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**NHS CORBY CLINICAL
COMMISSIONING GROUP**

***Policy for Managing Contract Breaches and
Termination***

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Audience:	All Staff of NHS Corby CCG (including members of the Governing Body), All contractors, Bidders and members of the CCG

Consultation

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1. Introduction

- 1.1 This policy outlines the approach to be taken by the Commissioner when a contract is considered to have been breached. Where processes differ with regards GMS, PMS and APMS contracts, these are highlighted.
- 1.2 Given that any decision to issue a Breach or Remedial Notice, apply sanctions or terminate a contract or agreement can be challenged by the contractor under appeal, it is essential that the Commissioner follows, and can demonstrate that it has followed, due process in investigating, communicating and implementing actions in this respect and that the Commissioner has acted fairly and reasonably throughout.
- 1.3 It is essential that the Commissioner maintains thorough and accurate records of all communications and discussions in respect of all notices under this policy.

2. Contract Breaches

- 2.1 Where the Commissioner considers that a breach has occurred, there are a number of options on how to proceed. The Commissioner can:
 - 2.1.1 take no action;
 - 2.1.2 agree an action with the contractor;
 - 2.1.3 issue a Remedial Notice;
 - 2.1.4 issue a Breach Notice;
 - 2.1.5 apply a Contract Sanction; or
 - 2.1.6 terminate the contract.

- 2.2 Doing nothing and agreeing an action with the contractor are options that are always available to the Commissioner. The remaining options may only be applied in specific situations as envisaged by the contract.
- 2.3 The following paragraphs set out the circumstances in which a Remedial Notice or a Breach Notice may be issued, a Contract Sanction may be applied or the contract may be terminated with an explanation of the relevant process that the Commissioner must follow.
- 2.4 The Commissioner must ensure that, when issuing a Remedial or Breach Notice, applying a Contract Sanction or terminating a contract, it follows the proper internal processes around approval of the action, compliance with any standing orders and due consideration of all relevant factors in the decision making process.

Co-commissioning - delegated commissioning arrangements

A CCG that has delegated commissioning arrangements will have entered into a Delegation Agreement with NHS England setting out the scope of those arrangements.

The Delegation Agreement reserves primary medical services functions that relate to performers lists to NHS England.

Circumstances that may result in the issue of a Breach Notice, a Remedial Notice, a Contract Sanction or may lead the Commissioner to consider termination may relate to or include reference to performers lists matters. Where this is the case, the Delegation Agreement requires the CCG to work collaboratively with NHS England and support and assist NHS England to carry out its performers lists functions.

3. Remedial Notices and Breach Notices

- 3.1 The GMS Regulations, the PMS Regulations and the APMS Directions make a clear distinction between the process to be followed where a breach is capable of remedy and the process where a breach is not capable of remedy.
- 3.2 GMS/PMS - Where a breach is capable of remedy, a Remedial Notice must be issued before the Commissioner takes any other action under the contract (such as termination). Where a breach is not capable of remedy, a Breach Notice must be issued before the Commissioner takes any other action under the contract (such as termination).
- 3.3 APMS - Contracts are not required to contain provisions relating to Remedial or Breach Notices. The NHS England Standard Alternative Provider Medical Services Contract 2014/15 does, however, contain these provisions. Where there is a potential breach of an APMS contract, the Commissioner should always review the actual wording of the contract to ensure the right process is followed.

Remedial Notice

- 3.4 Where a contractor has breached the contract and the breach is determined to be capable of remedy, the Commissioner may issue a Remedial Notice to the contractor setting out the actions that must be taken to remedy the breach.
- 3.5 A flowchart highlighting the main steps that the Commissioner should take when issuing a Remedial Notice is set out in Annex 1.
- 3.6 The Commissioner must issue a Remedial Notice before it takes any other action it is entitled to take under the contract, except where the breach relates to the rights of termination set out below. This is because the Commissioner has a right to terminate the contract immediately for a

breach of any of the circumstances set out below. These rights of termination are explained in more detail in paragraph 0 of this policy:

- 3.6.1 provision of untrue information;
 - 3.6.2 fitness to practice matters;
 - 3.6.3 a serious risk to patient safety or risk of financial loss to NHS England;
 - 3.6.4 unlawful sub-contracting; and
 - 3.6.5 in the case of a GMS contract, issues relating to the contractor's eligibility to hold the contract.
- 3.7 A breach capable of remedy is where the breach continues but the contractor could take action to stop the breach. Examples of breaches that may be capable of remedy include:
- 3.7.1 failure to compile a practice leaflet; or
 - 3.7.2 failure to provide information to the Commissioner.
- 3.8 Where the breach creates a serious risk to patient safety, the Commissioner can take more immediate action, regardless of whether the breach is capable of remedy or not. For further information on this, please refer to paragraph 0 of this policy.
- 3.9 Where the Commissioner has determined that a breach is capable of remedy, the Commissioner must take the following steps:
- 3.9.1 Initially the Commissioner should contact the contractor to discuss the breach and the action that they may be entitled to take, i.e. the issue of a Remedial Notice.

- 3.9.2 The contractor should be afforded the opportunity to provide an explanation as to the circumstances that led to the breach and this discussion should be recorded accurately in writing.
- 3.9.3 The Commissioner should then investigate the breach including any details recorded during the contractor discussion any which are pertinent to the matter at hand and examine evidence in relation to the breach.
- 3.9.4 If the Commissioner is satisfied that the matter is a breach which is capable of remedy, then the Commissioner may issue a Remedial Notice to the contractor, requiring the contractor to remedy the breach.
- 3.9.5 It is important that when the steps above are undertaken, this is completed as quickly as is reasonably possible as long delays between the breach occurring, or the Commissioner becoming aware of the breach, and the Remedial Notice issued, could lead to an argument that the Commissioner has accepted the breach and waived its right to take action.
- 3.10 A Remedial Notice must specify:
- 3.10.1 details of the breach, which led to the Remedial Notice being issued and any evidence gathered in respect of the breach;
 - 3.10.2 the steps the contractor must take in order to remedy the breach to the Commissioner's satisfaction;
 - 3.10.3 the period in which the steps must be taken;
 - 3.10.4 any arrangements for reviewing the matter to ensure that the requirements of the Remedial Notice have been met; and
 - 3.10.5 the actions that the Commissioner shall take if the contractor fails to satisfactorily remedy the breach.

- 3.11 The Commissioner may wish to include in the Remedial Notice how the contractor may appeal against the decision to issue a Remedial Notice.
- 3.12 A template Remedial Notice is provided in Annex 2. Where NHS England is the Commissioner, the finalised Remedial Notice should be signed off by the Head of Commissioning or their nominated deputy. Where the Commissioner is a CCG operating under delegated commissioning arrangements, the CCG should ensure the finalised Remedial Notice is signed off by an appropriately authorised individual.
- 3.13 The period during which the steps to remedy the breach must be taken must not be less than 28 days from the date that notice is given, unless the Commissioner is satisfied that a shorter period is necessary to protect the safety of the contractor's patients or protect NHS England from material financial loss.
- 3.14 The Remedial Notice must be delivered to the contractor in accordance with the notice provisions of the contract. This usually requires hand delivery or postal delivery (first class or registered post). Delivery of a notice by fax or email may be permissible. The Commissioner should review the relevant provisions to the contract to ensure proper delivery. Where the notice is hand delivered, the template Receipt Notice in Annex 3 can be used.
- 3.15 The Commissioner should ensure that arrangements are in place to follow up a Remedial Notice appropriately and in a timely fashion.
- 3.16 Where the Commissioner is satisfied that the contractor has taken the required steps to remedy the breach within the required period, a letter should be issued to the contractor informing them that the terms of the Remedial Notice have been satisfied and that no further action will be taken at this stage. A template Remedial Notice Satisfaction letter is provided in Annex 4.
- 3.17 Where the Commissioner is satisfied that the contractor has not taken the required steps to remedy the breach by the end of the required notice

period, the Commissioner may inform the contractor that they have failed to meet the terms of the Remedial Notice and that the Commissioner may terminate the contract with effect from such date as the Commissioner may specify in a further notice to the contractor.

- 3.18 Where the Commissioner intends to terminate the contract, please refer to paragraphs 0 to 0 of this policy.
- 3.19 If, following the issue of a Remedial Notice, a contractor either repeats a breach that was the subject of a Remedial Notice or otherwise breaches the contract that results in a further Remedial Notice or a Breach Notice, then the Commissioner has the right to terminate the contract by serving notice on the contractor.
- 3.20 The right to terminate in paragraph 0 above must only be used where the Commissioner is satisfied that the cumulative effect of the breaches is such that the Commissioner considers that to allow the contract to continue would be prejudicial to the efficiency of the services to be provided under the contract. Where the Commissioner intends to terminate the contract under this right, please refer to paragraph 0 of this policy.
- 3.21 If the contractor is in breach of any obligation and a Remedial Notice in respect of that default has been given to the contractor, the Commissioner may withhold or deduct monies which would otherwise be payable under the contract in respect of that obligation which is the subject of the default.
- 3.22 Where a Remedial Notice is issued, the Commissioner should submit a Notice Return to the NHS England primary care inbox (england.primarycareops@nhs.net) as soon as practicable after issue. A template Notice Return is set out Annex 13.

