the services to be provided under the contract.

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 AT may withhold or deduct monies that would otherwise be payable under the contract in respect of that obligation which is the subject to the breach.

### **Additional provisions specific to contracts with two or more individuals practising in partnership and dental corporations**

Where the contractor is a dental corporation and the AT becomes aware that the contractor is carrying on any business that the AT considers to be detrimental to the contractor's performance of its obligations under the contract, the AT is entitled to give notice to the contractor requiring that it ceases carrying on that business before the end of a period of not less than 28 days beginning on the day on which the notice is given ('the notice period').

If the contractor has not satisfied the NHS CB AT that it has discontinued business by the end of the notice period, the AT may issue a further written notice to terminate the contract immediately, or from such date as it specifies in the notice.

Where the contractor is a dental corporation and on or after the coming into force for all purposes of article 39 of the Dentists Act Order during the existence of the contract:

- the majority of the directors of the dental corporation cease to be either dental practitioners or dental care professionals;
- the dental corporation has been convicted of an offence under section 43(1) of the Dentists Act[79] (directors of bodies corporate); or
- the dental corporation, or a director or former director of that corporation, has had a financial penalty imposed on it or him by the General Dental Council pursuant to section 43B (financial penalties in relation to bodies corporate) or 44 (further financial penalties on bodies corporate) of the Dentists Act[80],

The NHS CB AT may, by written notice, terminate the contract if it considers that as a consequence the dental corporation is no longer suitable to be a contractor.

Where the contractor is two or more persons practising in partnership, the AT is entitled to terminate the contract by notice in writing on such date as may be specified in that notice where one or more partners have left the practice during the existence of the contract if, in its reasonable opinion, the AT considers that the change in membership of the partnership is likely to have a serious adverse impact on the ability of the contractor or the NHS CB to perform its obligations under the contract.

The notice given to the contractor must contain:

- the date on which the contract is to be terminated; and
- the NHS CB reasons for considering that the change in the membership of the partnership is likely to have a serious adverse impact on the ability of the contractor or NHS CB to perform its obligations under the contract.

# Application of sanctions and the dispute resolution procedure

Sanctions cannot be applied to a contract unless the NHS CB is in a position to move to terminate. As an alternative to terminating a contract or agreement, NHS CB may, in certain circumstances consider the application of sanctions.

Where the termination of a contract or agreement is being considered on the grounds that a contractor has breached the contract or agreement or has failed to respond to a remedial notice, the NHS CB will, in all cases, consider the option of applying sanctions as an alternative.

Such sanctions may involve:

- termination of additional services under the contract or agreement;
- suspension of specified additional services under the contract; or
- Withholding or deducting monies otherwise payable under the contract or agreement.

The choice of sanction to use normally depends on the nature of the breach, or cumulative effect, and what is felt to be the most appropriate at that time. For example, if the breaches have occurred in relation to a specific service element under the contract, it might be most appropriate to move to terminate that specific service, such as additional services.

Where the NHS CB decides that the most appropriate sanction would be to withhold or deduct monies, this must be calculated in accordance with set criteria in order to establish a consistent, fair and measured approach.

1. The AT shall issue a notice of its intent to apply a sanction to the contractor which should include:
  - a. the nature of the sanction to be applied;
  - b. if withholding or deducting monies, how this has been calculated and the duration of any such sanction;
  - c. if services are to be terminated, which services and from what date;

- d. if suspension of specified reciprocal obligations under the contract or agreement, the period of that suspension and its end date; and
  - e. the contractor's right to appeal to this decision (annex 7).
- 2. If there is a dispute between the NHS CB and the contractor in relation to a contract sanction that the AT is proposing to impose, the AT shall not, subject to paragraph 5 below, impose the proposed contract sanction except in the circumstances specified in paragraph (3)(a) or (b) below.
- 3. If the contractor refers the dispute relating to the contract sanction to the NHS dispute resolution procedure within 28 days beginning on the date on which the NHS CB served notice on the contractor (or such longer period as may be agreed in writing with the AT), and notifies the AT in writing that it has done so, the AT shall not impose the contract sanction unless:
  - a. there has been a determination of the dispute and that determination permits the NHS CB to impose the contract sanction; or
  - b. the contractor ceases to pursue the NHS dispute resolution procedure, whichever is the sooner.
- 4. If the contractor does not invoke the NHS dispute resolution procedure within the time specified in paragraph (3), the AT shall be entitled to impose the contract sanction immediately.
- 5. If the NHS CB is satisfied that it is necessary to impose the contract sanction 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,the AT shall be entitled to impose the contract sanction forthwith, pending the outcome of that procedure.

