

Policy Book for Primary Dental Services

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Policy Book for Primary Dental Services

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The National Health Service Commissioning Board was established on 1 October 2012 as an executive non-departmental public body. Since 1 April 2013, the National Health Service Commissioning Board has used the name NHS England for operational purposes.

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CHAPTER 1

Introduction

1. Introduction

- 1.1 NHS England became responsible for direct commissioning of primary care services on 1 April 2013 and at that time published a suite of policies underpinning its single operating model.
- 1.2 Those policies have been reviewed and refined in light of:
 - 1.2.1 feedback from users;
 - 1.2.2 engagement with stakeholders;
 - 1.2.3 the introduction of different models of co-commissioning;
 - 1.2.4 the changing organisational structure of NHS England under the organisational alignment and capability programme; and
 - 1.2.5 contractual and regulatory changes.
- 1.3 This policy book provides new and revised policies to support a consistent and compliant approach to primary care commissioning across England.

2. Structure

- 2.1 The policies have been arranged into a single policy book. Chapters 2 to 4 provide introductory information on co-commissioning and the general duties of NHS England. Each subsequent chapter contains a policy on a discrete matter with cross references indicating where other policies may be relevant.
- 2.2 It is NHS England's intention to update the policies periodically and users of this policy book are encouraged to ensure that the most up to date policy book is used at all times.

3. Transitional Arrangements

- 3.1 This policy book replaces the previous policies. The processes and procedures set out in this policy book must be followed where matters arise after the date of publication of this policy book.
- 3.2 Where a matter arose prior to the publication of this policy book and parties are following a previous policy, the parties should continue to follow that previous policy as this would have been the expectation of the parties.
- 3.3 Parties following a previous policy should consider switching to the relevant policy set out in this policy book if there is a natural transitional point in the matter and provided all parties agree.

CHAPTER 2

Abbreviations and Acronyms

1. Abbreviations and Acronyms

1.1 The following abbreviations and acronyms are used:

CCG	Clinical Commissioning Group
CQC	Care Quality Commission
FHSAU	Family Health Services Appeal Unit
GDS	General Dental Services
GDS Regulations	The National Health Service (General Dental Services Contracts) Regulations 2005
HWB	Health and Wellbeing Board
LDC	Local Dental Committee
NHS Act	National Health Service Act 2006
NHS BSA	NHS Business Services Authority
NHS DS	NHS Dental Services
NICE	National Institute for Health and Care Excellence
PDS	Personal Dental Services
PDS Regulations	The National Health Service (Personal Dental Services Agreements) Regulations 2005
SFE	Statement of Financial Entitlements
UDA	Unit of Dental Activity

UOA	Unit of Orthodontic Activity
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CHAPTER 3

Co-commissioning

1. Introduction

- 1.1 This chapter provides an overview of the models of co-commissioning and how the medical services policies reflect the involvement of CCGs under different co-commissioning models.
- 1.2 For 2015/16, the scope of primary care co-commissioning was primary medical services only. This information is provided for background to persons involved in dental and eye health services.

2. Background

- 2.1 In May 2014, NHS England invited CCGs to come forward with expressions of interest to take on an increased role in the commissioning of primary care services. The intention was to empower and enable CCGs to improve primary care services locally for the benefit of patients and local communities.
- 2.2 CCGs could choose which form of co-commissioning they would like to adopt:
 - 2.2.1 greater involvement in primary care decision-making;
 - 2.2.2 joint commissioning arrangements; or
 - 2.2.3 delegated commissioning arrangements.
- 2.3 In April 2015, over 70 percent of CCGs adopted either joint or delegated commissioning arrangements for primary medical services.

3. Co-commissioning Models

Greater involvement in primary care co-commissioning

- 3.1 Greater involvement in primary care co-commissioning is an invitation to CCGs to collaborate more closely with NHS England to ensure that decisions taken about healthcare services are strategically aligned across the local health economy.
- 3.2 CCGs who wish to have greater involvement in primary care decision making could participate in discussions about all areas of primary care

including primary medical care, eye health, dental and community pharmacy services, provided that NHS England retains its statutory decision-making responsibilities and there is appropriate involvement of local professional networks.

Joint commissioning arrangements

- 3.3 A joint commissioning model enables one or more CCGs to assume responsibility for jointly commissioning primary medical services with NHS England, either through a joint committee or “committees in common”. Joint commissioning arrangements give CCGs and NHS England an opportunity to more effectively plan and improve the provision of out-of-hospital services for the benefit of patients and local populations.
- 3.4 The functions that joint committees cover include:
 - 3.4.1 GMS, PMS and APMS contracts (including the design of PMS and APMS contracts, monitoring of contracts, taking contractual action such as issuing branch/remedial notices, and removing a contract);
 - 3.4.2 newly designed enhanced services (“Local Enhanced Services (LES)” and “Directed Enhanced Services (DES)”);
 - 3.4.3 design of local incentive schemes as an alternative to the Quality and Outcomes Framework (QOF);
 - 3.4.4 the ability to establish new GP practices in an area;
 - 3.4.5 approving practice mergers; and
 - 3.4.6 making decisions on ‘discretionary’ payments (e.g., returner/retainer schemes).
- 3.5 Joint commissioning arrangements exclude individual GP performance management (medical performers’ list for GPs, appraisal and revalidation). NHS England is also responsible for the administration of payments and list management.
- 3.6 CCGs have the opportunity to discuss dental, eye health and community pharmacy commissioning with NHS England and local professional networks but have no decision-making role.

Delegated commissioning arrangements

- 3.7 Delegated commissioning is an opportunity for CCGs to assume full responsibility for commissioning general practice services. Legally, NHS

England retains the residual liability for the performance of primary medical care commissioning. Therefore, NHS England will require robust assurance that its statutory functions are being discharged effectively. CCGs continue to remain responsible for discharging their own statutory duties, for instance, in relation to quality, financial resources and public participation.

- 3.8 The following primary care functions are included in delegated arrangements:
 - 3.8.1 GMS, PMS and APMS contracts (including the design of PMS and APMS contracts, monitoring of contracts, taking contractual action, such as issuing branch/remedial notices, and removing a contract);
 - 3.8.2 newly designed enhanced services ("Local Enhanced Services (LES)" and "Directed Enhanced Services (DES)");
 - 3.8.3 design of local incentive schemes as an alternative to the Quality and Outcomes Framework (QOF);
 - 3.8.4 the ability to establish new GP practices in an area;
 - 3.8.5 approving practice mergers; and
 - 3.8.6 making decisions on 'discretionary' payments (e.g., returner/retainer schemes).
- 3.9 Delegated commissioning arrangements exclude individual GP performance management (medical performers' list for GPs, appraisal and revalidation). NHS England is also responsible for the administration of payments and list management.
- 3.10 CCGs have the opportunity to discuss dental, eye health and community pharmacy commissioning with NHS England and local professional networks but have no decision-making role.

4. Co-Commissioning and Primary Care Policies

- 4.1 For the purposes of the primary care policies, the commissioner of the primary care service is not referred to by name but simply as the "Commissioner". This is to reflect the fact that for primary medical services, the identity of the commissioner in an area will depend on the model of co-commissioning that the CCG has adopted:

- 4.1.1 where a CCG has adopted greater involvement in primary care co-commissioning, the Commissioner will usually be NHS England;
- 4.1.2 where a CCG has adopted joint commissioning arrangements, the Commissioner will usually be NHS England and the CCG acting under the governance of the joint committee; and
- 4.1.3 where a CCG has adopted delegated commissioning arrangements, the Commissioner will usually be the CCG.
- 4.2 Although CCGs may assume the role of the Commissioner for the purposes of the policies, legally NHS England retains the residual liability for the performance of primary medical care commissioning. There will be matters which have not been delegated to CCGs or are not able to be carried out by a CCG in which case the Commissioner will be NHS England.
- 4.3 The primary care policies that cover dental, eye health and pharmacy services retain the reference to Commissioner but for 2015/16 this is NHS England.
- 4.4 Where a CCG is operating under the joint commissioning arrangements, the CCG and NHS England should review the governance arrangements to ensure each is aware of its responsibilities as Commissioner.
- 4.5 Under delegated commissioning arrangements, a CCG will have agreed a delegation agreement with NHS England. This document will set out for what matters the CCG has decision-making responsibilities. Where the delegation agreement sets out obligations on the CCG, e.g. liaising with NHS England in relation to managing disputes, the relevant primary medical policy refers to the delegation agreement and highlights relevant points.

5. Equality and Health Inequalities

- 5.1 Clinical Commissioning Groups (CCGs) and NHS England have legal duties in respect of equality and health inequalities. Supporting guidance has been issued within the [2015-16 Planning Guidance](#). In the commissioning and operational implementation of primary dental services due regard should be given to these duties. Further detail is also provided in the next section.

CHAPTER 4

General Duties of NHS England

1. Introduction

- 1.1 This chapter outlines the general duties that NHS England must comply with that are likely to affect the decisions it takes regarding the provision of primary care.
- 1.2 There are many general duties on NHS England. It is important that decision-makers are familiar with all of these because if a duty has not been complied with when a decision is taken, that decision can be challenged in the courts on the grounds that it is unlawful.
- 1.3 This guidance looks at the general duties that NHS England is required to comply that are most applicable to primary care, providing examples to illustrate how they might affect decision making.
- 1.4 Below is a summary of the duties that are covered by this guidance. The full wording from the legislation is provided at Annex 1. The guidance goes on to look at each of the duties in more detail

Equality duties

- 1.5 The Equality Act 2010 prohibits unlawful discrimination in the provision of services on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. These are the "protected characteristics".
- 1.6 As well as these prohibitions against unlawful discrimination the Equality Act 2010 requires NHS England to have "due regard" to the need to:
 - 1.6.1 eliminate discrimination that is unlawful under the Equality Act;
 - 1.6.2 advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it; and
 - 1.6.3 foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

This can require NHS England to take positive steps to reduce inequalities. The duty is known as the public sector equality duty or PSED (see section 149 of the Equality Act).

