

Guidance on handing back a GMS/PMS contract

The following guidance has been produced with the aim of supporting practices who may be considering handing back their GMS/PMS contract and winding up their business. It looks at the consequences of termination and possible alternatives, but it does not go into detail about selling of assets, the payment of debts and liabilities, or the implications for partnerships and individuals of making staff redundant. These matters should be dealt with only after obtaining professional advice on the processes and procedures you need to follow and the potential liabilities you may face.

Alternatives to handing back a contract

Handing back a contract should be seen as a last resort and only contemplated when all possible alternatives have been considered.

The GPC has produced [guidance](#) and advice that can provide practical support to manage daily workloads and which provides examples of different ways of working under pressure and at scale. GP partners are encouraged to read it and discuss strategies to take control of their workload within practices.

This might extend to working with other local practices in networks and federations, or if appropriate in formal mergers of partnerships or practices. Further guidance is available [here](#). It might also be possible to find another healthcare provider who might be willing to take over your contract.

In the case of a single hander, an alternative route might be to consider taking on a new partner, or multiple partners, who would be able to take over the practice, allowing them to step down.

Aside from the above, GPC has created guidance on how to mitigate the possibility of being the 'last partner standing'. This can be found [here](#). With any of these possible solutions, practices are urged to contact their LMC in the first instance for help and advice. A list is available [here](#).

Additional assistance may also be available from your local commissioner (CCG or NHS England) who can work with you to help find an acceptable solution, potentially through financial assistance or other support mechanisms, not least because receiving the patient list back is likely to become an expensive problem for them to solve.

Checking your exposure

As noted above, handing back a contract is not simply a matter of termination, there are potential consequences that need to be considered. It should not be viewed as a 'soft' option or a standalone solution. There are a number of financial and legal implications and it is important that practices make informed decisions about whether handing back their contract will leave them exposed.



What should be considered?

Premises

- **Mortgage** – If you have a mortgage and are looking to repay the borrowing early, you may be liable for an early redemption penalty, which could run into hundreds of thousands of pounds. If you have a mortgage and are looking to retain the premises and indeed any borrowing over the same, you must consider how you will meet the monthly repayments. Ordinarily these would have been met by notional rent payments but it is important to consider that any ability to claim reimbursements under the Cost Directions is linked to you holding a core NHS contract. If you handback your core contract you will lose your ability to seek reimbursement which may prejudice your ability to meet your mortgage repayments.

Leases

- **Break clauses** – Check if you have a break clause enabling you to break where you cease to hold a core contract and what the conditions of the break clause (including the timescales by when notices must be served) are. If there is no break clause, your rent and service charges will continue unless and until you can assign the lease, the landlord agrees to end the lease early or the lease term comes to an end. To the extent that none of these prove possible then the ongoing costs under the lease will, unless some comfort or guarantee has been provided by third parties (such as your commissioner), become your personal responsibility as your ability to claim for reimbursements under the Cost Directions will have ended. The lease and the partnership agreement should be read to see what the options/consequences are to terminating a lease early.
- **Repairing obligations** – aside from checking whether you have the ability to break your lease it is important to look at what parts of the building you are responsible for, particularly if there are concerns about dilapidations. Even if the building has not been maintained properly for 20 years you may still be responsible for putting defects right on the basis that most leases will require you to “yield up” the premises (effectively put it into a good state of repair and condition).

Other contracts

- Check to see if the partnership has any liabilities and/or other contractual obligations which would need to be wound up. These could include:-
 - Interests in any provider companies or GP federations
 - lease/hire purchase contracts for IT or telephone equipment
 - contracts for the provision of services (for instance HR support)
 - loans acquired to buy into the practice or buy out former partners which still need to be repaid?

Staff

- In relation to your staff you will, unless your staff transfer to a new provider by operation of TUPE, need to go through formal procedures in connection with redundancy and ultimately pay the appropriate statutory (and potentially contractual) redundancy costs. For more information in relation to handling redundancy issues with your staff please refer to the [BMA's Employment Advisory Service](#).

Extraordinary costs/obligations

- Locum cover
- Costs for handling an orderly handover of patient records and/or the service to any new provider
- Professional fees (financial, legal etc.)
- Indemnity – most agreements set out that membership is on an annual basis and is normally only terminated at the end of the membership year. Therefore you may not be entitled to a refund

Terminating the contract

To the extent that you operate as a partnership, before making the final decision to hand back your GMS/PMS contract, you will need to consider the existing partnership agreement (where relevant); in particular those provisions concerning decision making. The termination of the contract will usually be covered within the agreement and this should be looked at before proceeding. If your agreement does not cover this eventuality, or you don't have a practice agreement in place (in which case you are likely to be operating as a partnership at will under the Partnership Act 1890) you should get advice to ensure that the taking of such action is not in breach of your contractual obligations.

Leaving aside the need to consider any partnership agreement, you will need to give notice in writing to NHS England in accordance with the Regulations. The GMS notice period is 6 months for a partnership and 3 months for a sole practitioner. The GMS contract will come to an end on the last day of the month in which the notice period expires. The required PMS notice period is a minimum of 6 months regardless of the type of contractor.

Notifying patients

When a practice closes, NHS England become responsible for the continuity of primary medical services for those patients. The onus is on the commissioner to inform patients of their options and the other practices in the area where they could register. We would advise practices to advertise that the practice is closing with posters in the waiting room, letters that would be picked up at reception or notes on the bottom of repeat prescriptions.

At the point of termination your patient list will return to NHS England and you will no longer have an obligation to provide patient care. However this is not the end of the matter. The business will continue to operate until it is formally closed and therefore you will continue to have expenses associated with it that must be paid even though your primary income stream has ceased.

If you are affected by any of the items noted in this guidance document please do contact your LMC or BMA regional representative before taking any decisive action.

If you need formal support and advice in connection with

1. exploring other options (mergers, federations, etc.) to shore up and strengthen your practice; and/or
2. quantifying the potential exposure to liability that you may face if your core contract is handed back

then please contact our legal services provider, BMA Law, by telephone on 0300 213 2014 or by e mail on info@bmalaw.co.uk. In direct response to concerns raised at the LMC Secretaries conference they have established a "practice health check" service with the aim of helping practices navigate this issue so an informed decision can be made.

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