# Payment online requirements: applicable to all sections of the policy

On issue of any terminations following the final contract reconciliation the AT is required to make the required changes on payment on line (POL).

Guidance with screenshots is available from:

[Payments on Line Guidance](#)

# Patient signposting applicable to all sections of the policy

Patients who are displaced as a result of the contract terminating must be given details of practices accepting NHS patients within the area. This can be done either verbally, by directing them to NHS choices or signposting them and giving them contact details of the area teams dental helpline where advice on local dental practice accepting patients can be given.

Where patients will not get their existing open course of treatment finished before the contract terminating then the GDP treating them will need to explain that they will incur additional fees as when they go to another practice the cost of the banded COT will need to be paid again.

# Financial reconciliation

On termination of the contract a financial reconciliation of the contract status and activity delivered must be carried out within 65 days and a closing statement sent to the contractor.

The statement issued must show activity delivered at the date of ceasing and if any monies are either payable to the contractor or owed to them.

Any money owed to the contractor should be made as a scheduled payment via payments on line at the next payment date.

If money is owed to NHS CB the AT should ensure that this is made as a one-off payment within three months to NHS DS directly and entered onto POL.

Template letters are contained within the annexes.

## Performer list: applicable to all sections of the policy

The AT will need to ensure that any appropriate updates are made to the performers list as a result of the termination. Cross-reference with performer list policy.

# Annex 1: abbreviations and acronyms

A&E	accident and emergency
APHO	Association of Public Health Observatories (now known as the Network of Public Health Observatories)
APMS	Alternative Provider Medical Services
AT	area team (of the NHS Commissioning Board)
AUR	appliance use reviews
BDA	British Dental Association
BMA	British Medical Association
CCG	clinical commissioning group
CD	controlled drug
CDAO	controlled drug accountable officer
CGST	NHS Clinical Governance Support Team
CIC	community interest company
CMO	chief medical officer
COT	course of treatment
CPAF	community pharmacy assurance framework
CQC	Care Quality Commission
CQRS	Calculating Quality Reporting Service (replacement for QMAS)
DAC	dispensing appliance contractor
Days	calendar days unless working days is specifically stated
DBS	Disclosure and Barring Service
DDA	Disability Discrimination Act
DES	directed enhanced service
DH	Department of Health
EEA	European Economic Area
ePACT	electronic prescribing analysis and costs
ESPLPS	essential small pharmacy local pharmaceutical services
EU	European Union
FHS	family health services
FHS AU	family health services appeals unit
FHSS	family health shared services
FPC	family practitioner committee
FTA	failed to attend
FTT	first-tier tribunal
GDP	general dental practitioner
GDS	General Dental Services
GMC	General Medical Council
GMS	General Medical Services
GP	general practitioner

GPES	GP Extraction Service
GPhC	General Pharmaceutical Council
GSMP	global sum monthly payment
HR	human resources
HSE	Health and Safety Executive
HWB	health and wellbeing board
IC	NHS Information Centre
IELTS	International English Language Testing System
KPIs	key performance indicators
LA	local authority
LDC	local dental committee
LETB	local education and training board
LIN	local intelligence network
LLP	limited liability partnership
LMC	local medical committee
LOC	local optical committee
LPC	local pharmaceutical committee
LPN	local professional network
LPS	local pharmaceutical services
LRC	local representative committee
MDO	medical defence organisation
MHRA	Medicines and Healthcare Products Regulatory Agency
MIS	management information system
MPIG	minimum practice income guarantee
MUR	medicines use review and prescription intervention services
NACV	negotiated annual contract value
NCAS	National Clinical Assessment Service
NDRI	National Duplicate Registration Initiative
NHAIS	National Health Authority Information System (also known as Exeter)
NHS Act	National Health Service Act 2006
NHS BSA	NHS Business Services Authority
NHS CB	NHS Commissioning Board
NHS CfH	NHS Connecting for Health
NHS DS	NHS Dental Services
NHS LA	NHS Litigation Authority
NMS	new medicine service
NPE	net pensionable earnings
NPSA	National Patient Safety Agency
OJEU	Official Journal of the European Union
OMP	ophthalmic medical practitioner
ONS	Office of National Statistics
OOH	out of hours
PAF	postcode address file
PALS	patient advice and liaison service