The "Regard Duties"

1.7 The "Regard Duties" are:

- 1.7.1 the duty to have regard to the need to reduce health inequalities (see section 13G of the NHS Act 2006)
- 1.7.2 the duty to have regard to the desirability of allowing others in the healthcare system to act with autonomy and avoid imposing unnecessary burdens upon them, so far as this is consistent with the interests of the health service (see section 13F of the NHS Act 2006)
- 1.7.3 the duty to have regard to the need to promote education and training of those working within (or intending to work within) the health service (see section 13M of the NHS Act 2006)
- 1.7.4 the duty to have regard to the likely impact of commissioning decisions on healthcare delivered in areas of Wales or Scotland close to the border with England (see section 13O of the NHS Act 2006)

The "View To Duties"

1.8 The "View To Duties" are:

- 1.8.1 the duty to act with a view to delivering services in a way that promotes the NHS constitution (see section 13C(1)(a) of the NHS Act 2006)
- 1.8.2 the duty to act with a view to securing continuous improvement in the quality of services in health and public health services (see section 13E of the NHS Act 2006)
- 1.8.3 the duty to act with a view to enabling patients to make choices about their care (see section 13I of the NHS Act 2006)
- 1.8.4 the duty to act with a view to securing integration, including between health and other public services that impact on health, where this would improve health services (see section 13N of the NHS Act 2006)

The "Promote Duties"

1.9 The "Promote Duties" are:

- 1.9.1 the duty to promote awareness of the NHS Constitution among patients, staff and members of the public (see section 13C(1)(b) of the NHS Act 2006)
- 1.9.2 the duty to promote the involvement of patients and carers in decisions about their own care (see section 13H of the NHS Act 2006)
- 1.9.3 the duty to promote innovation in the health service (see section 13K of the NHS Act 2006)
- 1.9.4 the duty to promote research and the use of research on matters relevant to the health service (see section 13L of the NHS Act 2006)

The "Involvement Duty"

- 1.10 NHS England has a duty to make arrangements to secure that service users and potential service users are involved in:
 - 1.10.1 the planning of commissioning arrangements by NHS England;
 - 1.10.2 NHS England's development and consideration of proposals for changes to commissioning arrangements, if the implementation of the proposals would impact on the range of health services available to service users or the manner in which they are delivered; and
 - 1.10.3 NHS England decisions affecting the operation of commissioning arrangements, if those decisions would have such an impact.

Duty to act fairly & reasonably

- 1.11 NHS England has a duty to act fairly and reasonably when making its decisions. These duties come from case law that applies to all public bodies.

Duty to obtain advice

- 1.12 NHS England has a duty to "obtain appropriate advice" from persons with a broad range of professional expertise (see section 13J of the NHS Act 2006)

Duty to exercise functions effectively

- 1.13 NHS England has a duty to exercise its functions effectively, efficiently and economically (see section 13D of the NHS Act 2006)

Duty as to reducing inequalities

- 1.14 The Board must, in the exercise of its functions, have regard to the need to:-
- 1.14.1 reduce inequalities between patients with respect to their ability to access health services, and
 - 1.14.2 reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.

Duty not to prefer one type of provider

- 1.15 NHS England must not try to vary the proportion of services delivered by providers according to whether the provider is in the public or private sector, or some other aspect of their status.

2. Equality duties

The protected characteristics

- 2.1 The Equality Act 2010 prohibits unlawful discrimination in the provision of services (including healthcare services) on the basis of "protected characteristics". The protected characteristics are:
- 2.1.1 age
 - 2.1.2 disability
 - 2.1.3 gender reassignment
 - 2.1.4 marriage and civil partnership
 - 2.1.5 pregnancy and maternity
 - 2.1.6 race
 - 2.1.7 religion or belief (which can include an absence of belief)
 - 2.1.8 sex
 - 2.1.9 sexual orientation

Unlawful discrimination can also occur if a person is put at a disadvantage because of a combination of these factors.

Unlawful discrimination

- 2.2 There are broadly four types of discrimination in the provision of services that are unlawful under the Equality Act:
- 2.2.1 Direct discrimination services are not available to someone because they are e.g. not married, over 35, a woman. Apart from a few limited exceptions, direct discrimination will always be unlawful, unless it is on the grounds of age and the discrimination is a proportionate means of achieving a legitimate aim.
- 2.2.2 Indirect discrimination occurs when NHS England apply a policy, criterion or practice equally to everybody but which has a disproportionate negative impact on one of the groups of people sharing a protected characteristic, and where the complainant cannot themselves comply. The classic example is a height requirement, which is likely to exclude a much greater proportion of women than men because women are on average significantly shorter. Requirements that require people to behave in a certain way will amount to indirect discrimination if compliance is not consistent with reasonable expectations of behaviour. For example, a requirement not to wear a head covering would be indirectly discriminatory on the grounds of religion, even though followers of religions which require a head covering are physically able to remove it.) Indirect discrimination is not unlawful if it is a proportionate means of achieving a legitimate aim.
- 2.2.3 Disability discrimination occurs if a person is treated unfavourably because of something "arising in consequence of their disability". This captures discrimination that occurs not because of a person's disability per se (e.g. a person has multiple sclerosis) but because of the behaviour caused by the disability (e.g. use of a wheelchair). So an inability of someone with multiple sclerosis to access services when using their wheelchair could be an instance of disability discrimination. Disability discrimination is not unlawful if it is a proportionate means of achieving a legitimate end.
- 2.2.4 A failure to make "reasonable adjustments" for people with disabilities who are put at a substantial disadvantage by a practice or physical feature. The duty also requires bodies to put an "auxiliary aid" in place where this would remove a substantial disadvantage e.g. a hearing aid induction loop The duty to make reasonable adjustments might e.g. require NHS England to make consultation materials available in braille. However some care is needed here. People with disabilities have a right to access

services in broadly the same way as people without disabilities, so far as is reasonable. Offering a telephone consultation to a wheelchair using patient who is prevented from accessing a clinic by steps may in fact be unlawful discrimination rather than a reasonable adjustment. The wheelchair user should be able to access services in broadly the same way as others i.e. by attending practice premises for a consultation.

(Unlawful discrimination is also prohibited in the field of employment and other areas but these are not covered in this guidance.)

Public sector equality duty

- 2.3 As well as these prohibitions against unlawful discrimination the Equality Act 2010 requires NHS England to have "due regard" to the need to:
 - 2.3.1 eliminate discrimination that is unlawful under the Act;
 - 2.3.2 advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it; and
 - 2.3.3 foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

This can require NHS England to take positive steps to reduce inequalities. In this regard the Act permits treating some people more favourably than others but not if this amounts to unlawful discrimination. The duty is known as the public sector equality duty or PSED (see section 149 of the Act). The PSED has been used successfully on many occasions to challenge changes to services.

- 2.4 This means that NHS England has a duty to help eliminate any unlawful discrimination practised by the providers of primary care e.g. through requiring premises to be accessible. Failing to use its negotiating power to secure such changes could be seen as a breach by NHS England of the PSED, as well as a breach of the non-discrimination rules by the service provider.

Example:

After a site visit NHS England becomes aware that consulting rooms in a Dental surgery are no longer accessible to those with limited mobility as they have been moved upstairs. NHS England decides that as there are no downstairs consulting rooms and there is no lift or stairlift, this is a breach of the practice's duty to make reasonable adjustments under the Equality Act. This in turn is a breach of the practice's duty under its contract with NHS England to comply with legislation. In order to comply with the PSED NHS England takes steps to ensure that the practice complies with its Equality Act duties by raising the issue informally and issuing a breach notice if the problem is not remedied.

Example:

A patient is severely agoraphobic in addition to having other health needs. The Dental surgery offers to arrange for home visits, which it would not do for the majority of its patients.

Example:

A hearing impaired patient complains to NHS England about their experience with a local (NHS commissioned) dentist. The patient was unable to communicate effectively with the dentist because of their hearing impairment. When the patient suggested that the dentist obtain a sign language interpreter to translate for them this was refused.

It is likely that the provider will be in breach of their obligations under the Equality Act 2010 to make reasonable adjustments. In order to comply with the PSED NHS England takes steps to investigate and enforcement action if needed

- 2.5 Carrying out appropriate equality impact assessments is usually critical to proving discharge of the PSED, although they are not as such a legal requirement. This is because if there is no assessment of the impact of a possible change on groups with protected characteristics, it is very difficult to argue that NHS England had the impact properly in mind when it made

its decision. This is the case even if the impact on protected groups is minimal.

- 2.6 It is not always easy to assess equality impact. A robust service user involvement exercise will help NHS England identify any issues. It is advisable to ask question(s) directly aimed at equalities issues. In many cases it is advisable to take special steps to reach hard to reach groups affected by the decisions (e.g. by making involvement materials available in languages other than English). The more likely a decision is to disproportionately affect a protected group, the more important it is to get feedback from that group about the decision.
- 2.7 The PSED means that NHS England must consider equalities issues when making decisions. In some cases there may be a solution that causes less disadvantage to a protected group but for other reasons is undesirable. In these situations it is important to acknowledge the disadvantage caused and be clear about why the decision was taken. This may include outlining costs concerns. It also makes sense to monitor the situation e.g. does the demographic of service users change as a result of the decision and timetable a formal review in e.g. a year's time.
- 2.8 There are a few themes arising from the cases we have seen so far on the application of the PSED (and similar duties in previous legislation).
 - 2.8.1 A need to explicitly recognise that the PSED applies and equalities issues need to be considered
 - 2.8.2 The duty is an ongoing one – to be considered at all stages of decision-making not just at the end.
 - 2.8.3 A need to be clear about the factors driving a decision, even if these are unpalatable e.g. budgetary pressures.
 - 2.8.4 A need to analyse in some detail the impact of a proposed policy or decision so that the public authority has a clear idea of who is affected and how. Statements of impact need to be supported by evidence where possible.
 - 2.8.5 If a decision is made that will impact negatively on a protected group, that should be acknowledged and the rationale explained.
 - 2.8.6 There should be a detailed consideration as to how any negative impact of the decision could be mitigated. If the steps identified are not practicable, this should be explained.
 - 2.8.7 The duty must be complied with at the time of the decision. After the event reasoning is rarely allowed.

