

Policy Reference: PC5

**NHS CORBY CLINICAL  
COMMISSIONING GROUP**

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*Policy for Managing a PMS Contractors right to a  
GMS Contract*

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<b>Description:</b>	Policy for Managing a PMS Contractors right to a GMS Contract
<b>Audience:</b>	All Staff of NHS Corby CCG (including members of the Governing Body), All contractors, Bidders and members of the CCG

### Consultation

Date	Name	Title and /or Organisation
Sept 2016	Primary Care Commissioning Committee	Primary Care Commissioning Committee, NHS Corby CCG

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## 1. Introduction

- 1.1 The aim of this policy is to ensure that all parties to the contract understand the process and procedures that must be followed when a contractor requests a transfer from a PMS agreement to a GMS contract.
- 1.2 Subject to the contractor's eligibility to hold a GMS contract and the requirement to provide essential services, then there should be no variation in the application of this policy.

## 2. Roles and Responsibilities

- 2.1 Commissioners will need to ensure that the finance department and relevant persons are made aware of the change to the contracting arrangements as there will be long term financial implications. A GMS contract is not time limited and exists in perpetuity. Anyone with delegated authority can sign off the transfer.
- 2.2 The payment and contract management system must be updated by the officer managing the transfer.

## 3. Background

- 3.1 A contractor holding a PMS agreement which is providing essential services, has the right to a GMS contract in accordance with Regulation 19 of the PMS Regulations which states:  
  
"A contractor which is providing essential services and which wishes a general medical services contract to be entered into pursuant to this regulation shall notify [the Commissioner] in writing at least three months before the date on which it wishes the general medical services contract to be entered into."
- 3.2 This policy sets out the decision making process that the Commissioner will follow, together with refusal (where eligibility is not satisfied), appeal processes and discussions regarding any actions that are required.

## **4. Notification from a Contractor**

- 4.1 The Commissioner should receive at least three months' notice in writing from the contractor requesting a GMS contract.
- 4.2 The contractor's notice must:
  - 4.2.1 state that the contractor wishes to terminate the PMS agreement;
  - 4.2.2 state the date on which the contractor wishes the PMS agreement to terminate which must be at least three months after the date of service of the notice;
  - 4.2.3 give the name of the person(s) with whom the contractor wishes the Commissioner to enter into a GMS contract (a person's name may only be given in a notice if that person is a party to the PMS agreement); and
  - 4.2.4 confirm that the person(s) named meet the conditions set out in section 86 of the NHS Act (persons eligible to enter into GMS contracts) and regulations 4 and 5 (where applicable) of the GMS Regulations or, where the contractor is not able to confirm, the reason why it is not able to do so and confirmation that the person(s) immediately prior to entering into the GMS contract will meet those conditions.

## **5. Process for PMS Agreements**

- 5.1 The Commissioner must acknowledge receipt of the notice within seven days beginning on the day it received the notice.
- 5.2 While it is not a requirement of the PMS Regulations, when the Commissioner receives such a notice it should discuss the full implications of this action with the contractor to ensure the contractor has fully understood the necessary changes to the contractual income

streams (see paragraph 0) and should advise the contractor to seek their own independent advice.

- 5.3 The Commissioner will check that all necessary information has been provided in the contractor's notice and undertake a review of the PMS agreement to establish if the contractor provides essential services; and if they are eligible to hold a GMS contract (as set out in section 86 of the NHS Act (persons eligible to enter into GMS contracts) and regulations 4 and 5 of the GMS Regulations. This information can also be found in chapter 5 (Which medical contract when?).
- 5.4 The Commissioner must apply the GMS SFE on first setting up a GMS contract and calculating the global sum monthly payment. Whilst a PMS contractor has the right to a GMS contract, there is no entitlement for the contractor to carry the same funding arrangements it had under the PMS agreement into that GMS contract. GMS contracts are funded according to terms set out in the GMS SFE while PMS agreements are funded through local agreement. There is the discretion to agree additional payments under GMS arrangements outwith the GMS SFE which are not necessarily payable under the GMS SFE. It is essential that the Commissioner has ascertained the financial impact of this decision of the contractor to move to a GMS contract.
- 5.5 If the contractor does not provide essential services, the Commissioner must notify the contractor that they are not entitled to transfer to a GMS contract. A template letter is provided in Annex 1.
- 5.6 If the contractor is not eligible to hold a GMS contract the Commissioner must refuse to enter into a GMS contract. A template letter is provided in Annex 2.
- 5.7 If the Commissioner confirms that the contractor provides essential services and is eligible to hold a GMS contract under section 86 of the NHS Act and regulations 4 and 5 of the GMS Regulations, the Commissioner will acknowledge receipt of the notice and outline the next steps within seven days of receipt of the notice. A template letter is provided in Annex 3.