Breach Notice

- 3.23 Where the contractor has breached the contract and that breach is not capable of remedy, the Commissioner may serve a Breach Notice on the contractor requiring the contractor not to repeat the breach.
- 3.24 A flowchart highlighting the main steps that the Commissioner should take when issuing a Breach Notice is set out in Annex 5.
- 3.25 Breach Notices cannot be issued where the breach relates to the following rights of termination:
- 3.25.1 provision of untrue information;
 - 3.25.2 fitness to practice matters;
 - 3.25.3 a serious risk to patient safety or risk of financial loss to NHS England;
 - 3.25.4 unlawful sub-contracting; and
 - 3.25.5 in the case of a GMS contract, issues relating to the contractor's eligibility to hold the contract.
- For further information on these rights of termination, please refer to paragraph 0.
- 3.26 A breach that is not capable of remedy is where a breach occurs but either does not continue prior to a notice being issued or there is no action that can be taken to remedy the breach.
- 3.27 Examples of breaches that are not capable of remedy include:
- 3.27.1 a practice closing during its contracted opening times in the previous week with no access for the contractor's registered patients to access essential services; or

- 3.27.2 failure to store vaccines correctly and such vaccines have already been provided to patients.

- 3.28 Where the breach creates a serious risk to patient safety, the Commissioner can take more immediate action, regardless of whether the breach is capable of remedy or not. For further information on this, please refer to paragraph 0 of this policy.

- 3.29 Where the Commissioner has determined that a breach is not capable of remedy, the Commissioner must take the following steps:
 - 3.29.1 Initially the Commissioner should contact the contractor to discuss the breach and the action that they may be entitled to take, i.e. the issue of a Breach Notice.

 - 3.29.2 The contractor should be afforded the opportunity to provide an explanation as to the circumstances that led to the breach and this discussion should be recorded accurately in writing.

 - 3.29.3 The Commissioner should then investigate the breach including any details recorded during the contractor discussion which are pertinent to the matter at hand and examine any evidence in relation to the breach.

 - 3.29.4 If the Commissioner is satisfied that the matter is a breach which is not capable of remedy, then the Commissioner may issue a Breach Notice to the contractor, requiring the contractor not to repeat the breach.

- 3.30 The Breach Notice must specify:
 - 3.30.1 details of the breach;

 - 3.30.2 the requirement that the contractor must not repeat the breach again; and

- 3.30.3 the consequences of the contractor further breaching the contract;
- 3.31 A template Breach Notice is provided in Annex 6. Where NHS England is the Commissioner, the finalised Breach Notice should be signed off by the Head of Commissioning or their nominated deputy. Where the Commissioner is a CCG operating under delegated commissioning arrangements, the CCG should ensure the finalised Breach Notice is signed off by an appropriately authorised individual.
- 3.32 The Breach Notice must be delivered to the contractor in accordance with the notice provisions of the contract. This usually requires hand delivery or postal delivery (first class or registered post). Delivery of a notice by fax or email may be permissible. The Commissioner should review the relevant provisions to the contract to ensure proper delivery. Where the notice is hand delivered, the template Receipt Notice in Annex 3 can be used.
- 3.33 If, following the issue of a Breach Notice, a contractor either repeats a breach that was the subject of a Breach Notice or otherwise breaches the contract that results in a further Remedial Notice or a Breach Notice, then the Commissioner has the right to terminate the contract by serving notice on the contractor.
- 3.34 This right to terminate can only be used where the Commissioner is satisfied that the cumulative effect of the breaches is such that the Commissioner considers that to allow the contract to continue would be prejudicial to the efficiency of the services to be provided under the contract. Where the Commissioner intends to terminate the contract under this right, please refer to paragraph 0 of this policy.
- 3.35 If the contractor is in breach of any obligation and a Breach Notice has been issued, the Commissioner may withhold or deduct monies which would otherwise be payable under the contract in respect of that obligation.

- 3.36 Where a Breach Notice is issued, the Commissioner should submit a Notice Return to the NHS England primary care inbox england.primarycareops@nhs.net) as soon as practicable after issue. A template Notice Return is set out Annex 13.

4. Contract Sanctions

- 4.1 GMS / PMS - The Commissioner must follow the process set out in this section. PMS agreements refer to "agreement sanctions" rather than Contract Sanctions. Reference to Contract Sanctions in this policy should be read as including reference to agreement sanctions.
- 4.2 APMS – APMS contracts are not required to contain provisions relating to Contract Sanctions. The NHS England Standard Alternative Provider Medical Services Contract 2014/15 does not contain references to Contract Sanctions. The Commissioner must check the relevant contract to determine whether Contract Sanctions can be applied.
- 4.3 Contract Sanctions must not be applied to a contract unless the Commissioner is in a position to move to terminate. Where Contract Sanctions are applied, this is an alternative to terminating the contract. The Commissioner cannot apply Contract Sanctions and later decide to terminate the contract in the same circumstances.
- 4.4 The circumstances in which the Commissioner may apply Contract Sanctions are those circumstances set out below where a right of termination arises. Please refer to the relevant right of termination in paragraph 0 for further information on how these rights of termination arise:
- 4.4.1 provision of untrue information;
 - 4.4.2 fitness to practice matters;
 - 4.4.3 where there is a serious risk to patient safety or NHS England is at risk of material financial loss;

- 4.4.4 where the Commissioner is satisfied that the contractor has not taken the steps required by a Remedial Notice to remedy a breach within the required period;
- 4.4.5 where, after a Remedial Notice or Breach Notice has been issued, the contractor:
 - 4.4.5.1 repeats a breach that was the subject of a Remedial Notice or a Breach Notice; or
 - 4.4.5.2 otherwise breaches the contract resulting in a further Remedial Notice or Breach Notice.
- 4.4.6 where the contractor carries on business detrimental to the contract; and/or
- 4.4.7 for GMS contracts only, where changes in membership of the partnership is likely to have a serious adverse impact on the ability of the contractor or the Commissioner to perform obligations under the contract.
- 4.5 Contract Sanctions must not be applied if they terminate or suspend any obligation that relates to essential services.
- 4.6 Contract Sanctions may involve:
 - 4.6.1 termination of specified reciprocal obligations;
 - 4.6.2 suspension of specified reciprocal obligations for a period of up to six months; or
 - 4.6.3 withholding or deducting monies otherwise payable under the contract.
- 4.7 The choice of which Contract Sanction to use would ordinarily depend on the nature of the breach, or cumulative effect, and what is felt to be the most appropriate and proportionate action in those circumstances. 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 an additional service.

- 4.8 Where the Commissioner is considering imposing a Contract Sanction and the contractor has a GMS contract, it is a statutory requirement that the Commissioner consults the relevant LMC before it imposes the Contract Sanction, where it is reasonably practicable to do so. There is no such statutory requirement in respect of PMS or APMS contracts and the Commissioner should ensure it considers any relevant wording in the contract.
- 4.9 Where the Commissioner decides that the most appropriate sanction would be to withhold or deduct monies, this must be calculated in order to establish a consistent, fair and measured approach. Annex 7 provides further information on calculating a financial Contract Sanction.
- 4.10 Where the Commissioner decides to impose a Contract Sanction, the Commissioner must issue a notice of its intent to apply a sanction to the contractor which must include:
- 4.10.1 the nature of the sanction to be applied;
 - 4.10.2 if withholding or deducting monies, how this has been calculated and the duration of any such sanction;
 - 4.10.3 if services are to be terminated, which services and from what date;
 - 4.10.4 if suspension of specified reciprocal obligations under the contract or agreement, the period of that suspension and its end date;
 - 4.10.5 an explanation of the effect of the imposition of the Contract Sanction; and

- 4.10.6 the contractor's right to appeal the decision to apply a Contract Sanction.
- 4.11 A template Contract Sanctions notice is provided in Annex 8. Where NHS England is the Commissioner, the finalised Contract Sanction notice should be signed off by the Head of Commissioning or their nominated deputy. Where the Commissioner is a CCG operating under delegated commissioning arrangements, the CCG should ensure the finalised Contract Sanction notice is signed off by an appropriately authorised individual.
- 4.12 The date that the Contract Sanction takes effect must not be until at least 28 days after the notice was served unless the Commissioner is satisfied that it is necessary to impose the Contract Sanction to protect the safety of patients or protect NHS England from material financial loss.
- 4.13 Where a Contract Sanction is imposed, the Commissioner can charge the contractor reasonable administration costs of imposing the Contract Sanction.
- 4.14 After imposing the Contract Sanction on a contractor with a GMS contract, it is a statutory requirement for the Commissioner to, as soon as reasonably practicable, notify the relevant LMC in writing of the Contract Sanction imposed. There is no such statutory requirement in respect of PMS or APMS contracts and the Commissioner should ensure it considers any relevant wording in the contract.
- 4.15 If the contractor disputes the imposition of a Contract Sanction, the Commissioner must not impose the Contract Sanction until the dispute has been determined unless the Contract Sanction is necessary to protect the safety of patients or protect NHS England from material financial loss.
- 4.16 Where a dispute arises in relation to the imposition of Contract Sanctions, please refer to the policy on managing disputes (chapter 11).

- 4.17 The Commissioner should ensure that arrangements are in place to monitor the contractor's compliance with a Contract Sanction notice.
- 4.18 Where a Contract Sanction notice is issued, the Commissioner should submit a Notice Return to the NHS England primary care inbox (england.primarycareops@nhs.net) as soon as practicable after issue. A template Notice Return is set out Annex 13.

5. Termination

- 5.1 Termination is a very significant action to take both on the part of the Commissioner and the contractor and is an area of high risk for both parties in respect of financial impact and continuity of services. Where the Commissioner considers that a Termination Notice may be issued, the Commissioner should liaise with the NHS England Legal team early in the process to confirm the appropriateness and lawfulness of taking such a step. It is essential that the Commissioner maintains thorough and accurate records of all communications and discussions in respect of all notices.
- 5.2 Contractors have the right to appeal so it is essential that the Commissioner follows, and can demonstrate that they have followed due process in investigating, communicating and implementing actions leading to termination.
- 5.3 It is essential that prior to moving to terminate a contract, the Commissioner is satisfied that they are fully within their rights to do so.
- 5.4 Legislation sets out certain rights of termination that are required to be in each type of primary medical contract. These mandatory termination rights are set out below and explained more fully in paragraph 0. Where the termination relates to a matter that is contained within an alternative policy, this is highlighted.