3. The regard duties

Introduction

- 3.1 The "Have regard", "act with a view to" or "promote" duties. These form a loose hierarchy of duties:
 - 3.1.1 The duty to have regard means that when taking actions, a certain thing must be considered
 - 3.1.2 The duty to promote means action must be taken that actually achieves an outcome. Additionally, it is possible to promote something by encouraging others to do it.
 - 3.1.3 The duty to act with a view to means that action must be taken with a purpose in mind.
- 3.2 In contrast to the Promotion Duties and the View To Duties, the Regard Duties apply to every action of NHS England where it is carrying out its primary care functions. (Pausing there, the duty will not normally apply to "private law" decisions that would be taken by any private sector organisation – making HR decisions, leasing estate etc.)
- 3.3 The PSED cases are the best guide that we have to how a court would interpret NHS England's Regard Duties. We can learn from these that:
 - 3.3.1 Those in NHS England who have to take decisions must be made aware of their duty to have regard to the various issues outlined in the duties. Failure to do so will render the decision unlawful.
 - 3.3.2 The Regard Duties must be fulfilled before and at the time that a particular decision is being considered. If they are not, any attempts to retrospectively justify a decision as consistent with the Regard Duties will not be enough to discharge them.
 - 3.3.3 Officers need to engage with the Regard Duties with rigour and with an open mind.
 - 3.3.4 It is good practice for the decision maker to make reference to the Regard Duties.
 - 3.3.5 It is not possible for NHS England to delegate the duties down to another organisation to comply with. They will always remain with NHS England. If NHS England acts through contractors it must ensure as necessary that they act consistently with the duties.

- 3.3.6 The Regard Duties are continuing ones that apply throughout decision-making. It is not enough to only "rubber stamp" a decision by reference to the Regard Duties at the end of a decision-making process. The Regard Duties need to be borne in mind throughout.
- 3.3.7 It is crucial to keep an adequate record of how the Regard Duties are considered. If records are not kept it will make it more difficult, evidentially, for NHS England to persuade a court that it has fulfilled the duties imposed.
- 3.4 One key point to understand is that there is no obligation to achieve the object of the Regard Duties e.g. it is not unlawful not to eliminate health inequalities (although equally, if health inequalities persist and widen, that fact would need to inform consideration of the regard duty.). Nor does NHS England have the luxury of "pausing" the health service while it investigates health inequality or any other matter. The duties are to have regard, not to achieve perfection, and this is a practical rather than an academic exercise.

Reduce health inequalities

- 3.5 Of the Regard Duties, the requirement to have regard to the need to:-
 - 3.5.1 Reduce inequalities between patients with respect to their ability to access health services, and
 - 3.5.2 reduce health inequalities between patients with respect to the outcomes achieved for them by the provision of health services
- 3.6 When making decisions about primary care – particularly about service changes – decision-makers will need to bear in mind the impact on health inequalities. To do this NHS England will need some data around existing health inequalities, and to consider whether its decision can be used to diminish these.
- 3.7 The detail and causes of health inequalities is a highly complex area, ranging from the highest level of generality (male vs female life expectancy, say) down to very granular data taking into account a patients place of residence, age, smoking status etc. NHS England must try to obtain the data needed to understand and address health inequality, but there is a trade off between making further enquiries and taking decisions and moving the health service on.

- 3.8 The key point is that NHS England can show (through documentation) that the impact a decision will have on health inequalities has been taken into account, and that its decision is based on some relevant data.

Act with autonomy

- 3.9 NHS England has a duty to have regard to the desirability of allowing others in the healthcare system to act with autonomy and avoid imposing unnecessary burdens upon them, so far as this is consistent with the interests of the health service.

Promote education and training

- 3.10 NHS England has a duty to have regard to the need to promote education and training of those working within (or intending to work within) the health service.

Impact in areas of Wales or Scotland

- 3.11 NHS England has a the duty to have regard to the likely impact of commissioning decisions on healthcare delivered in areas of Wales or Scotland close to the border with England. This will clearly be relevant for those working in regional teams that border Wales or Scotland. NHS England will also need to comply with the duty when making national strategic decisions about the delivery of primary care – that affect bordering areas as well as others.

Example:

NHS England is considering commissioning new primary care services for a town in England close to the border with Scotland. It is concerned that many of the local residents have difficulty in accessing local primary care services, the nearest practice being based over the border in Scotland. That provider is difficult to access by public transport and in the winter the short route is often impassable. To comply with its duty to have regard to the likely impact of commissioning decisions on healthcare delivered in areas Scotland close to the border with England, the regional team discusses the impact that commissioning services on the English side of the border would have on the Scottish provider. It takes this impact into account when it makes its decision about the commissioning of services.

4. The promote duties

- 4.1 It is helpful to look next at the Promote Duties. These are:
 - 4.1.1 the duty to promote awareness of the NHS Constitution among patients, staff and members of the public (see section 13C(1)(b) of the NHS Act 2006)
 - 4.1.2 the duty to promote the involvement of patients and carers in decisions about their own care (see section 13H of the NHS Act 2006)
 - 4.1.3 the duty to promote innovation in the health service (see section 13K of the NHS Act 2006)
 - 4.1.4 the duty to promote research and the use of research on matters relevant to the health service (see section 13L of the NHS Act 2006)
- 4.2 However a decision which is positively contrary to achieving the relevant outcome might breach a promote duty unless there was some compelling reason to adopt it. In this situation please contact the NHS England Legal Team for further guidance.
- 4.3 Additionally, some decisions will be obvious opportunities where e.g. patient involvement could easily be promoted. In such cases the safest course of action is to ensure that this is done.
- 4.4 To meet the duty NHS England does not have to do everything itself – be more innovative, improve its use of research data etc. It can meet the duty by encouraging other people to do things.

5. The view to duties

- 5.1 The "View To Duties" are:
 - 5.1.1 the duty to act with a view to delivering services in a way that promotes the NHS constitution (see section 13C(1)(a) of the NHS Act 2006)
 - 5.1.2 the duty to act with a view to securing continuous improvement in the quality of services in health and public health services (see section 13E of the NHS Act 2006)
 - 5.1.3 the duty to act with a view to enabling patients to make choices about their care (see section 13I of the NHS Act 2006)

- 5.1.4 the duty to exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would:-
 - 5.1.4.1 improve the quality of those services (including the outcomes that are achieved from their provision)
 - 5.1.4.2 reduce inequalities between persons with respect to their ability to access those services, or
 - 5.1.4.3 reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- 5.2 In many ways the considerations for these duties and the Promote Duties are the same. One difference is that while a Promote Duty can be met by encouraging others to achieve it (e.g. encouraging GP practices to make better use of telehealth devices), with the View To Duties the actions have to be carried out by NHS England.
- 5.3 The View To duties are less onerous than the Promote Duties because they do not require NHS England to achieve a particular outcome (although that would be desirable)– only to do something that aims to achieve it. This is in contrast to the Promote Duties, which require an outcome to be achieved.
- 5.4 Again, the View To duties are most likely to affect strategic decisions taken at directorate level. Provided NHS England can show that within the totality of its activities there has been significant action taken with the intention of achieving the outcomes that NHS England is required to have a view to, the duty is discharged.
- 5.5 As with the Promote Duties, decision-makers on the ground should be wary of doing something actively goes against one of the goals set out in the View To duties. In this situation please contact the NHS England Legal Team for further guidance. Also, if there is a clear opportunity to help deliver one of the View To objectives, it is best to take it.

6. The involvement duty

Overview

- 6.1 Under section 13Q of the NHS Act 2006, NHS England has a statutory duty to 'make arrangements' to involve the public in the commissioning

services for NHS patients.

6.2 Section 13Q applies to:

6.2.1 the planning of commissioning arrangements

6.2.2 the development and consideration of any proposals that would impact on the manner in which services are delivered to individuals or the range of services available to them

6.2.3 decisions that would impact on the manner in which services are delivered to individuals or the range of services available to them

6.3 The section 13Q duty only applies to plans, proposals and decisions about services that are directly commissioned by NHS England. This includes GP, dental, ophthalmic and pharmaceutical services.

NHS England's arrangements for public involvement

6.4 The statutory duty to 'make arrangements' under section 13Q of the NHS Act 2006 is essentially a requirement to make plans and preparations for public involvement.

6.5 NHS England has set out its plans as to how it intends to involve the public in its '[Statement of Arrangements and Guidance on Patient and Public Participation in Commissioning](#)'. The document sets out and explains the arrangements NHS England has in place:

6.5.1 Corporate infrastructure – how public involvement is embedded in the way that NHS England is constituted and carries out its business

6.5.2 Involvement initiatives – initiatives designed to involve the public in strategic planning and the development of policy or other aspects of NHS England's activities

6.5.3 Monitoring arrangements – a step-by-step process to help commissioners identify whether the section 13Q applies and decide whether sufficient public involvement activity is already in place or whether additional public involvement is required

6.5.4 Responsive arrangements – guidance to commissioners on how to make arrangements for public involvement where monitoring has indicated that such arrangements are required.