PAM	professions allied to medicine
PCC	Primary Care Commissioning
PCT	primary care trust
PDS	personal dental services
PDS NBO	Personal Demographic Service National Back Office
PGD	patient group direction
PHE	Public Health England
PLDP	performers' list decision panel
PMC	primary medical contract
PMS	Personal Medical Services
PNA	pharmaceutical needs assessment
POL	payments online
PPD	prescription pricing division (part of NHS BSA)
PSG	performance screening group
PSNC	Pharmaceutical Services Negotiating Committee
QOF	quality and outcomes framework
RCGP	Royal College of General Practitioners
RO	responsible officer
SEO	social enterprise organisation
SFE	statement of financial entitlements
SI	statutory instrument
SMART	specific, measurable, achievable, realistic, timely
SOA	super output area
SOP	standard operating procedure
SPMS	Specialist Personal Medical Services
SUI	serious untoward incident
UDA	unit of dental activity
UOA	unit of orthodontic activity

# Annex 2: Remedial notice

NHS CB reference:

*[date]*

Dear *[Name]*

## **Remedial notice**

Following our recent communications and discussion on the *[insert date(s)]*, we hereby serve notice that the NHS CB considers you are in breach of your (GDS/PDS)\**delete as appropriate* contract dated *[insert start date of contract]* on the following grounds:

*[bullet points setting out the breach details and referencing clause numbers from contract]*

*[details of any evidence relied upon in reaching this decision]*

In accordance with schedule 9 part 3, regulation *[insert clause]* of The National Health Service (General Dental Services Contracts) Regulations 2005 or The National Health Service (Personal Dental Services Agreements) Regulations 2005 \**delete where appropriate* the NHS CB requires you to remedy this breach by taking the following steps:

*[details of action required]*

To remedy this breach, this action must be completed to the satisfaction of the NHS CB on or before *[date]*

*The notice period shall unless the NHS CB is satisfied that a shorter period is necessary to:*

- *protect the safety of the contractor's patients; or*
- *protect itself from material financial loss.*

*be no less than 28 days from the date of this notice]*

Your progress in taking the required action will be reviewed at a further meeting on the *[date]* to be held at *[venue details]*

If you fail to comply with this notice, repeat this breach or otherwise breach the contract resulting in further breach notices being issued, the NHS CB may

take steps to terminate your contract or consider the imposition of a contract sanction.

Should you wish to appeal against this decision, you must do so in writing to *[details of appeal contact address]* within a maximum of 28 days from the date of service of this notice and you do, of course, retain the right to seek support from your local dental committee.

Yours sincerely,

*[Name]*

*[title]*

# Annex 3: Notice receipt

NB: ATs should complete this receipt in duplicate ensuring that one copy of the completed document is retained by the contractor and the other retained on the NHS CB AT file.

NHS CB reference:

[date]

I [name of NHS CB AT representative] confirm that I have today at [the time of delivery] hand-delivered a letter of notice to [contractor's name] in respect of their dental services contract on behalf of the NHS CB area team, [address of AT offices]

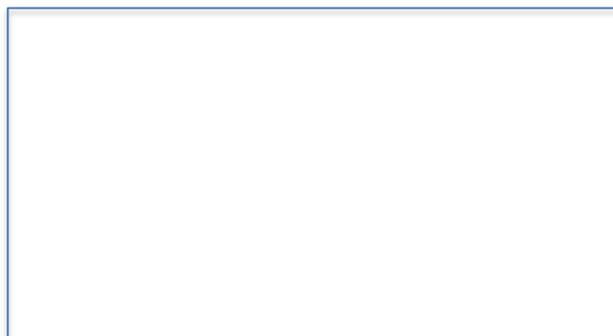
Please ensure that the recipient completes the section below on receipt:

I, [name of contract holder] hereby acknowledge receipt of a hand delivered letter of notice from the NHS CB in respect of my [GDS/PDS/PDS Plus] contract.