5.5 The contract may contain additional termination rights. The Commissioner should consider the relevant contract to ensure it is fully aware of all termination rights.

5.6 GMS / PMS - The following circumstances relating to rights of termination are required to be in GMS and PMS contracts:

- 5.6.1 death of a contractor;
- 5.6.2 contractor serving notice;
- 5.6.3 late payment;
- 5.6.4 provision of untrue information;
- 5.6.5 fitness to practice issues;
- 5.6.6 patient safety;
- 5.6.7 material financial loss;
- 5.6.8 unlawful sub-contracting;
- 5.6.9 remedial Notices and Breach Notices; and
- 5.6.10 carrying on business detrimental to the contract.

5.7 GMS - GMS contracts are required to contain additional rights of termination relating to:

- 5.7.1 breach of Regulation 4 (Conditions relating solely to medical practitioners) of the GMS Regulations; and
- 5.7.2 certain partnership matters.

5.8 PMS - PMS agreements are required to contain additional rights of termination relating to:

- 5.8.1 commissioner serving notice;
 - 5.8.2 contractor's exercise of the right to a GMS contract; and
 - 5.8.3 agreement of the parties.
- 5.9 **APMS** - The following circumstances relating to rights of termination are required to be in APMS contracts:
- 5.9.1 death of a contractor;
 - 5.9.2 provision of untrue information;
 - 5.9.3 fitness to practice issues;
 - 5.9.4 patient safety;
 - 5.9.5 material financial loss; and
 - 5.9.6 unlawful sub-contracting.
- 5.10 **APMS** - APMS contract are likely to have further rights of termination. Where the Commissioner wishes to terminate for a reason other than those set out in paragraph 0 above, the Commissioner must review the contract to determine if any further rights of termination apply.
- 5.11 Contracts may also terminate by:
- 5.11.1 reaching their natural end dates (in which case, please refer to the policy on practice closedown (chapter 13) for more information); or
 - 5.11.2 retirement of the contractor (in which case, please refer to the policy on contract variation (chapter 6)).
- 5.12 Where the Commissioner has considered all the relevant factors and has decided to proceed with termination, it must send a Termination Notice to the contractor.

5.13 A template Termination Notice is provided in Annex 9. Where NHS England is the Commissioner, the finalised Termination Notice should be signed off by the Director of Commissioning Operations or their nominated deputy. Where the Commissioner is a CCG operating under delegated commissioning arrangements, the CCG should ensure the finalised Termination Notice is signed off by an appropriately authorised individual.

5.14 Where the termination relates to:

5.14.1 for GMS and PMS contracts:

5.14.1.1 provision of untrue information;

5.14.1.2 fitness to practice issues;

5.14.1.3 patient safety;

5.14.1.4 material financial loss; or

5.14.1.5 remedial Notices and Breach Notices;

5.14.2 for GMS agreements:

5.14.2.1 certain partnership matters;

5.14.3 PMS agreements:

5.14.3.1 carrying on business detrimental to the agreement,

the notice must specify a date on which the contract terminates that is not less than 28 days after the date on which the Commissioner has served the notice on the contractor. The Commissioner may state a date less than 28 days where this is necessary to protect the safety of the contractor's patients or protect NHS England from material financial loss. APMS contracts are not required to contain any such provisions and the Commissioner should consider the wording of the particular APMS contract.

- 5.15 Where the contractor disputes the Commissioner's decision to terminate the contract, the contractor may invoke the NHS dispute resolution procedure. In such circumstances, the Commissioner should refer to the policy on managing disputes (chapter 11).
- 5.16 Where a Termination Notice is issued, the Commissioner should submit a Notice Return to the NHS England primary care inbox (england.primarycareops@nhs.net) as soon as practicable after issue. A template Notice Return is set out Annex 13.

6. Key Considerations on Termination

- 6.1 The Commissioner must establish that grounds exist under the terms of the contract to terminate. The Commissioner must follow due process and investigation of the facts and provide the contractor with the opportunity to provide a response to allegations, wherever possible.
- 6.1 A flowchart highlighting the main steps that the Commissioner should take when issuing a termination notice is set out in Annex 10.
- 6.3 The Commissioner must consider all relevant information available and decide on the appropriate course of action and whether the contract should be terminated.
- 6.4 Apart from considerations regarding whether the right to terminate arises, there are a number of common factors that the Commissioner should consider when termination is a proposed course of action. These factors are set out below.
- 6.5 This list is not exhaustive and there are likely to be other issues that need due consideration under these provisions. These considerations will also apply following the sudden death of a contractor (see the policy on the death of a contractor (chapter 12)) and in some part on the closure of a branch surgery (see the policy on contract variations (chapter 6)).

Continuity of service provision

- 6.6 NHS England has a statutory duty to ensure continuity of provision of primary care services. Termination of existing service provision may result in some persons not being able to access primary care services. The Commissioner must therefore consider how this duty will be discharged if it decides to terminate the contract.
- 6.7 If the Commissioner envisages that a new contract will be entered into with a provider, the Commissioner must consider how to procure that contract and to ensure it is in accordance with procurement law and any procurement protocol issued by NHS England.

PMS to GMS

- 6.8 PMS agreements provide a right for the contractor to request to enter into a GMS contract. Such a request can only be refused where the contractor fails to meet the conditions set out in the PMS Regulations.
- 6.9 For further information on this, please refer to the policy on managing a PMS contractor's right to a GMS contract (chapter 8).

General duties

- 6.10 NHS England has a number of statutory duties relating to the exercise of its functions including reducing health inequalities and public involvement. The Commissioner must ensure that its actions in terminating a contract and any consequential actions ensure compliance with these duties. In an urgent situation, it may be necessary to balance the duty to involve with the public interest in maintaining continuity of care and protecting the health, safety and welfare of patients or staff. Please refer [Patient and Public Participation Policy and Statement of Arrangements & Guidance on Patient and Public Participation in Commissioning](#) for more detailed guidance.

LMC consultation

- 6.11 The Commissioner must consult the LMC for the area in which the contractor provides services where the Commissioner is considering:
- 6.11.1 Terminating the contract;
 - 6.11.2 which alternative notice to issue where there is a right to terminate for unlawful sub-contracting; or
 - 6.11.3 imposing a contract sanction.
- 6.12 Whether or not the LMC has been consulted, whenever the Commissioner imposes a Contract Sanction or terminates a contract, the Commissioner must as soon as reasonably practicable, notify the relevant LMC in writing of the sanction or termination.

Premises

- 6.13 The Commissioner should ascertain who owns the premises and what arrangements apply to the premises. Where the outgoing contractor owns the premises, a future service provider may not be able to use those premises for delivery of services. The Commissioner should consider what arrangements need to be put in place to ensure continued service provision.

TUPE

- 6.14 The Commissioner should consider the impact of termination on the staff currently employed under the terminating contract. Where a new contract is entered into with a new provider, TUPE may apply to transfer the staff to the new provider.
- 6.15 TUPE can be complex, risky and time consuming for any incoming provider and is likely to have a financial impact on the cost of any service. The

Commissioner should consider whether the potential for TUPE to apply may be considered a significant risk to any incoming provider.

Equipment

- 6.16 Some equipment, such as IT, may be owned by the Commissioner. Arrangements may need to be put in place to retrieve this equipment to ensure it is available to a future service provider.

Patient lists

- 6.17 Patients have a right of choice meaning the Commissioner must not simply transfer all of the registered patients to an alternative provider. Patients should be provided with a detailed list of other local practices that are currently accepting new patients and offered the opportunity to register with one of them.
- 6.18 The Commissioner should consider what steps will be taken in regard to patients who have not registered elsewhere at the end of the contract. It is often the case that the majority will voluntarily seek alternative registration; however, there are usually a number of patients who do not, some of whom may no longer be resident in the UK or simply moved within the UK and not changed their address details at the practice and others who have not yet chosen an alternative provider. Some may have died. In these circumstances the Commissioner must be clear on the process of dispersal or allocation that they will follow in order to avoid the risk of challenge from other local providers.

Patient records

- 6.19 The Commissioner should consider management of NHS patient paper records (Lloyd George notes) and any subsequent clinical mail – it is very likely that the contractor has retained a significant number of patient paper records both in the reception area and often stored elsewhere in the practice premises, including loft spaces and store cupboards. The

Commissioner must be able to securely retrieve these records and communications, having full regard of data protection and confidentiality in order that these can be distributed accordingly to any providers or returned to central storage. The contractor (or their representative) is responsible for any non NHS patient or client record, though agreement may be reached with the Commissioner to manage (dispose of) any confidential information on their behalf.

Prescriptions

6.20 The Commissioner should consider prescription pads, electronic prescriptions and any uncollected completed prescriptions – these will also need to be retrieved and dealt with accordingly. The Commissioner may wish to decide on a specified age of a current prescription (such as one month) and make appropriate arrangements for the handling of these and disposal of any that are older.

Drugs and medicines

6.21 The Commissioner should consider practice held drugs – these will need to be disposed of but are technically likely to be owned by the contractor whose contract is terminating. The Commissioner should seek assurances about the safe and effective disposal of such drugs.

7. Rights of Termination

Death of a contractor

7.1 Please refer to the policy on the death of a contractor (chapter 12) for further information.

Termination where both parties agree

7.2 PMS agreements are required to contain a provision stating that both parties may agree to terminate a contract. Although GMS or APMS

contracts are not required to contain such a provision, all types of contract may be terminated where both parties agree.