6.6 As well as setting out the above arrangements, which NHS England commissioners should follow, the document is regularly reviewed and updated and contains useful resources for commissioners, including:

- 6.6.1 Details of existing corporate infrastructure and involvement initiatives which could be drawn upon by commissioners to involve the public in their commissioning activities.
 - 6.6.2 Reference to NHS England’s framework for involving patients and the public in primary care commissioning, which includes resources developed especially for primary care.
 - 6.6.3 Resources to help commissioners identify whether the section 13Q applies, put in place appropriate arrangements for public involvement and avoid legal challenge.
 - 6.6.4 Guidance on a variety of topics that often arise, such as what ‘public involvement’ means, how to involve the public, who to involve, when involvement should take place, urgent decisions and joint involvement exercises
 - 6.6.5 Case studies based upon primary care scenarios
 - 6.6.6 Summaries of related legal duties
 - 6.6.7 Details of how to seek further advice if needed.
- 6.7 The document is intended to be used by both NHS England staff (who need to understand and comply with the arrangements when commissioning services) and the public (to understand how NHS England involves the public in its commissioning of services). It is not intended for CCGs, who are required to make their own arrangements for public involvement under section 14Z2 of the NHS Act 2006.

7. Duty to act fairly & reasonably

- 7.1 NHS England has a duty to act fairly and reasonably when making its decisions. These duties come from case law that applies to all public bodies.

Acting fairly

- 7.2 Normally, to act fairly NHS England will need to act in accordance with its own policies. It can depart from guidance if there is good reason to do so. In this scenario NHS England will need to explain the situation fully to the people & organisations affected and give them a chance to provide their views on the procedure to be followed. This will include why it wants to depart from the usual policy and what it will do instead.

- 7.3 NHS England also needs to be careful about keeping to promises made to contractors or the public e.g. that there will be a public consultation before any final decision is made on closing a particular pharmacy. It is sometimes (but not always) possible to depart from such promises. Therefore care should be taken about giving any clear commitments to a particular course of action until NHS England is sure that it is what it wants to do. If NHS England is considering to depart from a commitment it has given to do a particular thing or follow a particular type of process, please contact the NHS England Legal Team for further guidance.
- 7.4 It is also important to act proportionately, taking into account any adverse impact on patients and/or contractors.

Acting reasonably

- 7.5 NHS England has to take all relevant factors into account when making its decisions and exclude irrelevant factors. It is up to NHS England how much weight it gives competing considerations and may give a factor no weight at all. The key point is that all the relevant factors are identified and documented.

Example:

NHS England has to decide whether to approve a practice's application to stop opening on Wednesday evening and open on Saturday morning instead. The practice is based in an area with a high Jewish population. Relevant factors in this decision include whether services will become more or less accessible as a result of the change, any adverse impact on people with protected characteristics (is the Jewish population disadvantaged as Saturday falls on the Jewish rest day?) and any costs implications for NHS England. An example of an irrelevant factor is that NHS England has been promised some good publicity by the practice if it agrees to the change.

- 7.6 The reasons for NHS England's decisions also need to "stack up". It is important for NHS England to document its reasons for a decision as NHS England needs not only to act reasonably but be able to show that it has acted reasonably by reference to contemporaneous documents. This means that particularly where a controversial decision is being made the thinking behind the decision needs to be carefully documented.

8. The duty to obtain advice

- 8.1 NHS England has a duty to "obtain appropriate advice" from persons with a broad range of professional expertise (see section 13J of the NHS Act 2006).
- 8.2 This means that decision-makers need to collect appropriate information before making decisions. If NHS England does not have the information it needs then it should seek out appropriate advice. In many cases it will not be necessary to do this as all the necessary information is to hand. The duty is most relevant to strategic decisions taken at directorate level, where decision-makers will need to document how they obtain advice from those with professional expertise (some of whom may be NHS England employees or secondees).

9. The duty to exercise functions effectively

- 9.1 NHS England has a duty to exercise its functions effectively, efficiently and economically (see section 13D of the NHS Act 2006).
- 9.2 This is a statutory reformulation of a duty that has been contained for many years in Managing Public Money and its predecessors. If NHS England has complied with the other duties in this guidance – in particular the duty to act reasonably – it is highly unlikely that it will breach this duty.

10. The duty not to prefer one type of provider

- 10.1 NHS England must not try and vary the proportion of services delivered by providers according to whether the provider is in the public or private sector, or some other aspect of their status.
- 10.2 This means that NHS England must focus on the services delivered by an organisation and its sustainability. It should not make choices about contractors based solely on their status as e.g. company, partnership, public sector, private sector, charity or not for profit organisation.

Example:

In partnership with local authority social services departments, NHS England wishes to commission new in-reach support to support people living in care homes. It carries out a patient involvement exercise. Much of the feedback expresses a preference for the services to be delivered by a charity rather than a for profit

organisation. However, the feedback does not give any reason for this. The feedback is a relevant consideration but in order to comply with its duty not to discriminate NHS England should not prefer non-profit organisations, simply because they are non-profit.

Annex 1

Extracts from Legislation

The NHS Act 2006 – sections 13C – 13Q

General duties of the Board

[References to "the Board" are to NHS England]

13C Duty to promote NHS Constitution

- (1) The Board must, in the exercise of its functions--
 - (a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and
 - (b) promote awareness of the NHS Constitution among patients, staff and members of the public.
- (2) In this section, "patients" and "staff" have the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 3(7) of that Act).

13D Duty as to effectiveness, efficiency etc

The Board must exercise its functions effectively, efficiently and economically.

13E Duty as to improvement in quality of services

- (1) The Board must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with--
 - (a) the prevention, diagnosis or treatment of illness, or
 - (b) the protection or improvement of public health.
- (2) In discharging its duty under subsection (1), the Board must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.

- (3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show--
 - (a) the effectiveness of the services,
 - (b) the safety of the services, and
 - (c) the quality of the experience undergone by patients.
- (4) In discharging its duty under subsection (1), the Board must have regard to--
 - (a) any document published by the Secretary of State for the purposes of this section, and
 - (b) the quality standards prepared by NICE under section 234 of the Health and Social Care Act 2012.

13F Duty as to promoting autonomy

- (1) In exercising its functions, the Board must have regard to the desirability of securing, so far as consistent with the interests of the health service--
 - (a) that any other person exercising functions in relation to the health service or providing services for its purposes is free to exercise those functions or provide those services in the manner it considers most appropriate, and
 - (b) that unnecessary burdens are not imposed on any such person.
- (2) If, in the case of any exercise of functions, the Board considers that there is a conflict between the matters mentioned in subsection (1) and the discharge by the Board of its duties under sections 1(1) and 1H(3)(b), the Board must give priority to those duties.

13G Duty as to reducing inequalities

The Board must, in the exercise of its functions, have regard to the need to--

- (a) reduce inequalities between patients with respect to their ability to access health services, and
- (b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.

13H Duty to promote involvement of each patient

The Board must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to--

- (a) the prevention or diagnosis of illness in the patients, or

- (b) their care or treatment.

13I Duty as to patient choice

The Board must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

13J Duty to obtain appropriate advice

The Board must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in--

- (a) the prevention, diagnosis or treatment of illness, and
- (b) the protection or improvement of public health.

13K Duty to promote innovation

- (1) The Board must, in the exercise of its functions, promote innovation in the provision of health services (including innovation in the arrangements made for their provision).
- (2) The Board may make payments as prizes to promote innovation in the provision of health services.
- (3) A prize may relate to--
 - (a) work at any stage of innovation (including research);
 - (b) work done at any time (including work before the commencement of section 23 of the Health and Social Care Act 2012).

13L Duty in respect of research

The Board must, in the exercise of its functions, promote--

- (a) research on matters relevant to the health service, and
- (b) the use in the health service of evidence obtained from research.

13M Duty as to promoting education and training

The Board must, in exercising its functions, have regard to the need to promote education and training for the persons mentioned in section 1F(1) so as to assist the Secretary of State in the discharge of the duty under that section.

13N Duty as to promoting integration

- (1) The Board must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would--
 - (a) improve the quality of those services (including the outcomes that are achieved from their provision),
 - (b) reduce inequalities between persons with respect to their ability to access those services, or
 - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (2) The Board must exercise its functions with a view to securing that the provision of health services is integrated with the provision of health-related services or social care services where it considers that this would--
 - (a) improve the quality of the health services (including the outcomes that are achieved from the provision of those services),
 - (b) reduce inequalities between persons with respect to their ability to access those services, or
 - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (3) The Board must encourage clinical commissioning groups to enter into arrangements with local authorities in pursuance of regulations under section 75 where it considers that this would secure--
 - (a) that health services are provided in an integrated way and that this would have any of the effects mentioned in subsection (1)(a) to (c), or
 - (b) that the provision of health services is integrated with the provision of health-related services or social care services and that this would have any of the effects mentioned in subsection (2)(a) to (c).
- (4) In this section--

"health-related services" means services that may have an effect on the health of individuals but are not health services or social care services;

"social care services" means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970).

130 Duty to have regard to impact on services in certain areas

- (1) In making commissioning decisions, the Board must have regard to the likely impact of those decisions on the provision of health services to persons who reside in an area of Wales or Scotland that is close to the border with England.
- (2) In this section, "commissioning decisions", in relation to the Board, means decisions about the carrying out of its functions in arranging for the provision of health services.

13P Duty as respects variation in provision of health services

The Board must not exercise its functions for the purpose of causing a variation in the proportion of services provided as part of the health service that is provided by persons of a particular description if that description is by reference to—

- (a) whether the persons in question are in the public or (as the case may be) private sector, or
- (b) some other aspect of their status.

13Q Public involvement and consultation by the Board

- (1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by the Board in the exercise of its functions ("commissioning arrangements").
- (2) The Board must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways) –
 - (a) in the planning of the commissioning arrangements by the Board,
 - (b) in the development and consideration of proposals by the Board for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and
 - (c) in decisions of the Board affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.
- (3) The reference in subsection (2)(b) to the delivery of services is a reference to their delivery at the point when they are received by users.
- (4) This section does not require the Board to make arrangements in relation to matters to which a trust special administrator's report or draft report under

section 65F or 65I relates before the Secretary of State makes a decision under section 65K(1), is satisfied as mentioned in section 65KB(1) or 65KD(1) or makes a decision under section 65KD(9) (as the case may be).

