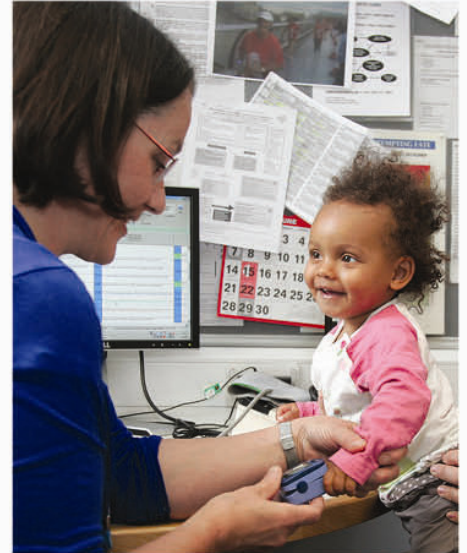
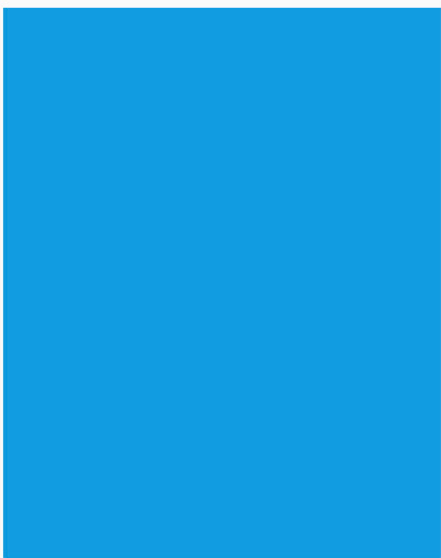


**Standard  
operating policies  
and procedures  
for primary care**



**Procedure for the  
termination of  
General Ophthalmic  
Services contracts**



# **Procedure for the termination of General Ophthalmic Services contracts**

*Standard operating policies and procedures for  
primary care*

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# Purpose of policy

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

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

This policy should be read in conjunction with the Procedure for the Assurance of General Ophthalmic Services contracts.

# Background

The following section of the policy looks at the termination of General Ophthalmic Services (GOS) contracts and the approach that the NHS Commissioning Board (NHS CB) needs to take.

## Scope of the policy

To provide a consistent approach in managing GOS contracts when:

- managing deaths in service – contracts with individuals;
- termination of contract by contractor;
- checks to be carried out before terminating a contract; and
- insolvency.

Please note that this policy should be read together with the procedure for the Assurance of General Ophthalmic Services contracts which provides examples of termination notices.

# Managing deaths in service – contracts with individuals

Where the contract is with an individual who dies, the default position is that contract would terminate seven days after the date of death unless the executor of the deceased individual's estate has asked that the contract should continue.

The NHS CB has discretion to extend the contract for up to three months if the deceased contractor's estate notifies the NHS CB that they are employing or supplying one or more ophthalmic practitioners to perform ophthalmic services under the contract throughout the period for which it continues.

This three-month extension period gives the widow, widower or other beneficiary of the estate the opportunity to consider whether they wish to run the practice themselves, employ performers and apply for a GOS contract in their own right or to sell the practice as a going concern to another person or company.

The three-month extension should allow ample time for consideration of the new application but, if an application is pending determination, the NHS CB may further extend the deceased contractor's contract for up to a further three months to enable the new application to be determined, making a potential maximum extension period of up to six months. After six months the deceased contractor's contract must be terminated.

# Termination of contract by contractor

Most GOS contracts are terminated at the request of the contractor. The default position is that contracts terminate at the end of the third calendar month following the month in which a request to terminate their contract has been received ie if the request for termination is received 15 April 2013 the contract would terminate 31 July 2013.

It is often the case that contractors are unable or reluctant to give up to four months' notice, so there is the option for the NHS CB to agree a shorter termination period at its discretion.

Where a practice is being sold to an existing contractor the time period can be made much shorter because all that is needed is a contract variation adding the practice premises to clause 24 and 29 of the new owner's existing GOS contract. However, the variation should only be issued once the NHS CB is satisfied that the premises, equipment, record-keeping and staffing arrangements meet the required standard.

Where the practice is being sold to a person or company who needs a new contract the old contract would normally be terminated by agreement on the day before the new contract comes into operation.

Contractors can sometimes mistakenly believe that once they have sold their practice, their contract and their responsibilities under it have automatically come to an end. This is not the case.

The NHS CB will need between six weeks and three months to determine a new contract application and during this time the old contractor must remain under contract to the NHS CB. This is to ensure continuity of patient care to avoid 'contract limbo' and to continue operation as normal by undertaking GOS sight test and issuing NHS optical vouchers.

Since the old contractor no longer owns the business he/she has no practical control over how the business operates and over how the new owner is meeting the terms of the GOS contract. However, the GOS contract still subsists and the old contractor has responsibility without any authority. The NHS CB may therefore have to hold the old contractor to account if the practice is mismanaged during this period.