- 7.3 Where the parties agree to terminate, the parties must agree the date from which termination will take place and any further terms relating to the termination. Before agreeing the termination date, the Commissioner should ensure any proposed timescale allows the Commissioner to consider any other factors or actions that may be required prior to termination.
- 7.4 The contractor party may be composed of more than one person. The Commissioner must agree the same termination arrangements with all persons that constitute the contractor.
- 7.5 NHS England's general duties may be triggered by termination in these circumstances. For further information, please refer to paragraph 0.

Termination where the contractor serves notice

- 7.6 GMS and PMS contracts can be terminated by the contractor by serving notice in writing at any time. APMS contracts may also contain this right of termination.
- 7.7 Where a contractor serves notice to terminate a GMS contract, it shall terminate six months after the date on which the notice is served, except where the contractor is an individual medical practitioner in which case the contract shall terminate three months after the date on which the notice is served.
- 7.8 If the date on which the GMS contract will terminate 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.
- 7.9 Where a contractor serves notice to terminate a PMS agreement, the period of notice shall not be less than six months (unless both parties agree in which case please refer to paragraph 0 – termination where both parties agree).

7.10 NHS England's general duties may be triggered by termination in these circumstances. For further information, please refer to paragraph 0.

Termination where the Commissioner serves notice

7.11 PMS agreements can be terminated by the Commissioner by serving notice in writing at any time. APMS contracts may also contain this right of termination. .

7.12 Where the Commissioner serves notice to terminate a PMS agreement, the period of notice shall not be less than six months (unless both parties agree in which case please refer to paragraph 0 – termination where both parties agree).

7.13 NHS England's general duties may be triggered by termination in these circumstances. For further information, please refer to 0.

7.14 GMS contracts are usually contracts in perpetuity without any right for the Commissioner to terminate on notice.

Termination where the contractor exercises the right to a GMS contract

7.15 Please refer to the policy on managing a PMS contractor's right to a GMS contract (chapter 8) for further information.

Termination due to late payment

7.16 The contractor may give notice in writing to the Commissioner if the Commissioner has failed to make any payment due to the contractor under the contract. If the Commissioner has failed to make any such payment within 28 days of the notice, the contractor may terminate the contract by a further written notice.

7.17 Where the NHS dispute resolution procedure has been invoked by the Commissioner, within 28 days of the initial notice, the contractor may not terminate the contract until either the NHS dispute resolution determination

allows termination or the Commissioner ceases to pursue the NHS dispute resolution process.

7.18 For further information on the NHS dispute resolution process, please refer to the policy on managing disputes (chapter 11).

7.19 NHS England's general duties may be triggered by termination in these circumstances. For further information, please refer to paragraph 0.

Termination for provision of untrue information

7.20 The Commissioner may serve notice to terminate the contract immediately (or from any date set out in the notice) if, after the contract has been entered into, it comes to the attention of the Commissioner that written information provided to the Commissioner:

7.20.1 before the contract was entered into; or

7.20.2 for GMS contracts, pursuant to paragraph 85(2) or (3) or 86(2) of Schedule 6 of the GMS Regulations; or

7.20.3 for PMS agreements, pursuant to paragraph 80(2) or (3) of Schedule 5 of the PMS Regulations,

in relation to:

7.20.4 for GMS contracts, Regulations 4 and 5 of the GMS Regulations

7.20.5 for PMS agreements, Regulation 5 of the PMS Regulations;
and

7.20.6 for APMS contracts, Direction 4 of the APMS Directions,

was, when given, untrue or inaccurate in a material respect.

7.21 NHS England's general duties may be triggered by termination in these circumstances. For further information, please refer to paragraph 0.

Termination due to fitness to practice issues

7.22 The Commissioner may serve notice in writing on the contractor terminating the contract immediately (or from any date set out in the notice) where a person connected with the contract (such as a medical practitioner, a partnership, a company or a director) falls within any circumstances set out in the relevant regulations / directions. Those circumstances include where the person:

7.22.1 is disqualified from practising by a licensing body;

7.22.2 has been convicted of certain offences;

7.22.3 has been adjudged bankrupt; or

7.22.4 has been subject to a disqualification under the Company Director Disqualification Act 1986.

The full list of circumstances is set out in Annex 11. Part A of Annex 11 refers to GMS contracts, Part B of Annex 11 refers to PMS agreements and Part C of Annex 11 refers to APMS contracts.

7.23 NHS England's general duties may be triggered by termination in these circumstances. For further information, please refer to paragraph 0.

Termination where there is a serious risk of patient safety

7.24 The Commissioner may serve notice in writing on the contractor terminating the contract immediately (or from such date set out in the notice) where 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.

7.25 NHS England's general duties may be triggered by termination in these circumstances. For further information, please refer to paragraph 6.10.

Termination where there is a material financial loss

7.26 The Commissioner may serve notice in writing on the contractor terminating the contract immediately (or from such date set out in the notice) where the contractor's financial situation is such that the Commissioner considers that NHS England is at risk of material financial loss.

7.27 NHS England's general duties may be triggered by termination in these circumstances. For further information, please refer to paragraph 6.10.

Termination due to unlawful sub-contracting

7.28 The Commissioner will have a right of termination where it comes to the Commissioner's attention that the contractor has sub-contracted any of its rights or duties under the agreement in relation to the provision of essential services to a company or firm:

7.28.1 owned wholly or partly by the contractor, or by any former or current employee of, or partner or shareholder in, the contractor;

7.28.2 formed by or on behalf of the contractor, or from which it derives or may derive a pecuniary benefit; or

7.28.3 formed by or on behalf of a former or current employee of, or partner or shareholder in, the contractor, or from which such a person derives or may derive a pecuniary benefit,

where that company or firm is or was formed wholly or partly for the purpose of avoiding the restrictions on the sale of the goodwill of a medical practice in section 54 of the NHS Act or any regulations made wholly or partly under that section.

- 7.29 Where this occurs, the Commissioner may serve notice in writing on the contractor terminating the contract immediately or instructing the contractor to terminate the relevant sub-contract.
- 7.30 It is a requirement under GMS contracts that, whenever reasonably practicable to do so, the Commissioner must consult with the relevant LMC when considering which alternative notice to issue (for further information on LMC consultation requirements, refer to paragraph 0). PMS and APMS contracts are not required to contain such provisions, The Commissioner should review the relevant contract to determine whether any requirement has been included.
- 7.31 If the contractor fails to terminate the sub-contract, the Commissioner may serve a notice in writing on the contractor terminating the contract immediately.
- 7.32 NHS England's general duties may be triggered by termination in these circumstances. For further information, please refer to paragraph 6.10.

Termination relating to Remedial Notices and Breach Notices

- 7.33 The Commissioner has a right to terminate the contract where the Commissioner is satisfied that the contractor has not taken the required steps to remedy the breach by the end of the required period as stated in the Remedial Notice.
- 7.34 The Commissioner has a further right of termination where, following the issue of a Remedial Notice or Breach Notice, a contractor:
- 7.34.1 repeats a breach that was the subject of a Remedial Notice or Breach Notice; or
 - 7.34.2 otherwise breaches the contract that results in a further Remedial Notice or Breach Notice.

- 7.35 The further breach must have occurred after the breach which was the subject of the Remedial Notice or Breach Notice. The Commissioner may intend to issue a further Remedial Notice or Breach Notice for a breach that occurred prior to the original breach with the need to investigate or gather information delaying the issue of the notice. In these circumstances, the Commissioner cannot then rely on this right of termination as the further breach did not occur following the issue of the original Remedial Notice or Breach Notice.
- 7.36 This further right to terminate can only be used where the Commissioner is satisfied that the cumulative effect of the breaches is such that the Commissioner considers that to allow the contract to continue would be prejudicial to the efficiency of the services to be provided under the contract.
- 7.37 NHS England's general duties may be triggered by termination in these circumstances. For further information, please refer to paragraph 6.10

Termination due to the contractor carrying on business detrimental to the contract

- 7.38 Where the contractor is a company that is carrying on business which the Commissioner considers is detrimental to the contractor performance of the contract, the Commissioner may give notice to the contractor requiring that it ceases carrying on the relevant business within a specified period (which must not be less than 28 days from the date the notice was given).
- 7.39 Where the contractor has not satisfied the Commissioner that it has ceased carrying on the business by the end of the notice period, the Commissioner may by further written notice terminate the contract immediately (or from such date set out in the notice).
- 7.40 NHS England's general duties may be triggered by termination in these circumstances. For further information, please refer to paragraph 6.10.