THE EQUALITY ACT 2010 - SECTION 149

Advancement of equality

149 Public sector equality duty

- (1) A public authority must, in the exercise of its functions, have due regard to the need to—
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

CHAPTER 5

Which Dental Contract When?

1. Comparison of Dental Contract Types

	GDS Contract (General Dental Services)	PDS Agreement (Personal Dental Services)	PDS + Contract (Personal Dental Services Plus)
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	GDS Contract (General Dental Services)	PDS Agreement (Personal Dental Services)	PDS + Contract (Personal Dental Services Plus)
Who can hold the contract?	<ul style="list-style-type: none"> • Individual dental practitioner • Two or more individuals practising in partnership where: <ul style="list-style-type: none"> - at least one partner is a dentist, and - any other partner is either an NHS employee; a PDS/PMS employee (UK); a health care professional working in the NHS; or a PMS, GMS, PDS or GDS provider (UK) • Dental corporation • Limited liability partnership <p>The above is a summary only. Please refer to Annex 1 for more detail.</p>	<ul style="list-style-type: none"> • Dental practitioner • NHS employee • Health care professional • Individual already providing services under a GMS, PMS or GDS or PDS contract or equivalent (UK) • Limited liability partnership • Dental corporation • Company limited by shares • NHS trust or foundation trust <p>The above is a summary only. Please refer to Annex 2 for more detail.</p>	As for PDS Agreement

	GDS Contract (General Dental Services)	PDS Agreement (Personal Dental Services)	PDS + Contract (Personal Dental Services Plus)
Where two or more individuals are practising in partnership, is the contract treated as being made with the partnership?	Yes	No	No
Is the contract time limited?	No Except in certain circumstances when a temporary GDS contract can be used – see Urgent Contracts below	Yes Note that a PDS contractor providing mandatory services may apply for a GDS contract any time prior to the end of the PDS agreement	Yes Note that a right to a GDS contract also exists for PDS+ contractors
Can the commissioner terminate at will?	No	No	No
Must the contractor provide mandatory services?	Yes	No	No
Can the contract contain KPIs?	No	No	Yes

	GDS Contract (General Dental Services)	PDS Agreement (Personal Dental Services)	PDS + Contract (Personal Dental Services Plus)
Payment arrangements	GDS SFE	PDS SFE	PDS SFE, access and performance payments
Standard form contract	Yes	Yes	Yes

2. Urgent Contracts

- 2.1 Circumstances may arise that require the Commissioner to put in place an urgent contract. Such circumstances may include:
 - 2.1.1 the death of a contractor;
 - 2.1.2 the bankruptcy or insolvency of a contractor; or
 - 2.1.3 termination of an existing contract due to patient safety.
- 2.2 Where continuity of services to patients is required, the short timescales involved may not allow the Commissioner to undertake a managed closedown and transfer to a new provider (details of which are set out in the policy on practice closedown (chapter 13). The Commissioner may therefore look to award a contract to a specific party that is able to provide the services to patients at short notice.
- 2.3 Prior to awarding a contract in this scenario, the Commissioner should consider a number of factors which are set out in the paragraphs below.

Procurement

- 2.4 A direct award of a contract, without considering whether a competitive process is required to determine the new contractor, risks being a breach of procurement law, in which case the Commissioner could be challenged in Court or could be the subject of a complaint to Monitor.
- 2.5 The following factors will be relevant in determining the extent of the risk:
 - 2.5.1 value of the new contract and whether it is best value for money;
 - 2.5.2 duration of the new contract;
 - 2.5.3 identity of the new contractor and whether it can be argued that the new contractor is the only provider capable of providing the services;
 - 2.5.4 number of potential new contractors;
 - 2.5.5 cross-border interest of the new contract; and/or
 - 2.5.6 extent to which the need to procure a new contract was foreseeable.
- 2.6 Where the Commissioner determines that a contract for the immediate provision of services is required but time does not allow full consideration of the above factors (or for a competitive procurement process if

required), the procurement risks can be mitigated by entering into a temporary contract that provides time for the proper action to be arranged and followed.

- 2.7 Having awarded a contract, the Commissioner must maintain a record of how, in awarding the contract, it complied with its duties in relation to effectiveness, efficiency, improvement in the quality of the services and promoting integration.

Premises

- 2.8 The previous contractor may own or lease the premises which, as a result, may not be available for the provision of the services under a new contract. The availability of the premises must be ascertained before entering into a temporary contract.

Public Involvement

- 2.9 One of the general duties of NHS England is to ensure there is public involvement where a decision leads to an impact on the provision of primary care services. If, under a new contract, services are provided from a different location, this will be an impact on the services which may trigger the need to undertake a public involvement exercise.
- 2.10 Where there is no time for undertaking an exercise prior to entering into the contract, the Commissioner should ensure that, as soon as possible after the contract is entered into, it arranges for such an exercise to be undertaken prior to the Commissioner making any decisions about the long term provision of services.

Commissioner SOs and SFIs

- 2.11 The Commissioner may have organisational standing orders and standing financial instructions that require contracts to be procured in certain ways, e.g. securing three quotes for contracts up to a certain financial value. Where time does not allow the rules to be followed, there may be an emergency process that must be followed.

Other factors

- 2.12 Further factors may be relevant depending on the circumstances of the matter. Please refer to the policy on practice closedown (chapter 13) for a list of all factors that may be relevant.

Which contract form?

- 2.13 GDS contracts are often considered unsuitable for a temporary solution as they are not time-limited. However, a GDS contract can be used where the Commissioner has terminated a contract of another provider of primary dental services, and as a result of that termination, it wishes to enter into a temporary contract for a period specified in the contract for the provision of services.
- 2.14 A time limited PDS agreement may not be attractive in this scenario as the PDS contractor, if providing mandatory services, can request a non-time limited GDS contract at any time.
- 2.15 The Commissioner should therefore consider what services and duration is required and whether there are any restrictions on the proposed contractor entering into different contract types to meet local diverse health needs.

Annex 1

Persons Eligible to Enter into a GDS Contract

3. Statutory Provisions

- 3.1 Section 102 of the NHS Act (extracted in paragraph 2 below) sets out the types of persons (including organisation types) that may enter into a GDS contract.
- 3.2 Regulations 3 to 5 of the GDS Regulations (extracted in paragraph 3 below) sets out the eligibility criteria that must be satisfied before any of the types of persons set out in section 102 of the NHS Act can enter into the GDS contract.
- 3.3 The extracted legislation below is correct as of 1 June 2015.

4. Section 102 of the NHS Act 2006

102 Persons eligible to enter into GDS contracts

- (1) The Board may, subject to such conditions as may be prescribed, enter into a general dental services contract with—
 - (a) a dental practitioner,
 - (b) a dental corporation,
 - (c) two or more persons practising in partnership where the conditions in subsection (2) are satisfied,
 - (d) a limited liability partnership where the conditions in subsection (2A) are satisfied.
- (2) The conditions referred to in subsection (1)(c) are that—
 - (a) at least one partner is a dental practitioner, and
 - (b) subsection (3A) or (3B) applies.
- (2A) The conditions referred to in subsection (1)(d) are that—
 - (a) at least one member is a dental practitioner, and
 - (b) subsection (3A) or (3B) applies.
- (3) Regulations may make provision as to the effect, in relation to a general dental services contract entered into by individuals practising in partnership, of a change in the membership of the partnership.

- (3A) This subsection applies if a partner or member who is a dental practitioner, or who falls within subsection (3C), has the power to secure that the partnership's affairs are conducted in accordance with that partner's or member's wishes.
- (3B) This subsection applies if, in any combination of partners or members who, acting together, have the power (or who, if they were to act together, would have the power) to secure that the partnership's affairs are conducted in accordance with their wishes, at least one of them is a dental practitioner or a person who falls within subsection (3C).
- (3C) A person falls within this subsection if the person is—
 - (a) an NHS employee,
 - (b) a section 92 employee, section 107 employee, section 50 employee, section 64 employee, section 17C employee or Article 15B employee,
 - (c) a health care professional who is engaged in the provision of services under this Act or the National Health Service (Wales) Act 2006, or
 - (d) an individual falling within section 108(1)(d).
- (4) In this section—

“dental corporation” means a body corporate which is carrying on the business of dentistry in accordance with the Dentists Act 1984 (c. 24)

“health care professional”, “NHS employee”, “section 92 employee”, “section 107 employee”, “section 50 employee”, “section 64 employee”, “section 17C employee” and “Article 15B employee” have the meaning given by section 108.

5. Regulations 3 to 5 of the GDS Regulations

3. Conditions: introductory

Subject to the provisions of any scheme made by the Secretary of State under section 300 (transfer schemes) and any order made under section 303 (power to make consequential provision) of the 2012 Act, the Board may only enter into a contract if the conditions set out in—

- (a) regulation 4; and
- (b) in the case of a contract to be entered into with a dental

corporation on or after the coming into force for all purposes of article 39 of the Dentists Act Order (substitution of sections 43 and 44), regulation 5, are met.