It is in everyone's interest therefore for:

- contractors to give the NHS CB as much notice of change as possible;
- the NHS CB to process contract variations and new applications in a timely manner; and
- all parties to collaborate to ensure a smooth and safe transition for patients.

# Checks to be carried out before terminating a contract

Before a contract is allowed to be terminated the key issue for the NHS CB to consider is how the proposed arrangements for either handing the practice onto a successor or winding up the practice will affect patients.

If the practice is being sold as a going concern and a new contract is to be awarded to the practice purchaser, the NHS CB needs to satisfy itself that the arrangements for keeping the patient records of the old contractor are satisfactory and that any uncollected glasses supplied by the old contractor will be supplied by the new contractor.

Where a practice is being closed the record keeper of last resort will be the NHS CB itself but the NHS CB is entitled to require the outgoing contractor to deliver the patient records to another local practice of the NHS CB's choice.

All the contract clauses end with the contract itself except the following which expressly survive termination:

- Clauses 52-55 Patient Records.
- Part 13 – Clauses 80-87 Fees and Charges.
- Part 17 – Clauses 101-116 Complaints.
- Part 18 – Clauses 117-123 Dispute Resolution.
- Clauses 187- 193 Consequences of Termination.
- Clauses 197 and 198 Governing Law and Jurisdiction.

# Insolvency

## **Introductions to insolvency**

There are two types of insolvency:

- Personal insolvency.
- Company insolvency.

Insolvent individuals are either adjudged bankrupt or make an Individual Voluntary Arrangement (IVA) with their creditors. Companies either have an administrator, receiver or administrative receiver appointed or make a Company Voluntary Arrangement (CVA) with their creditors.

## **Termination of contracts following insolvency**

Where an individual or company ceases to trade normally and where the individual or company is a GOS contractor they cease to satisfy the conditions imposed by Regulation 4 of the General Ophthalmic Services Contracts Regulations 2008 and the NHS CB must serve notice on the contractor, terminating the contract forthwith.

There is a difficulty with the term forthwith because depending on circumstances the NHS CB may not be informed about the insolvency until it has happened.

There is as yet insufficient case law to say whether it is legitimate for the NHS CB to back-date the termination notice to the date on which the insolvency took effect. The NHS CB may wish to seek its own legal advice before taking any action.

Any residual payments due to the contractor in relation to the period before the contract was terminated should be made as instructed by the administrator or receiver.

## **Sale of viable practices**

Quite often the administrator or receiver of an insolvent company will do their best to keep the company trading and to seek a buyer for some or all of the optical practices. The administrator or receiver may be unaware that

depending on circumstance the NHS CB maybe unwilling to continue the GOS contract while the company remains in administration or receivership.

Where a viable practice is sold to a company or individual who does not already hold a GOS contract with the NHS CB the new provider will be required to make a full new contract application. Such a new contract application will be subject to the usual requirements concerning the suitability of premises, equipment, record-keeping, staffing arrangements and usual director checks (as appropriate).

Inevitably in such circumstances the practice concerned is likely to go through a period of contract limbo, ie a period during which the practice may not treat NHS patients either by carrying out GOS sight tests or by issuing NHS optical vouchers.

These practices may of course continue to trade in the private sector and they may also redeem any NHS optical vouchers issued by other GOS contractors and carry out repairs and replacements to glasses for eligible patients using form GOS4.

### **Variation to contracts**

If a practice previously owned by an insolvent GOS contractor is sold to a company or individual who already holds a GOS contract with the NHS CB then the practice premises maybe added to the GOS contract of the purchasing contractor by means of a contract variation to clauses 24 and 29 of their contract.

NHS CB would need to first check the suitability of the premises, equipment, record-keeping and staffing arrangements before varying the contract. This is the only circumstance in which it is appropriate to change the contractor by means of a variation rather than a new contract.

### **Winding up arrangements**

The administrator or receiver does not stand directly in the shoes of the insolvent contractor. Insolvency practitioners have as a primary duty to maximise the payout to creditors rather than adhere to the letter of the GOS contract. The principal winding-up processes are likely to concern the supply of uncollected glasses and arranging the safe storage of patient records or their transfer to another local contractor. The NHS CB may need to work closely with the administrator or receiver to ensure that the winding-up arrangements are carried out appropriately and in the best interest of the

former NHS patients of the insolvent contractor before making any remaining payments due under the contract.

When a contract is terminated, clause 188.3.2 of the mandatory services contract requires the former contractor to co-operate with the NHS CB to enable patients to be referred to other contractors and this includes delivering patient records to such other appropriate person or persons as the NHS CB specifies.

Please note, spectacles may only be supplied to patients who are aged under 16 or registered as visually impaired or severely visually impaired, face-to-face by or under the supervision of a registered optical or medical practitioner.

# Annex 1: abbreviations and acronyms

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

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

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



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