Termination due to partnership matters

- 7.41 A Commissioner has a right to terminate a GMS contract where:
- 7.41.1 the contractor is two or more persons practising in partnership;
 - 7.41.2 where one or more partners have left the practice during the contract; and
 - 7.41.3 if the Commissioner reasonably considers that the changes in membership of the partnership is likely to have a serious adverse impact on the ability of the contractor or the Commissioner to perform its obligations under the contract.
- 7.42 Where this occurs, the Commissioner may terminate the contract by notice in writing on such date as is set out in the notice. The notice must contain the Commissioner's 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 the Commissioner to perform its obligations under the contract.
- 7.43 NHS England's general duties may be triggered by termination in these circumstances. For further information, please refer to paragraph 6.10

Termination due to breach of regulation 4

- 7.44 Regulation 4 sets out conditions that the contractor must satisfy in order to enter into a GMS contract. There are a number of rights of termination relating to these conditions. Annex 12 sets out the termination rights and conditions in detail.
- 7.45 NHS England's general duties may be triggered by termination in these circumstances. For further information, please refer to paragraph 6.10

8. Consequences of Termination

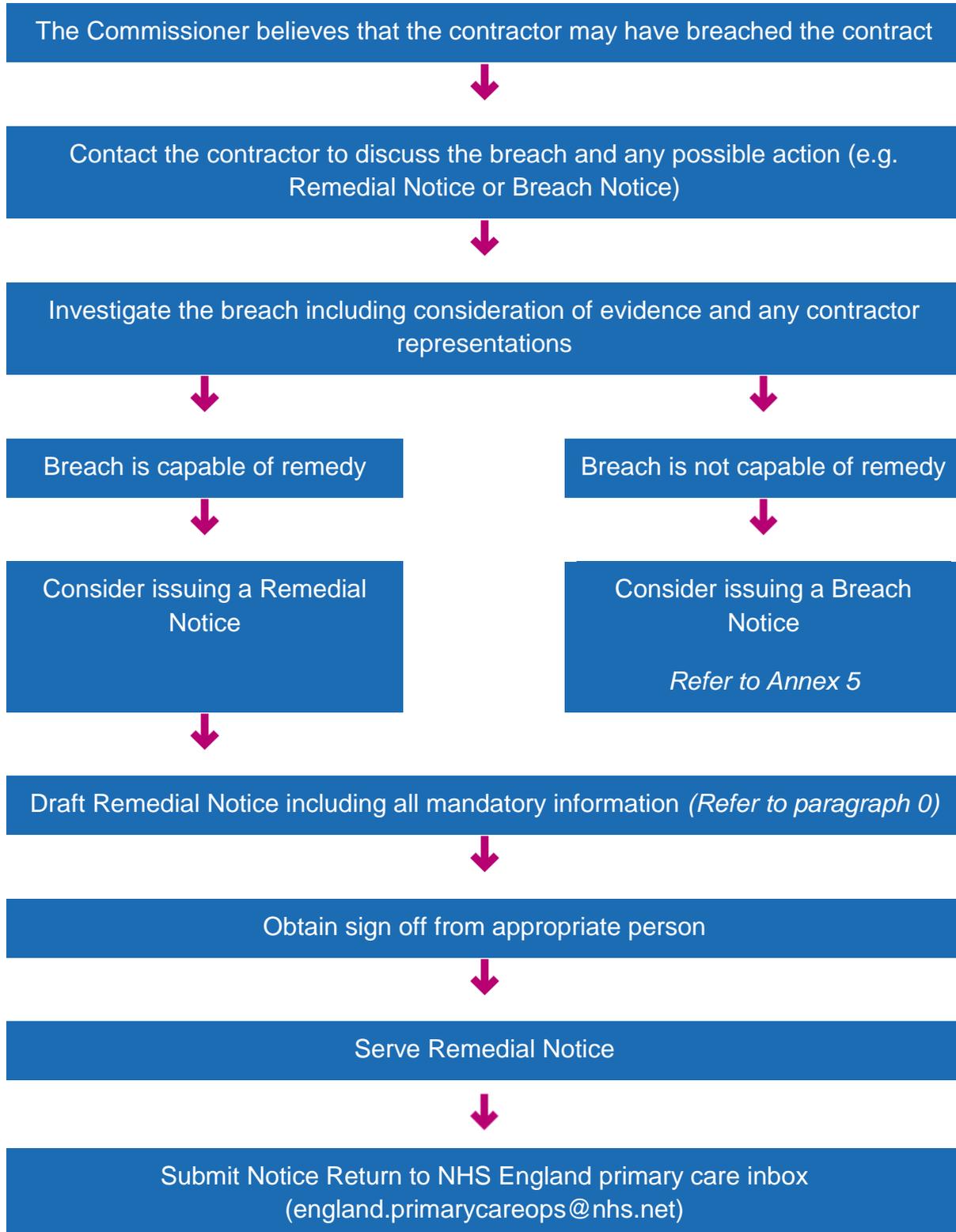
8.1 Contracts usually contain certain obligations on both parties on termination of the contract. The GMS Regulations, PMS Regulations and APMS Directions do not set out any requirements for primary care contracts to contain such provision but the Standard GMS Contract contains a number of obligations including provisions relating to:

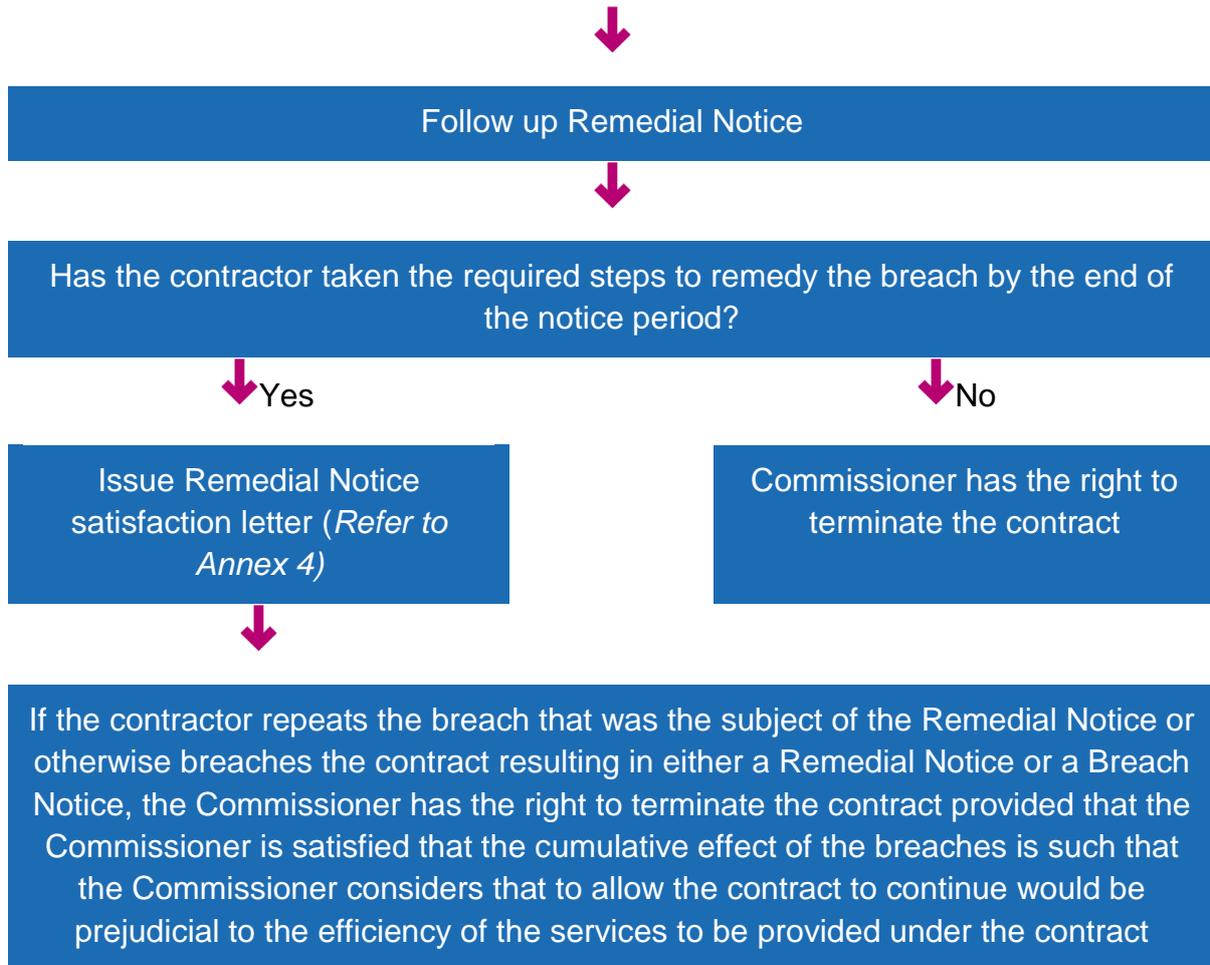
- 8.1.1 co-operation in dealing with any outstanding matters;
- 8.1.2 delivering up property owned by the other party; and
- 8.1.3 carrying out a financial reconciliation.

It is likely that PMS and APMS contracts will contain similar provisions. The Commissioner should consider the relevant contract to determine what obligations are set out on termination.

Annex 1

Remedial Notice Flowchart





Annex 2

Template Remedial Notice

[This Annex is provided as a template only and appropriate advice and support should be sought prior to issuing such a notice]

Dear *[Name]*

Remedial Notice

Following our recent communications and discussion on the *[insert date(s)]*, we hereby serve notice that we consider that you are in breach of your *[GMS/PMS/APMS] [contract/agreement]* dated *[insert start date of contract]* (the "Contract").

We consider that you have breached clause *[insert relevant clause]* of the Contract. This states:

"[insert wording of clause]"

We consider that you have breached this clause because *[insert details of the breach and any evidence relied upon in reaching this decision]*

We require you to remedy this breach by taking the following steps:

- *[insert details of action required – these are the steps that the contractor must take to rectify the breach]*

In order to remedy this breach this action must be completed to our satisfaction on or before *[insert date]*. *[If more than one action is listed, the remediation period for each should be clear]*

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

If you fail to comply with this Remedial Notice, repeat this breach or otherwise breach the Contract resulting in a further Remedial Notice or Breach Notice, we

may take steps to terminate your Contract or consider the imposition of a Contract Sanction.

If you do not agree with our decision to issue this Remedial Notice, you should contact us within 28 days of this notice. If, after making every reasonable effort, we are unable to resolve the dispute, you may wish to refer the matter to the NHS dispute resolution procedure by sending a written request to:

NHS Litigation Authority

FHS Appeal Unit

1 Trevelyan Square

Leeds

LS1 6AE

You do, of course, retain the right to seek support from your representative or defence body or Local Medical Committee.