4.— General prescribed conditions relating to all contracts

- (1) For the purposes of section 28M of the Act (conditions upon which a general dental services contract may be entered into) the prescribed condition is that a person must not fall within paragraph (3).
- (2) The reference to a person in paragraph (1) includes any director, chief executive or secretary of a dental corporation or any member of a limited liability partnership .
- (3) A person falls within this paragraph if—
 - (a) he or it is the subject of a national disqualification;
 - (b) subject to paragraph (4), he or it is disqualified or suspended (other than by an interim suspension order or direction pending an investigation) from practising by any licensing body anywhere in the world;
 - (c) within the period of five years prior to the date the contract is to be commenced or, if earlier, the date on which the contract is to be signed—
 - (i) he has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body, unless he has subsequently been employed by that health service body or another health service body and paragraph (5) applies to him or that dismissal was the subject of a finding of unfair dismissal by any competent tribunal or court; or
 - (ii) he or it has been 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 or its name has subsequently been included in such a list;
 - (d) he has been convicted in the United Kingdom of—
 - (i) murder; or
 - (ii) a criminal offence other than murder, committed on or after 14th December 2001, and has been sentenced to a term of

- imprisonment of over six months;
- (e) subject to paragraph (6), he has been convicted outside the United Kingdom of an offence—
 - (i) which would, if committed in England and Wales, constitute murder; or
 - (ii) committed on or after 14th December 2001, which would if committed in England and Wales, constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
- (f) 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) committed on or after 1st April 2006.
- (g) 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, or 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;
- (h) an administrator, administrative receiver or receiver is appointed in respect of it;
- (i) he has within the period of five years prior to the date the contract is to be commenced or, if earlier, the date on which the contract is to be signed—

- (i) been 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;
 - (ii) been 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; or
 - (j) 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).
- (4) A person shall not fall within paragraph (3)(b) where the Board is satisfied that the disqualification or suspension from practising is imposed by a licensing body outside the United Kingdom and it does not make that person unsuitable to be—
- (a) a contractor;
 - (b) a director, chief executive or secretary of a corporation entering into a contract, in the case of a contract with a dental corporation; or
 - (c) a member of a limited liability partnership entering into a contract, in the case of a contract with a limited liability partnership, as the case may be.
- (5) Where a person has been employed as a member of a health care profession any subsequent employment must also be as a member of that profession.
- (6) A person shall not fall within paragraph (3)(e) where the Board is satisfied that the conviction does not make that person unsuitable to be—
- (a) a contractor;
 - (b) a director, chief executive or secretary of a corporation entering

into a contract, in the case of a contract with a dental corporation;
or

- (c) a member of a limited liability partnership entering into a contract, in the case of a contract with a limited liability partnership, as the case may be.
- (7) For the purposes of paragraph (3)(c)(i), a health service body includes a Strategic Health Authority or a Primary Care Trust which was established before the coming into force of sections 33 and 34 of the 2012 Act.

5.— Additional prescribed conditions relating to contracts with dental corporations

- (1) Subject to paragraph (2), it is a condition in the case of a contract to be entered into with a dental corporation on or after the date of the coming into force for all purposes of article 39 of the Dentists Act Order that no—
 - (a) offence has been or is being committed under section 43 of the Dentists Act; or
 - (b) financial penalty has been imposed under section 43B or 44 of the Dentists Act.
- (2) Paragraph (1) shall not apply if the Board is satisfied that any offence under section 43 or penalty imposed under section 43B or 44 of the Dentists Act does not make the dental corporation unsuitable to be a contractor, whether by virtue of the time that has elapsed since any conviction or penalty was imposed, or otherwise.

Annex 2

Persons Eligible to Enter into a PDS Agreement

1. Statutory Provisions

- 1.1 Section 108 of the NHS Act (extracted in paragraph 2 below) sets out the types of persons (including organisation types) that may enter into a PDS agreement (referred to in the NHS Act as section 107 agreements).
- 1.2 Regulations 3 to 5 of the PDS Regulations (extracted in paragraph 3 below) sets out the eligibility criteria that must be satisfied before any of the types of persons set out in section 108 of the NHS Act can enter into the PDS agreement.
- 1.3 The extracted legislation below is correct as of 1 June 2015.

2. Section 108 of the NHS Act 2006

108 Persons with whom agreements may be made under section 107

- (1) The Board may, subject to such conditions as may be prescribed, make an agreement under section 107 only with one or more of the following–
 - (a) an NHS trust or an NHS foundation trust,
 - (b) a dental practitioner,
 - (c) a health care professional,
 - (d) an individual who is providing services–
 - (i) under a general medical services contract or a general dental services contract or a Welsh general medical services contract or a Welsh general dental services contract,
 - (ii) in accordance with section 107 arrangements, section 92 arrangements, section 50 arrangements, section 64 arrangements, section 17C arrangements or Article 15B arrangements, or
 - (iii) under section 17J or 25 of the 1978 Act or Article 57 or 61 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)), or has so provided them within such period as may be prescribed,
 - (e) an NHS employee, a section 107 employee, a section 92 employee, a section 50 employee, a section 64 employee, a section 17C

employee or an Article 15B employee,

- (f) a dental corporation,
- (fa) a company limited by shares where the conditions in subsection (1A) are satisfied,
- (fb) a limited liability partnership where subsection (1B) or (1C) applies

(1A) The conditions referred to in subsection (1)(fa) are that—

- (a) every person who owns a share in the company owns it both legally and beneficially, and
- (b) it is not possible for two or more members of the company who are not persons who fall within subsection (1)(a) to (e) to hold the majority of the voting rights conferred by shares in the company on any matter on which members have such rights.

(1B) This subsection applies if a member of the partnership who falls within subsection (1)(a) to (e) has the power to secure that the partnership's affairs are conducted in accordance with that member's wishes.

(1C) This subsection applies if, in any combination of members of the partnership who, acting together, have the power (or who, if they were to act together, would have the power) to secure that the partnership's affairs are conducted in accordance with their wishes, at least one of them falls within subsection (1)(a) to (e).

(2) ...

(3) In this section—

“the 1978 Act” means the National Health Service (Scotland) Act 1978 (c. 29),

“Article 15B arrangements” means arrangements for the provision of services made under Article 15B of the Health and Personal Social Services (Northern Ireland) Order 1972,

“Article 15B employee” means an individual who, in connection with the provision of services in accordance with Article 15B arrangements, is employed by a person providing or performing those services,

“dental corporation” means a body corporate which is carrying on the business of dentistry in accordance with the Dentists Act 1984,

“health care professional” means a person who is a member of a profession regulated by a body mentioned (at the time the agreement in

question is made) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17),

“NHS employee” means an individual who, in connection with the provision of services in the health service, the Scottish health service or the Northern Ireland health service, is employed by–

- (a) an NHS trust, an NHS foundation trust or (in Northern Ireland) a Health and Social Services Trust,
- (b) a Local Health Board,
- (c) a person who is providing services under a general medical services contract or a general dental services contract or a Welsh general medical services contract or a Welsh general dental services contract,
- (d) an individual who is providing services as specified in subsection (1)(d)(iii),

“the Northern Ireland health service” means the health service within the meaning of the Health and Personal Social Services (Northern Ireland) Order 1972,

“the Scottish health service” means the health service within the meaning of the National Health Service (Scotland) Act 1978,

“section 17C arrangements” means arrangements for the provision of services made under section 17C of the 1978 Act,

“section 17C employee” means an individual who, in connection with the provision of services in accordance with section 17C arrangements, is employed by a person providing or performing those services,

“section 50 arrangements” means arrangements for the provision of services made under section 50 of the National Health Service (Wales) Act 2006 (c. 42),

“section 64 arrangements” means arrangements for the provision of services made under section 64 of that Act,

“section 107 employee” means an individual who, in connection with the provision of services in accordance with section 107 arrangements, is employed by a person providing or performing those services,

“section 92 employee” means an individual who, in connection with the provision of services in accordance with section 92 arrangements, is employed by a person providing or performing those services,

“section 50 employee” means an individual who, in connection with the provision of services in accordance with section 50 arrangements, is employed by a person providing or performing those services,

“section 64 employee” means an individual who, in connection with the provision of services in accordance with section 64 arrangements, is employed by a person providing or performing those services,

“Welsh general medical services contract” means a contract under section 42(2) of the National Health Service (Wales) Act 2006, and

“Welsh general dental services contract” means a contract under section 57(2) of that Act.

3. Regulations 3 to 5 of the PDS Regulations

3. Conditions: introductory

Subject to the provision of any scheme made by the Secretary of State under section 300 (transfer schemes) or any order made under section 303 (power to make consequential provision) of the 2012 Act, the Board may only enter into an agreement if the conditions set out in—

- (a) regulation 4; and
- (b) in the case of an agreement to be entered into with a dental corporation on or after the coming into force for all purposes of article 39 of the Dentists Act Order (substitution of sections 43 and 44), regulation 5, are met.

4.— General conditions relating to all agreements

- (1) The Board may make an agreement with an individual falling within section 28D(1)(b) to (d) if that individual does not fall within paragraph (3).
- (2) The Board may make an agreement with a person only if—
 - (a) in the case of a dental corporation, that dental corporation, or any director, chief executive or secretary of that corporation; or
 - (b) in the case of a company limited by shares, that company limited by shares, or any director, chief executive or secretary of that company; or
 - (c) in the case of a limited liability partnership, that limited liability partnership, or any member of that partnership, does not fall within paragraph (3).

- (3) A person falls within this paragraph if—
- (a) he or it (in the case of a dental corporation, a company limited by shares, or a limited liability partnership) is the subject of a national disqualification;
 - (b) subject to paragraph (4), he or it is disqualified or suspended (other than by an interim suspension order or direction pending an investigation) from practising by any licensing body anywhere in the world;
 - (c) within the period of five years prior to the date the agreement is to be commenced or, if earlier, the date on which the agreement is to be signed—
 - (i) he has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body, unless he has subsequently been employed by that health service body or another health service body and paragraph (5) applies to him or that dismissal was the subject of a finding of unfair dismissal by any competent tribunal or court; or
 - (ii) he or it has been 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 or its name has subsequently been included in such a list;
 - (d) he has been convicted in the United Kingdom of—
 - (i) murder; or
 - (ii) a criminal offence other than murder, committed on or after 14th December 2001, and has been sentenced to a term of imprisonment of over six months;
 - (e) subject to paragraph (6), he has been convicted outside the United Kingdom of an offence—
 - (i) which would, if committed in England and Wales, constitute murder; or
 - (ii) committed on or after 14th December 2001, which would if committed in England and Wales, constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;

- (f) 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) committed on or after 1st April 2006;
- (g) 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, or 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;
- (h) an administrator, administrative receiver or receiver is appointed in respect of it;
- (i) he has within the period of five years prior to the date the agreement is to be commenced or, if earlier, the date on which the agreement is to be signed—
 - (i) been 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;
 - (ii) been 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; or

(iii) been subject to a disqualification order under the Company Directors Disqualification Act 1986¹², 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).