Signature.....

Date of receipt.....

Practice stamp



# Annex 4: Remedial notice satisfied letter

NHS CB reference:

[date]

Dear [Name]

## **Remedial notice satisfied**

Following the issue of our remedial notice reference [NHS CB ref from notice] on the [date], in respect of your (GDS/PDS/PDS Plus) delete as appropriate and our subsequent review meeting on the [date], we now write to confirm that you have taken the required steps to satisfy the NHS CB that this breach has been remedied within the agreed timescales.

The NHS CB now confirms it will not be taking any further action in this matter, but would advise that, should you repeat this breach or otherwise breach the contract resulting in further remedial or breach notices being issued, the NHS CB may take steps to issue a notice to terminate your contract or consider the imposition of a contract sanction

Yours sincerely,

[Name]

[title]

# Annex 5: Breach notice

NHS CB reference:

[date]

Dear [Name]

## **Breach notice**

Following our recent communications and discussion on the [date(s)], we hereby serve notice that the NHS CB considers you are in breach of your (GDS/PDS/PDS Plus)\*delete as appropriate contract dated [start date of contract] on the following grounds:

*[bullet points setting out the breach details and referencing clause numbers from contract]*

*[details of any evidence relied upon in reaching this decision]*

In accordance with schedule 9 part 3, regulation [clause] of The National Health Service (General Dental Services Contracts) Regulations 2005 or The National Health Service (Personal Dental Services Agreements) Regulations 2005 \*delete where appropriate the NHS CB requires that you do not repeat this breach.

If you fail to comply with this notice in that you repeat this breach or otherwise breach the contract resulting in a remedial notice or a further breach notice being issued, the NHS CB may take steps to terminate your contract or consider the imposition of a contract sanction.

Should you wish to appeal against this decision, you must do so in writing to [details of appeal contact address] within a maximum of 28 days from the date of service of this notice and you do, of course, retain the right to seek support from your local dental committee.

Yours sincerely,

[Name]

# Annex 6: Calculating a financial sanction

The NHS CB should seek guidance from their own legal advisers and finance experts in this respect.

Here are some examples for consideration:

- The cost of re-provision and the contractual cost, where the breach is on-going and a contract service cost can be quantified.
- The contractual service cost where the breach has been remedied and the service cost can be quantified.
- Plus in both cases the cost to the NHS CB AT in management time involved in investigating and processing the breach.

Where the contract service cannot be quantified:

- The cost to the NHS CB in management time involved in investigating and processing the breach.

# Annex 7: Notice of sanction

NHS CB reference:

[date]

Dear [Name]

## Notice of sanction

Further to our recent communications and discussion on the [date(s)], the NHS CB would advise that we are now in a position where we would be entitled to serve notice to terminate your (GDS/PDS/PDS Plus)\*delete as appropriate contract dated [start date of contract] on the following grounds:

*[bullet points setting out the breach details and referencing clause numbers from contract]*

*[details of any evidence relied upon in reaching this decision]*

*[full details of all previous notices issued and subsequent actions taken and outcomes]*

In accordance with schedule 9 part 3, regulation [insert clause] of The National Health Service (General Dental Services Contracts) Regulations 2005 or The National Health Service (Personal Dental Services Agreements) Regulations 2005 \* \*delete where appropriate the NHS CB has instead taken the decision to impose a contract sanction.

In accordance with the regulations a contract sanction means:

- a. termination of specified reciprocal obligations under the contract;
- b. suspension of specified reciprocal obligations under the contract for a period of up to six months; or
- c. withholding or deducting monies otherwise payable under the contract.

The NHS CB has decided to impose sanction [(a)(b)(c)] \* delete as appropriate and is reasonably satisfied that the contract sanction to be imposed is appropriate and proportionate to the circumstances giving rise to the NHS CB's entitlement to terminate the contract.

The details of this sanction are:

*[insert the details and effect of the sanction – either termination or suspension of reciprocal obligations, ie additional, enhanced services (this must not include any part of Essential Services), and so on, or details of any calculations in respect of a financial sanction and duration of any such sanction]*

In accordance with the regulations this sanction will be imposed on the *[date]* and *[if appropriate]* will terminate on the *[date]*.