Yours sincerely

[Name]

[Job title, etc]

Annex 3

Template Notice Receipt

[When hand delivering any notice under the contract, the Commissioner 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 Commissioner's file.]

Commissioner reference:

[insert date]

I *[insert name of Commissioner representative]* confirm that I have today at *[insert the time of delivery]* hand delivered a letter of notice to *[insert contractor's name]* in respect of their *[GMS/PMS/APMS]* *[contract/agreement]* dated *[insert start date of contract]* (the "Contract") on behalf of the Commissioner, *[insert address of Commissioner offices]*.

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

I, *[insert name of contractor]* hereby acknowledge receipt of a hand delivered letter of notice from the Commissioner in respect of my Contract.

Signature

Date of receipt

Practice Stamp

Annex 4

Template Remedial Notice Satisfaction Letter

[This letter is provided as a template only and the Commissioner should ensure that appropriate advice and support has been sought prior to issuing such a letter]

Dear **[Name]**

Remedial Notice Satisfied

Following the issue of our Remedial Notice reference **[insert Commissioner ref from notice]** on the **[insert date]**, in respect of the **[GMS/PMS/APMS]** **[contract/agreement]** dated **[insert start date of contract]** (the "Contract") and our subsequent review meeting on the **[insert date]**, we now write to confirm that we are satisfied that you have taken the required steps to remedy the breach within the agreed timescales.

We confirm that we will not be taking any further action in this matter.

Should you repeat this breach or otherwise breach the Contract resulting in a further Remedial Notice or Breach Notice, we may take steps to issue a notice to terminate your Contract or consider the imposition of a Contract Sanction.

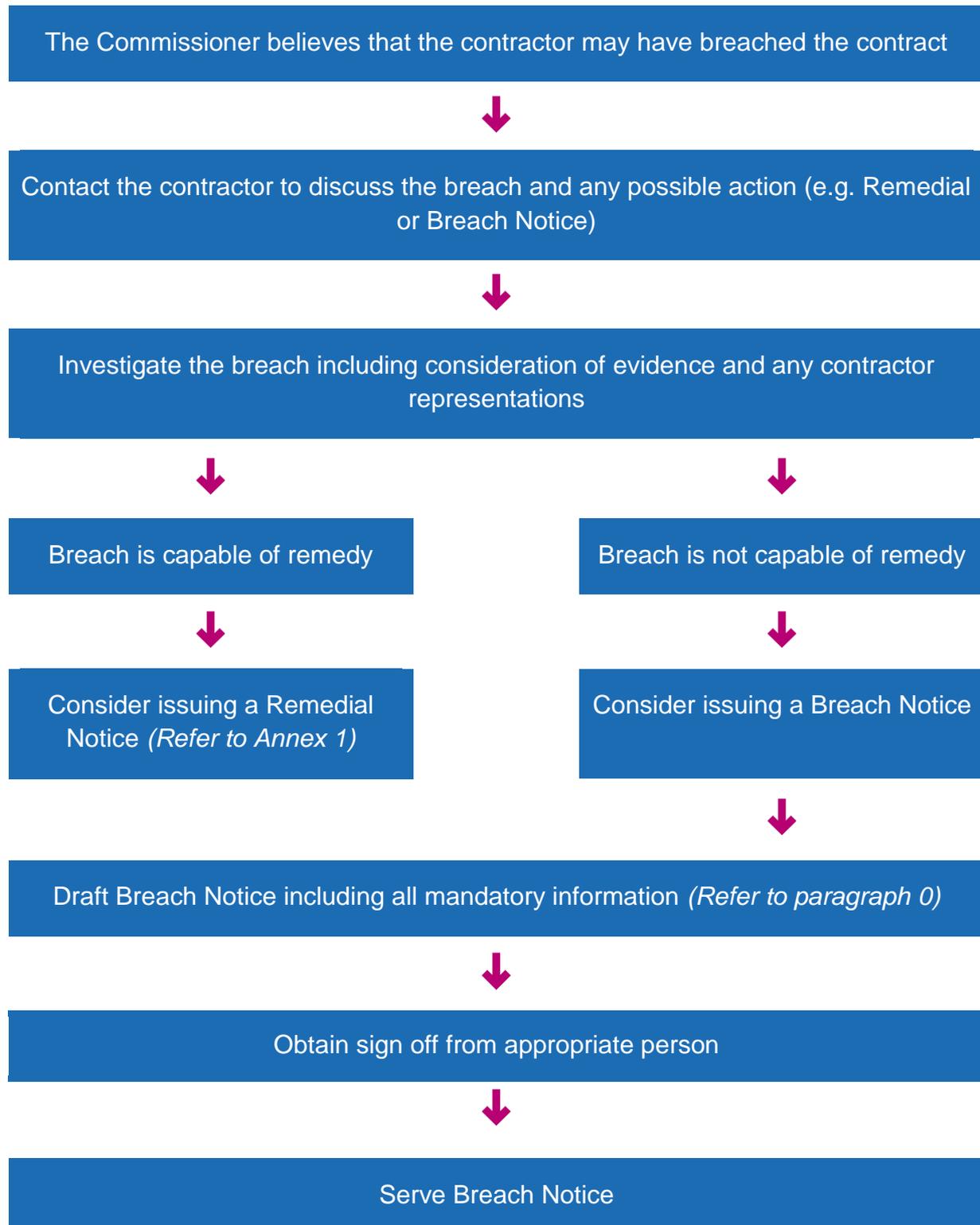
Yours sincerely

[Name]

[Job title, etc]

Annex 5

Breach Notice Flowchart





Submit Notice Return to NHS England primary care inbox
(england.primarycareops@nhs.net)



If the contractor repeats the breach that was the subject of the Breach Notice or otherwise breaches the contract resulting in either a Remedial Notice or a Breach Notice, the Commissioner has the right to terminate the contract provided that the Commissioner is satisfied that the cumulative effect of the breaches is such that the Commissioner considers that to allow the contract to continue would be prejudicial to the efficiency of the services to be provided under the contract

Annex 6

Template Breach Notice

[This Annex is provided as a template only and the Commissioner should ensure that appropriate advice and support has been sought prior to issuing such a notice]

Dear *[Name]*

Breach Notice

Following our recent communications and discussion on the *[insert date(s)]*, we hereby serve notice that we consider that you are in breach of your *[GMS/PMS/APMS] [contract/agreement]* dated *[insert start date of contract]* (the "Contract") on the following grounds:

We consider that you are in breach of *[insert clause relevant numbers from the contract]* of the Contract. This states:

"[insert wording of relevant clause]"

We consider that you are in breach because *[insert details of the breach with any evidence relied upon in reaching this decision]*.

We require that you do not repeat this breach.

If you repeat this breach or otherwise breach the Contract resulting in a Remedial Notice or a further Breach Notice, we may take steps to terminate your Contract or consider the imposition of Contract Sanctions.

If you do not agree with our decision to issue this Breach Notice, you should contact us within 28 days of this notice. If, after making every reasonable effort, we are unable to resolve the dispute, you may wish to refer the matter to the NHS dispute resolution procedure by sending a written request to:

NHS Litigation Authority

FHS Appeal Unit

1 Trevelyan Square

Leeds

LS1 6AE

You do, of course, retain the right to seek support from your representative or defence body or Local Medical Committee.

Yours sincerely

[Name]

[Job title, etc]

Annex 7

Calculating a Financial Contract Sanction

1. Calculating a Financial Contract Sanction

- 1.1 One example of where a financial sanction might be an appropriate action to take would be where a contractor had repeatedly failed to deliver an additional service, such as childhood immunisation. A repeat of any such failure, following the issue of a Remedial Notice or Breach Notice, would be a breach of contract. The Commissioner would be entitled to seek termination on those grounds but it may find it more appropriate to apply one of the three Contract Sanctions available.
- 1.2 If the Commissioner were to choose to apply a financial Contract Sanction, it should be able to calculate the cost of re-provision of that service for the registered population from another provider and would be able to refer to the SFE in order to calculate the appropriate deduction from the contract value and payments.
- 1.3 It would be these calculations that might suggest an appropriate level of financial Contract Sanction in respect of this particular breach example.
- 1.4 Some other examples of calculating a financial Contract Sanction are provided below for consideration:
 - 1.4.1 The higher of the cost of re-provision and the contractual cost – where the breach is on-going and a contract service cost can be quantified;
 - 1.4.2 The contractual service cost – where the breach has been remedied and the service cost can be quantified;
 - 1.4.3 Plus, in both the above examples, the cost to the Commissioner in management time involved in investigating and processing the breach;
 - 1.4.4 Where the contract service cannot be quantified, the cost to the Commissioner in management time involved in investigating and processing the breach.
- 1.5 The Commissioner cannot arbitrarily determine a penalty sum so any calculation should be consistent across the country to ensure equity and resilience to the process.
- 1.6 This should all be applied in a reasonable manner. The Commissioner should act reasonably and proportionately is deciding on the

appropriate level of financial sanction. Where possible, the hourly cost for management time should be set out in advance.

Annex 8

Template Contract Sanction Notice

[This Annex is provided as a template only and appropriate advice and support should be sought prior to issuing such a notice]

Dear [Name]

Notice of Sanction

Further to our recent communications and discussion on the [insert date(s)], we consider that we are entitled to serve notice to terminate your [GMS/PMS/APMS] [contract/agreement] dated [insert start date of contract] (the "Contract") on the following grounds:

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

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

[Insert full details of all previous Remedial Notices and/or Breach Notices issued and subsequent actions taken and outcomes]

Instead of serving notice to terminate the Contract, we have decided to impose a contract sanction. We are reasonably satisfied that the contract sanction to be imposed is appropriate and proportionate to the circumstances giving rise to our entitlement to terminate the Contract.