(4) A person shall not fall within paragraph (3)(b) where the Board is satisfied that the disqualification or suspension from practising is imposed by a licensing body outside the United Kingdom and it does not make that person unsuitable to be—

(a) a party to an agreement;

(b) a director, chief executive or secretary of a dental corporation, in the case of an agreement with a dental corporation;

(c) a director, chief executive or secretary of a company limited by shares, in the case of an agreement with a company limited by shares; or

(d) a member of a limited liability partnership, in the case of an agreement with a limited liability partnership.

(5) Where a person has been employed as a member of a health care profession any subsequent employment must also be as a member of that profession.

(6) A person shall not fall within paragraph (3)(e) where the Board is satisfied that the conviction does not make the person unsuitable to be—

(a) a party to an agreement;

(b) a director, chief executive or secretary of a dental corporation, in the case of an agreement with a dental corporation;

(c) a director, chief executive or secretary of a company limited by shares, in the case of an agreement with a company limited by shares; or

(d) a member of a limited liability partnership, in the case of an agreement with a limited liability partnership.

(7) For the purposes of paragraph (3)(c)(i), a health service body includes a

Strategic Health Authority or a Primary Care Trust which was established before the coming into force of sections 33 and 34 of the 2012 Act.

5.— Additional conditions relating to agreements with dental corporations or companies limited by shares

- (1) Subject to paragraph (2), it is a condition in the case of an agreement to be entered into with a dental corporation or a company limited by shares on or after the date of the coming into force of article 39 of the Dentists Act Order, that no—
 - (a) offence has been or is being committed under section 43 of the Dentists Act; or
 - (b) financial penalty has been imposed under section 43B or 44 of the Dentists Act.
- (2) Paragraph (1) shall not apply if the Board is satisfied that any offence under section 43 or penalty imposed under section 43B or 44 of the Dentists Act does not make a dental corporation or a company limited by shares unsuitable to be a contractor, whether by virtue of the time that has elapsed since any conviction or penalty was imposed, or otherwise.

CHAPTER 6

Contract Variations

1. Introduction

- 1.1 This policy describes the process to determine any contract variation, whether by mutual agreement or required by regulatory amendments, to ensure that any changes reflect and comply with legislation so as to maintain robust contracts.

2. Types of Contract Variation

- 2.1 Variations to contracts fall broadly within four categories:
 - 2.1.1 changes due to legislation or regulatory change;
 - 2.1.2 changes to the contracting party;
 - 2.1.3 changes to services; or
 - 2.1.4 changes to the payment arrangements.
- 2.2 Where a GDS or PDS contract is varied and there is a change in the range of services provided, the contractor must display written details of that change in a prominent position in a part of the premises to which patients have access.

3. Legislation / Regulatory Changes

- 3.1 Usually both parties to a primary dental contract must agree a variation in order for it to take effect. The Commissioner may, however, vary the contract without the contractor's consent where it is reasonably satisfied that it is necessary to do so to comply with the NHS Act, any regulatory changes pursuant to the NHS Act or any direction given by the Secretary of State pursuant to the NHS Act. This right is contained within all GDS and PDS contracts.
- 3.2 The Commissioner must notify the contractor in writing of the wording of the variation and the date it will take effect. Where it is reasonably practicable to do so, the date the variation will take effect must not be less than 14 days after the notice is served.

- 3.3 There is no need for the Commissioner to seek agreement or require a signature of acceptance for this type of variation, as there is no right of refusal or negotiation.
- 3.4 The process for issuing a variation notice due to legislation / regulatory changes is:
 - 3.4.1 A regulatory amendment to the existing GDS and PDS Regulations is issued under statutory instrument. Commissioners should ensure arrangements are in place to take the appropriate action as quickly as possible after the issue of an amendment.
 - 3.4.2 Where the GDS Regulations are amended, there may be a centrally issued GDS variation to the Standard GDS Contract and a supporting notice both of which should be used to inform the contractors of the change. This is not possible for PDS agreements as these are locally defined, which vary significantly across the country.
 - 3.4.3 The Commissioner must notify contractors of the variation and its effective date. A template variation notice is provided in Annex 1 for GDS contracts and Annex 2 for PDS agreements.
 - 3.4.4 For GDS contractors, the notification should include the GDS variation and the relevant pages of the amended contract document for completeness. For PDS contractors, the Commissioner will be required to ensure the regulatory amendments become a contractual amendment, citing the correct clause numbers affected within the individually held contracts and including the relevant pages of the document for completeness.
 - 3.4.5 All electronically held contracts should be updated with the variations at this stage to ensure that the centrally held documents remain up to date with current legislation.
 - 3.4.6 Commissioners should retain a copy of the notice on file for completeness. Each contract file should contain a variation log and Commissioners should ensure that this is updated accordingly.

4. Changes to the Contracting Party

- 4.1 Changes to the contracting party may be due to:
 - 4.1.1 partnership changes;

- 4.1.2 company changes;
 - 4.1.3 retirement (including 24-hour retirement);
 - 4.1.4 novations, mergers and splits; and/or
 - 4.1.5 death of a contractor.
- 4.2 There are specific processes to follow on the death of a contractor. Please refer to the policy on the death of a contractor for further information (chapter 12).
- 4.3 The GDS and PDS Regulations contain provisions relating to the remaining scenarios listed above which are considered in more detail below.

5. Partnership Changes

- 5.1 Changes to the composition of a partnership will require variation to the contract and may require a variation to the standard registration conditions with the CQC.
- 5.2 Procurement law may be relevant as, in some circumstances, the admittance of a new contracting party may give rise to procurement obligations. Commissioners should refer to relevant published guidance and should take appropriate advice at an early stage.
- 5.3 The Regulations place restrictions on the organisational structures that are eligible to enter into different types of primary dental contracts. Please refer to chapter 5 (Which dental contract when?) for details on the eligibility criteria.
- 5.4 Contracts may be varied in a number of ways with relation to partnership matters, including the following which are looked at in more detail below:
- 5.4.1 individual contractors changing to more than one individual (which may be a partnership which requires a different process depending on whether it is a GDS or PDS contract);
 - 5.4.2 changes to the parties of contracts with more than one individual (which may be from a partnership to an individual contractor or changes to the composition of partnerships); and
 - 5.4.3 disputes between partners or members.

Individual to partnership – GDS contracts

- 5.5 If a GDS contractor is currently an individual dental practitioner who wishes to enter into partnership with one or more individuals under that contract, the contractor is required to notify the Commissioner in writing and provide the following information:
- 5.5.1 the name of the person or persons with whom the contractor proposes to practice in partnership;
 - 5.5.2 confirmation that the person or persons is either:
 - 5.5.2.1 a dental practitioner; or
 - 5.5.2.2 a person who satisfies the conditions specified in section 102(2)(b) of the NHS Act;
 - 5.5.3 confirmation that the person or persons satisfies the conditions imposed by regulation 4 of the GDS Regulations;
 - 5.5.4 whether or not the partnership is to be a limited partnership and if so, who is a limited partner and who is a general partner; and
 - 5.5.5 the date on which the contractor wishes to change its status (which shall not be less than 28 days from the date on which the notice was served on the Commissioner).
- 5.6 The notice must be signed by the individual contractor and by the person or persons with whom the individual contractor is proposing to practise in partnership. Where a contractor contacts the Commissioner about such a change, the Commissioner should send Annex 3A.
- 5.7 The Commissioner must ensure the accuracy of the information provided. This may be achieved, for example, by checking the registration status of the proposed partner(s) and that the proposed partner(s) meet the eligibility criteria for holding a GDS contract.
- 5.8 Commissioners shall confirm in writing that the contract will continue with the partnership and issue a variation notice accordingly to amend the relevant sections of the contract. The Commissioner must specify in the notice the date on which the contract will continue as a partnership. Where reasonably practicable this should be the date requested by the contract holder in their initial notice, or the nearest date to it. A template acknowledgement letter is provided in Annex 3B.
- 5.9 A variation notice must include the wording of the proposed variation and the date upon which the variation will take effect. The contractor would then be required to return a signed copy of the variation notice. The

Commissioner should ensure that the electronically held contract documentation is amended accordingly.

- 5.10 If the new partner is not accepted as eligible the Commissioner should advise the contractor in writing of the reasons they believe the proposed partner(s) to be ineligible and confirm that the contract status will remain single handed until the matter can be resolved or a further notice is provided by the contractor proposing an alternative eligible partner.

Individual to more than one individual – PDS agreement

- 5.11 The PDS Regulations allow PDS agreements to be agreed with limited liability partnerships but do not allow PDS agreements to be treated as made with general partnerships.
- 5.12 Where individuals are practising in general partnership (not a limited liability partnership), the PDS agreement will be entered into with each individual. The individual signatories to a PDS agreement collectively form the contractor.
- 5.13 The PDS Regulations do not require a PDS agreement to define a specific process for any variation to the signatories. The Commissioner must, therefore, review the relevant PDS agreement to determine whether any provisions have been added relating to this and prior to following any process for variation.
- 5.14 If the contractor is currently an individual dental practitioner and they wish to have one or more individuals join them under that agreement, then they must seek the Commissioner's consent in writing for any such variation to the contract. Where a contractor contacts the Commissioner about such a change, the Commissioner should send Annex 4A. The Commissioner must have consideration of any procurement implications, along with other influencing factors, when considering such an application.
- 5.15 The Commissioner must ensure the proposed individual(s) meet the eligibility criteria for holding a PDS agreement (please refer to chapter 5 (Which dental contract when?) for further information).
- 5.16 The Commissioner should confirm its decision on the variation in writing to the contractor detailing the reasons for the decision and details of any information that they have relied upon in the process. A template acknowledgement letter is provided in Annex 4B.
- 5.17 If the decision is to consent to the variation, then the Commissioner shall issue a variation notice accordingly to amend the relevant sections of the

contract. A variation notice should include the wording of the proposed variation and the date upon which the variation will take effect. The contractor would then be required to return a signed copy of the variation notice. The Commissioner should ensure that the electronically held contract documentation is amended accordingly.