Should you wish to appeal against this decision, you must do so in writing to *[details of appeal contact address]* within a maximum of 28 days from the date of service of this notice and you do, of course, retain the right to seek support from your local dental committee.

Yours sincerely,

*[Name]*

*[title]*

# Annex 8: Eligibility to hold a primary dental services contract

The following section offers a summary of the legal requirements surrounding eligibility for primary dental services contracts. It does not replicate the full legal text. This guide can only offer a broad introduction. Anyone entering into, or seeking, a primary dental services contract should refer directly to the relevant legislation, or seek independent legal advice.

Potential contractors should also be aware that, in addition to the requirements on eligibility, there are further requirements across all contracting routes to ensure that the persons entering into the contract with the NHS CB are fit and proper: for example, they have not been adjudged bankrupt or have certain types of criminal record.

The NHS CB 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; and
- (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,

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/she 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/she has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless before the NHS CB has served a notice terminating the contract pursuant to this paragraph, he/she is employed by the health service body that dismissed him/her or by another health service body;

(d) he/she 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[71] respectively) unless his name has subsequently been included in such a list;

(e) he/she has been convicted in the United Kingdom of:

(i) murder; or

(ii) a criminal offence other than murder, committed on or after 14 December 2001, and has been sentenced to a term of imprisonment of over six months;

(f) subject to sub-paragraph (5), he/she 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 14 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/she has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933[72] (offences against children and young persons with respect to which special provisions apply) or Schedule 1 to the Criminal Procedure (Scotland) Act 1995[73] (offences against children under the age of 17 years to which special provisions apply);

(h) he/she or it has:

(i) been adjudged bankrupt or had sequestration of his/her estate awarded unless (in either case) he has been discharged 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 to the Insolvency Act 1986[74], 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/her or its creditors unless he/she 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[75];

(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/she 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/she 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[76] (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of any body;

(l) he/she is subject to a disqualification order under the Company Directors Disqualification Act 1986[77], the Companies (Northern Ireland) Order 1986[78] 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/she has refused to comply with a request by the NHS CB for him/her to be medically examined on the grounds that it is concerned that he/she is incapable of adequately providing services under the contract and, in a case where the contract is with two or more individuals practising in partnership or with a dental corporation, NHS CB is not satisfied that the contractor is taking adequate steps to deal with the matter.

(3) The NHS CB shall not terminate the contract pursuant to sub-paragraph (2)(b) where the NHS CB 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; or
- (c) in the case of a contract with a dental corporation, a director, chief executive or secretary of the corporation.

(4) The NHS CB 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.

The NHS CB 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 NHS CB shall not terminate the contract pursuant to sub-paragraph (2)(f) where the NHS CB 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; or
- (c) in the case of a contract with a dental corporation, a director, chief executive or secretary of the corporation.

# Annex 9: Closing financial statement: money owed to NHS CB

[date]

Dear [Name]

## Closing statement for contract [number]

We have now finalised the financial position of your contract on termination. This has been calculated using the FP17 data that you have sent to the NHS DS.

A summary of the position is tabled below:

Contracted UDA	Carry forward	Scheduled delivery	Contract value	UDA value	Actual delivery	% delivery	Variance	Reclaim amount

As a result of this, the NHS Commissioning Board asks that you repay the above sum in full within three months.

You can send the full amount to NHS DS by [date] either by direct bank transfer using the following details:

[details]

Or by cheque, quoting your contract number on the reverse of the cheque to the following address:

[address of BSA]

If this money is not repaid within the specified timeframe, the NHS CB may take legal action.

Yours sincerely,

[Name]

[title]

# Annex 10: Closing financial statement: money owed to contractor

[date]

Dear [name]

## Closing statement for contract [number]

We have now finalised the financial position of your contract on termination. This has been calculated using the FP17 data that you have sent to NHS DS.

A summary of the position is tabled below:

Contracted UDA	Carry forward	Scheduled delivery	Contract value	UDA value	Actual delivery	% delivery	Variance	Reclaim amount

As a result of this, the NHS Commissioning Board will pay you this money for the services and activity that you have delivered. You will receive this in the normal way on the date of your next scheduled payment. This sum will also appear on your payment schedule that is issued by NHS DS.

Yours sincerely,

[Name]

[title]

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