The details of the sanction are:

[Insert details of the nature of the sanction to be applied]

[If monies are to be withheld or deducted, this Contract Sanction Notice must set out how this has been calculated and the duration of any such withholding or deduction]

[If services are to be terminated, this Contract Sanction Notice must set out which services are terminated and from what date]

[If specified reciprocal obligations under the contract are to be suspended, this Contract Sanction Notice must set out the period of that suspension and its end date]

[An explanation of the effect of the imposition of the contract sanction must always be set out]

The sanction(s) above will be imposed on [insert date].

[Where there is more than one Contract Sanction imposed, ensure the Contract Sanction Notice makes clear when each Contract Sanction is imposed]

If you do not agree with our decision to issue this Sanction Notice, you should contact us within 28 days of this notice. If, after making every reasonable effort, we are unable to resolve the dispute, you may wish to refer the matter to the NHS dispute resolution procedure by sending a written request to:

NHS Litigation Authority

FHS Appeal Unit

1 Trevelyan Square

Leeds

LS1 6AE

You do, of course, retain the right to seek support from your representative or defence body or Local Medical Committee.

Yours sincerely

[Name]

[Job title, etc]

Annex 9

Template Termination Notice

[This Annex is provided as a template only and appropriate advice and support should be sought prior to issuing such a notice]

[date]

Dear [name]

Termination of [GMS/PMS/APMS] [contract/agreement]

Further to our recent communications, we consider that we are entitled to serve notice to terminate your [GMS/PMS/APMS] [contract/agreement] dated [insert start date of contract] (the "Contract") on the following grounds:

[insert:

- grounds, e.g. provision of untrue information;
- contract clause number that provides the right to terminate;
- explanation of situation and evidence relied on that led to the decision to terminate]

Your Contract will terminate on [insert date here]. During this period you should work with us to support our arrangements for dealing with the termination of the Contract.

If you do not agree with our decision to issue this Termination Notice, you should contact us within 28 days of this notice. If, after making every reasonable effort, we are unable to resolve the dispute, you may wish to refer the matter to the NHS dispute resolution procedure by sending a written request to:

NHS Litigation Authority

FHS Appeal Unit

1 Trevelyan Square

Leeds

LS1 6AE

You do, of course, retain the right to seek support from your representative or defence body or Local Medical Committee.

We enclose two copies of a declaration form in respect of receipt by you of this termination notice. I would be grateful if you would duly complete both forms and return one copy to me. The remaining copy is to be retained by you.

If you have any queries or need further assistance concerning the content of this termination notice, please contact us.

Yours sincerely

[name]

[title]

Enclosure: Declaration form of receipt of termination notice

Declaration of Receipt of Termination Notice

I, [insert name of contractor], hereby acknowledge receipt of the termination notice terminating my [GMS/PMS/APMS] [contract/agreement].

I also understand that I have the right to:

- seek support from my Local Medical Committee; and/or
- refer the matter in writing to the dispute resolution process.

Please complete the following information:

Title: _____

Print first name(s):
(in block capital letters) _____

Print surname:
(in block capital letters) _____

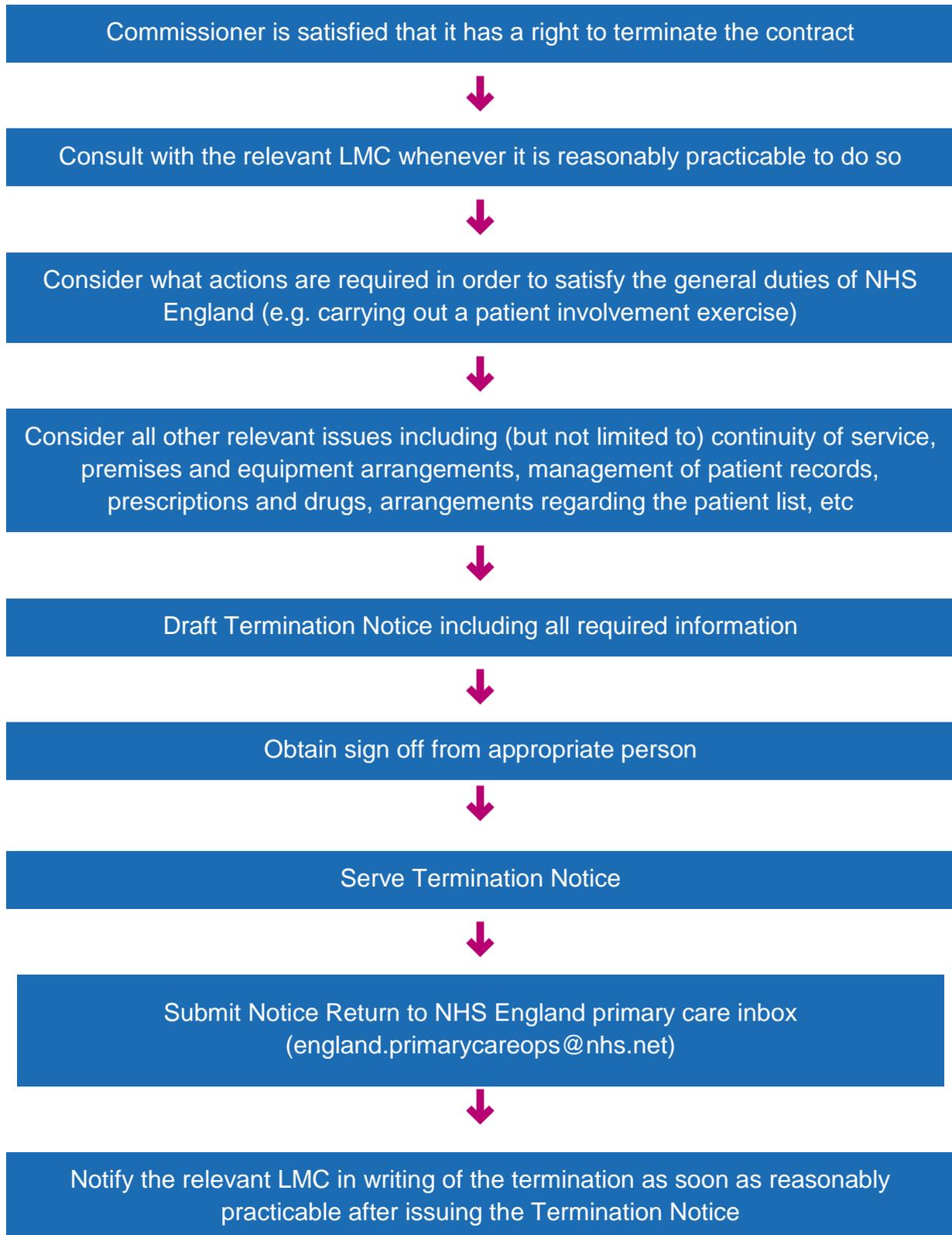
Signature: _____

Date termination notice
received: _____

Practice stamp:

Annex 10

Termination Flowchart



Annex 11

Fitness to Practice Matters

Part A

GMS Contracts

The wording below reflects paragraph 113 of Schedule 6 of the GMS Regulations as of 1 June 2015:

- (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 medical practitioner, that medical 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 company limited by shares—
 - (i) the company,
 - (ii) any person both legally and beneficially owning a share in the company, or
 - (iii) any director or secretary of the company, 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 5 was given under paragraph 85(2) or (3) or 86(2).
- (2) A person falls within this sub-paragraph if—
 - (a) it does not satisfy the conditions prescribed in section 28S(2)(b) or (3)(b) of the Act;

- (b) he or it is the subject of a national disqualification;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) he has been convicted in the United Kingdom of murder;
- (g) he has been convicted in the United Kingdom of a criminal offence other than murder and has been sentenced to a term of imprisonment of over six months;
- (h) subject to sub-paragraph (5), he has been convicted elsewhere of an offence which would if committed in England and Wales—
 - (i) constitute murder, or
 - (ii) constitute a criminal offence other than murder and been sentenced to a term of imprisonment of over six months;
- (i) 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 of this Act 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);
- (j) he or it has—
 - (i) been adjudged bankrupt or had sequestration of his estate awarded or a moratorium period under a debt relief order (under Part 7A of the Insolvency Act 1986) applies in relation to him unless he has been discharged from the bankruptcy or 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 to the Insolvency Act 1986 or Schedule 2A to the Insolvency (Northern Ireland) Order 1989, unless that order has ceased to have effect or has been annulled,
- (iia) been made the subject of 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, or
- (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;
- (k) 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;
- (l) 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;
- (m) 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;

- (n) 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
 - (o) 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 or with a company, 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)(c) 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; or
 - (c) in the case of a contract with a company limited by shares–
 - (i) a person both legally and beneficially holding a share in the company, or
 - (ii) a director or secretary of the company,
- as the case may be.
- (4) The Board shall not terminate the contract pursuant to sub-paragraph (2)(d)–
- (a) until a period of at least three months has elapsed since the date of the dismissal of the person concerned; or
 - (b) if, during the period 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)(h) 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; or
 - (c) in the case of a contract with a company limited by shares–
 - (i) a person both legally and beneficially holding a share in the company, or
 - (ii) a director or secretary of the company,

as the case may be.