- 5.8 The GMS contract will start immediately after the termination of the PMS agreement. The GMS contract start date should be the date set out in the notice to the Commissioner unless a different date is agreed by the parties. The GMS contract will include all the terms required by the GMS Regulations.
- 5.9 The new GMS contract must require the provision of the same services that were commissioned by NHS England (or a CCG under co-commissioning arrangements) under the PMS agreement and were provided by the contractor immediately prior to the PMS agreement terminating, unless the parties otherwise agree.
- 5.10 The names of the patients included in the contractor's list of patients immediately before the PMS agreement termination must be included in the first list of patients prepared and maintained by the Commissioner.
- 5.11 The out of hours services must be the same as were provided under the PMS agreement before it terminated.
- 5.12 The Commissioner must use the current standard GMS contract ensuring that it is amended to the specific contractor.
- 5.13 Once a GMS contract is agreed and entered into and the PMS agreement has terminated, the Commissioner must ensure all nationally held records of the contractor's status are adjusted appropriately. This must include, but not be limited to, changing the contractor's status on QMAS/CQRS, from PMS to GMS, to ensure that the correct quality and outcomes framework calculations are completed at year end and any contractual payment systems used, (i.e. Exeter).
- 5.14 The calculation of the contractor's first Initial Global Sum Monthly Payment must be made in accordance with Part 1 of the GMS SFE.

## **6. Disputes**

- 6.1 Where there is a dispute about whether or not a person satisfies the conditions set out in section 86 of the NHS Act or regulations 4 and 5

of the GMS Regulations, the contractor may appeal to the First-Tier Tribunal.

- 6.2 Any other dispute about the GMS contract shall be determined by the Secretary of State (the FHSAU) in accordance with regulation 9(2) and (3) of the GMS Regulations (pre-contract disputes).
- 6.3 The Commissioner can identify whether the contract is an NHS contract or not by reviewing the agreement. This will enable the Commissioner to identify whether they can apply for NHS dispute resolution (with or without the need for the written consent of the contractor) if appropriate.

## Annex 1

### PMS Agreement Transfer to GMS Contract – Template Letter (Essential Services)

[date]

Dear [name]

Contract No [insert contract number]

Thank you for contacting us. I acknowledge receipt of your notice dated [date] requesting a transfer of your PMS agreement to a GMS contract.

On review of your current PMS agreement, I note that you do not provide essential services.

Regulation 19 of the National Health Service (Personal Medical Services Agreements) Regulations 2004 states:

*"A contractor which is providing essential services and which wishes a general medical services contract to be entered into pursuant to this regulation shall notify the Board in writing at least three months before the date on which it wishes the general medical services contract to be entered into."*

We cannot approve your request to transfer your PMS agreement to a GMS contract as you do not meet the criteria required.

If you do not agree with this decision you have the right to raise your dispute with the Secretary of State in accordance with regulation 9(2) and (3) of the National Health Service (General Medical Services Contracts) Regulations 2004 (pre-contract disputes).

Yours sincerely

[name]

[title]

## Annex 2

### PMS Agreement Transfer to GMS Contract – Template Letter (Eligible Persons)

[date]

Dear [name]

Contract No [insert contract number]

Thank you for contacting us. I acknowledge receipt of your notice dated [date] requesting a transfer of your PMS agreement to a GMS contract.

On review of your current arrangements you do not meet the conditions set out in [section 86 of the NHS Act 2006 (persons eligible to enter into GMS contracts) / Regulations 4 and 5 (where applicable) of the National Health Service (General Medical Services Contracts) Regulations 2004]. This is because:

*[insert which requirements have not been met]*

We are unable to grant your request to transfer to a GMS contract.

If you do not agree with this decision you may appeal to the First-Tier Tribunal.

Yours sincerely

[name]

[title]

## Annex 3

# PMS Agreement Transfer to GMS Contract – Template Letter

[date]

Dear [name]

Contract No [insert contract number]

Thank you for contacting us. I acknowledge receipt of your notice dated [date] requesting a transfer of your PMS agreement to a GMS contract.

We will now undertake the next steps set out below and will contact you within 28 days of this letter for further discussions:

[insert practicalities]

In the meantime if you have any questions please contact us.

Yours sincerely

[name]

[title]