Annex 11

Fitness to Practice Matters

Part B

PMS Agreement

The wording below reflects paragraph 105 of Schedule 5 of the PMS Regulations as of 1 June 2015:

- (1) The Board may serve notice in writing on the contractor terminating the agreement forthwith, or from such date as may be specified in the notice if—
 - (a) in the case of an agreement with an individual as a party, that individual; or
 - (b) in the case of an agreement with a qualifying body as a party—
 - (i) the qualifying body,
 - (ii) any person both legally and beneficially owning a share in the qualifying body, or
 - (iii) any director or secretary of the qualifying body, falls within sub-paragraph (3) during the existence of the agreement or, if later, on or after the date on which a notice in respect of his compliance with the conditions in regulation 5 was given under paragraph 80(2) or (3).
- (2) In the case of a person who is a party to an agreement made before the 1st April 2004 and which is deemed to be an agreement made under section 28C of the Act, the reference to “during the existence of the agreement” shall be read as excluding any period before the 1st April 2004.
- (3) A person falls within this sub-paragraph if—
 - (a) he or it (in the case of a qualifying body) is the subject of a national disqualification;
 - (b) subject to sub-paragraph (4), 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 (5), 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 agreement 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 151(2), (3) and (4) of the 2006 Act respectively) unless his name has subsequently been included in such a list;
- (e) he has been convicted in the United Kingdom of murder;
- (f) he has been convicted in the United Kingdom of a criminal offence and has been sentenced to a term of imprisonment of over six months;
- (g) subject to sub-paragraph (6), he has been convicted elsewhere of an offence—
 - (i) which would, if committed in England and Wales, constitute murder, or
 - (ii) 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;
- (h) he has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933;
- (i) he or it has—
 - (i) been adjudged 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 to the Insolvency Act 1986 or Schedule 2A to the Insolvency (Northern Ireland) Order 1989, unless that order has ceased to have effect or has been annulled,

- (iia) been made the subject of 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, or
 - (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,
 - (iv) an administrator, administrative receiver or receiver appointed in respect of it,
 - (v) an administration order made in respect of it under Schedule B1 to the Insolvency Act 1986, or
 - (vi) been wound up under Part IV of the Insolvency Act 1986;
- (j) 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;
- (k) 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
- (l) has refused to comply with a request by the relevant body for him to be medically examined on the grounds that it is concerned that he is incapable of adequately providing services under the agreement.
- (4) The Board shall not terminate the agreement pursuant to sub-paragraph (3)(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 party to the agreement;
- (b) in the case of an agreement with a qualifying body–
 - (i) a person both legally and beneficially owning a share in the qualifying body, or
 - (ii) a director or secretary of the qualifying body,

as the case may be.

- (5) The Board shall not terminate the agreement pursuant to sub-paragraph (3)(c)–

- (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 agreement at the end of the period specified in paragraph (b) if there is no finding of unfair dismissal at the end of those proceedings.

- (6) The Board shall not terminate the agreement pursuant to sub-paragraph (3)(g) where the Board is satisfied that the conviction does not make the person unsuitable to be–

- (a) a party to the agreement; or
- (b) in the case of an agreement with a qualifying body–
 - (i) a person both legally and beneficially owning a share in the qualifying body, or
 - (ii) a director or secretary of the qualifying body,

as the case may be.

Annex 11

Fitness to Practice Matters

Part C

APMS Contracts

The wording below reflects Direction 6(1)(v) of the APMS Directions as of 1 June 2015

- (1) The Board may serve notice in writing on the contractor terminating the APMS contract forthwith, or from such date as may be specified in the notice if–
 - (a) in the case of an APMS contract with an individual as a party, that individual;
 - (b) in the case of an APMS contract with a company–
 - (i) the company, or
 - (ii) any director or company secretary of the company,
 - (c) in the case of an APMS contract with a partnership–
 - (i) and individual member of the partnership, or
 - (ii) the partnership; or
 - (d) in the case of an APMS contract with an industrial and provident society, a friendly society, a voluntary organisation or any other body–
 - (i) the society, organisation or other body; or
 - (ii) an officer, trustee or any other person concerned with the management of the society, organisation or other body, falls within sub-paragraph (3) during the existence of APMS contract.
- (2) Not used
- (3) A person falls within this sub-paragraph if–
 - (a) he or it (in the case of a qualifying body) is the subject of a national disqualification;

- (b) subject to sub-paragraph (4), 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 (5), 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 agreement 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 151(2), (3) and (4) of the 2006 Act respectively) unless his name has subsequently been included in such a list;
- (e) he has been convicted in the United Kingdom of murder;
- (f) he has been convicted in the United Kingdom of a criminal offence and has been sentenced to a term of imprisonment of over six months;
- (g) subject to sub-paragraph (6), he has been convicted elsewhere of an offence—
 - (i) which would, if committed in England and Wales, constitute murder, or
 - (ii) 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;
- (h) he has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933;
- (i) he or it has—
 - (i) been adjudged 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 to the Insolvency Act 1986 or Schedule 2A to the Insolvency (Northern

- Ireland) Order 1989, unless that order has ceased to have effect or has been annulled,
- (iia) been made the subject of 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, or
 - (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,
 - (iv) an administrator, administrative receiver or receiver appointed in respect of it,
 - (v) an administration order made in respect of it under Schedule B1 to the Insolvency Act 1986, or
 - (vi) been wound up under Part IV of the Insolvency Act 1986;
- (j) 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;
- (k) 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
- (l) has refused to comply with a request by the relevant body for him to be medically examined on the grounds that it is concerned that he is incapable of adequately providing services under the agreement.

(4) The Board shall not terminate the agreement pursuant to sub-paragraph (3)(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 party to the agreement;
- (b) in the case of an agreement with a qualifying body—
 - (i) a person both legally and beneficially owning a share in the qualifying body, or
 - (ii) a director or secretary of the qualifying body,

as the case may be.

(5) The Board shall not terminate the agreement pursuant to sub-paragraph (3)(c)—

- (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 agreement at the end of the period specified in paragraph (b) if there is no finding of unfair dismissal at the end of those proceedings.

(6) The Board shall not terminate the agreement pursuant to sub-paragraph (3)(g) where the Board is satisfied that the conviction does not make the person unsuitable to be—

- (a) a party to the agreement; or
- (b) in the case of an agreement with a qualifying body—
 - (i) a person both legally and beneficially owning a share in the qualifying body, or
 - (ii) a director or secretary of the qualifying body,

as the case may be.

Annex 12

Termination due to breach of Regulation 4

The wording below reflects paragraph 111 of Schedule 6 of the GMS Regulations as of 1 June 2015:

- (1) Subject to sub-paragraph (1A), the Board shall serve notice in writing on the contractor terminating the contract forthwith if the contractor is an individual medical practitioner and the medical practitioner no longer satisfies the condition specified in regulation 4(1).
- (1A) Where the failure of an individual medical practitioner to continue to satisfy the condition specified in regulation 4(1) is the result of a suspension specified in sub-paragraph (3B), sub-paragraph (1) shall not apply unless—
 - (a) the contractor is unable to satisfy the Board that it has in place adequate arrangements for the provision of clinical services under the contract for so long as the suspension continues; or
 - (b) the Board is satisfied that the circumstances of the suspension are such that if the contract is not terminated forthwith—
 - (i) the safety of the contractor's patients is at serious risk, or
 - (ii) the Board is at risk of material financial loss.
- (2) Except in a case to which paragraph 106(4) applies, where the contractor is—
 - (a) two or more persons practising in partnership, and the condition specified in regulation 4(2)(a) is no longer satisfied; or
 - (b) a company limited by shares, and the condition specified in regulation 4(3)(a) is no longer satisfied, sub-paragraph (3) shall apply.
- (3) Where sub-paragraph (2)(a) or (b) applies, the Board shall—
 - (a) serve notice in writing on the contractor terminating the contract forthwith; or
 - (b) serve notice in writing on the contractor confirming that the Board will allow the contract to continue, for a period specified by the Board in accordance with paragraph (3A) (the “interim period”), during which time the Board shall, with the consent of the contractor, employ or

supply one or more general medical practitioners to the contractor for the interim period to assist the contractor in the provision of clinical services under the contract.

- (3A) The period specified by the Board under sub-paragraph (3)(b) shall not exceed–
- (a) six months; or
 - (b) in a case where the failure of the contractor to continue to satisfy the condition in regulation 4(2)(a) or, as the case may be, 4(3)(a), is the result of a suspension referred to in sub-paragraph (3B), the period for which that suspension continues.
- (3B) The suspensions referred to in sub-paragraphs (1A) and (3A)(b) are suspension–
- (a) by a Fitness to Practise Panel under–
 - (i) section 35D (functions of a fitness to practise panel) of the Medical Act 1983 in a health case, other than an indefinite suspension under section 35D(6) of that Act, or
 - (ii) section 38(1) (power to order immediate suspension etc after a finding of impairment of fitness to practise) of that Act; or
 - (b) by a Fitness to Practise Panel or an Interim Orders Panel under section 41A (interim orders) of that Act.
- (3C) In paragraph (3B), “health case” has the meaning given in section 35E(4) of the Medical Act 1983.
- (4) Before deciding which of the options in sub-paragraph (3) to pursue, the Board must, whenever it is reasonably practicable to do so, consult the Local Medical Committee (if any) for the area in which the contractor provides services under the contract.
- (5) If the contractor does not, pursuant to sub-paragraph (3)(b), consent to the Board employing or supplying a general medical practitioner during the interim period, the Board shall serve notice in writing on the contractor terminating the contract forthwith.
- (6) If, at the end of the interim period, the contractor still falls within sub-paragraph (2)(a) or (b), the Board shall serve notice in writing on the contractor terminating the contract forthwith.

(7) In sub-paragraphs (3) and (5), “general medical practitioner” has the same meaning as in regulation 4(1).

Annex 13

Template Notice Return

Name of NHS England region or CCG submitting this return	Date notice was issued	Name of practice to which the notice was sent and contract reference number	Type of notice – remedial, breach, contract sanction, or termination	Reasons for issue to notice	Action (if any) required by the notice