- 5.18 If the contractor does not return a signed copy of the variation notice, then no amendment to the agreement can take place.
- 5.19 If the new partner is not accepted as eligible the Commissioner should advise the contractor in writing of the reasons they believe the proposed partner(s) to be ineligible and confirm that the contract status will remain as it was until the matter can be resolved or a further notice is provided by the contractor proposing an alternative eligible partner.

Changes to contracts with more than one individual – GDS contracts

- 5.20 Changes to the contracting parties may occur where a partnership dissolves or terminates or where the composition of the partnership changes. Both scenarios are explained below.
- 5.21 Where a partnership is dissolved or terminated and the contractor consists of two or more individuals practising in partnership, the contract will terminate. The contract may, however, continue with one of the former partners if the following conditions apply:
 - 5.21.1 the former partner must be nominated by the contractor; and
 - 5.21.2 the former partner must be a dental practitioner.
- 5.22 The nomination of the former partner by the contractor must:
 - 5.22.1 be in writing and signed by all of the persons who are practising in partnership. Where a contractor contacts the Commissioner about such a change, the Commissioner should send Annex 5A;
 - 5.22.2 specify the date on which the contractor proposes to change its status from that of a partnership to that of an individual dental practitioner;
 - 5.22.3 be provided to the Commissioner at least 28 days in advance of the date on which the contractor proposes to change its status from that of a partnership to that of an individual dental practitioner; and
 - 5.22.4 specify the name of the dental practitioner with whom the contract will continue, which must be one of the partners.

- 5.23 Where the Commissioner receives the information, it must acknowledge receipt of the notice in writing before the date specified in the nomination as the date on which the contractor proposes to change its status from that of a partnership to that of an individual dental practitioner. A template notice is provided in Annex 5B. A variation notice will need to be included with this letter. The Commissioner must notify the contractor in writing of the wording of the proposed variation and the date upon which that variation is to take effect
- 5.24 Where the Commissioner agrees the nomination, the Commissioner may vary the contract but only to the extent that it is satisfied it is necessary to reflect the change in status of the contractor from a partnership to an individual dental practitioner.
- 5.25 The Commissioner should be satisfied that the arrangements in place for continuity of service provision are robust.
- 5.26 In circumstances where the Commissioner is not satisfied that the nominated partner is eligible to hold the contract as an individual they should enter into dialogue with all of the partners, to explore potential solutions.
- 5.27 These might include the partners nominating an alternative partner to continue with the contract, in which circumstances a new notice should be issued to the Commissioner to include these details and propose a new date on which the changes will occur.
- 5.28 Where the contractor consists of two or more individuals practising in partnership and the composition of the partnership changes, either by a partner leaving (but without the partnership terminating) or a new partner joining, the contract will need to be amended to recognise the new partnership composition. For the variation to have effect, it must be in writing and signed by all parties to the contract.
- 5.29 The Commissioner should be aware that where the contractor is two or more persons practising in partnership, the Commissioner may terminate the contract where one or more persons have left the practice during the existence of the contract. This right of termination only arises where the Commissioner, in its reasonable opinion, considers that the change of membership of the partnership is likely to have a serious adverse impact on the ability of the contractor or the Commissioner to perform their obligation under the contract.
- 5.30 If the Commissioner intends to rely on this right of termination, please refer to the policy on contract breaches and termination (chapter 7) for further information on this right and on termination generally.

Changes to contracts with more than one individual – PDS agreements

- 5.31 As stated in paragraph 5.13, the PDS Regulations do not require a PDS agreement to define a specific process for any variation to the signatories. The Commissioner must, therefore, review the relevant PDS agreement to determine whether any provisions have been added relating to this and prior to following any process for variation.
- 5.32 If the contractor is currently two or more individuals and wish to change to an individual contractor, then they must seek the Commissioner's consent in writing for any such variation to the contract. Where a contractor contacts the Commissioner about such a change, the Commissioner should send Annex 6A. The Commissioner must consider any procurement implications, along with other influencing factors, when considering such an application.
- 5.33 The Commissioner must ensure that the proposed individual meet the eligibility criteria for holding a PDS agreement (please refer to chapter 5 (Which dental contract when?) for further information).
- 5.34 The Commissioner should confirm its decision on the variation in writing to the contractor detailing the reasons for the decision and details of any information that they have relied upon in the process. A template letter is provided in Annex 6B.
- 5.35 If the decision is to consent to the variation, then the Commissioner must issue a variation notice accordingly to amend the relevant sections of the contract. A variation notice should include the wording of the proposed variation and the date upon which the variation will take effect. The contractor would then be required to return a signed copy of the variation notice. The Commissioner should ensure that the electronically held contract documentation is amended accordingly.
- 5.36 If the contractor does not return a signed copy of the variation notice, then no amendment to the agreement can take place.
- 5.37 If the new individual is not accepted as eligible the Commissioner should advise the contractor in writing of the reasons they believe the individual is ineligible and confirm that the contract status will remain as it was until the matter can be resolved or a further notice is provided by the contractor proposing an alternative eligible individual.

- 5.38 The principles outlined in paragraphs 5.31 to 5.37 will also apply where the contractor consists of two or more individuals and the composition of the contractor changes, either by an individual wishing to leave the agreement or a new individual joining the agreement. The contract will need to be varied to recognise the new contractor composition.
- 5.39 The Commissioner should ensure that it is satisfied that the contractor will remain eligible to hold the agreement after the variation. For the variation to have effect, it must be in writing and signed by all existing (and new) individuals to the contract.
- 5.40 The Commissioner should also be satisfied that the arrangements for continuity of service provision to the local population covered within the contract are robust and may wish to seek written assurances of the post-variation contractor's ability and capacity to fulfil the obligations of the contract and their proposals for the future of the service.
- 5.41 GDS contracts are required to contain a right of termination where one of more persons has left the practice during the existence of the contract. PDS agreements are not required to contain such a right of termination. The Commissioner should therefore review the relevant PDS agreement to determine whether any such provision has been included.

Partnership splits/members dispute – GDS and PDS

- 5.42 Where the contractor to a GDS contract is a partnership and the partnership dissolves due to an internal partnership dispute, the contract will terminate unless the parties agree for the contract to continue with one partner (see paragraph 5.21). The Commissioner may have little time to make arrangements to ensure service continuity.
- 5.43 It is, therefore, desirable that the partners of a GDS contract are able to resolve disputes internally where possible, with the support of the LDC and/or mediation services.
- 5.44 If the partnership holding a GDS contract does not dissolve or terminate but the partnership no longer wishes to be a party to the contract, then the contractor will need to terminate on notice, which must not be less than three months unless agreed by the Commissioner. Failure to give six months' notice of termination is a breach of contract and the appropriate action may be taken in line with the policy on contract breaches and termination (chapter 7).
- 5.45 Under PDS agreements, subject to the terms of the individual agreements, partnership matters (including dissolution or termination of the partnership) do not affect the continuation of the agreement. This is

because where the agreement is with two or more individuals that are practising in partnership, the agreement is not entered into with the partnership but instead with the individuals (who collectively make up the contractor).

- 5.46 If a PDS contractor is practising in partnership and, following termination of a partnership, the contractor no longer wishes to be a party to the contract, the contractor will need to give notice to terminate the agreement, such notice being a minimum of three months unless agreed with the Commissioner. Please refer to the policy on contract breaches and termination (chapter 7) for more information on this.
- 5.47 Where partnerships or membership are formalised through a partnership agreement, it is very helpful if the parties are able to rely on the detail of these agreements to support the early resolution of internal disputes and to ensure that such agreements are reviewed and maintained to be current with associated legislation.
- 5.48 Unfortunately, many partnership organisations do not have agreements in place or have insufficient or outdated documents which can often lead to very protracted and acrimonious disputes between the partners.
- 5.49 The Commissioner should not get involved in endeavouring to resolve the dispute between the partners, instead insisting that the parties notify the Commissioner of their final decision when it is reached.
- 5.50 It is likely that the Commissioner will have numerous contacts from different partners and their staff about the dispute but the Commissioner should try to maintain a detached position in this respect. Any accusations of inappropriate behaviour or concerns should be considered, however, this should not be used as a means to endeavour to resolve the dispute.
- 5.51 Throughout the dispute the Commissioners should maintain open dialogue with the LDC and implement contract performance management protocols, if and when necessary.

6. Retirement of a Contractor – Single Handed

- 6.1 There is no specific reference to retirement in the GDS and PDS Regulations. The Commissioner should deal with a request to retire as a request to terminate the contract by the contractor on notice.
- 6.2 The contractor must provide the Commissioner with a written notification of the intended retirement date which will be the termination date of the

contract. This notice period must not be less than three months. If the termination date is not the last calendar day of a month, the contract shall instead terminate on the last calendar day of the month in which the termination date falls.

- 6.3 In exceptional circumstances, such as ill health, the Commissioner may wish to waive its right to the full notice period but it remains its right alone to do so. Consideration should be given, amongst other matters, to the effect that holding a contractor who is unwell to the full notice term may have on the contractor, the practice's patients and colleagues.
- 6.4 In either case the Commissioner should confirm receipt and acceptance of the retirement/termination notice in writing, the date on which the contract will terminate and any consequences and actions that the contractor must take as a result of the notice.
- 6.5 For a list of considerations relating to termination, please refer to the policy on contract breaches and termination (chapter 7).

7. Retirement of a Contractor – Two or More Partners/Individuals

- 7.1 Where a partner wishes to retire from a GDS partnership, as constituted from time to time, the contractor will need to notify the Commissioner that it wishes to vary the contract. The Commissioner should follow the process in paragraphs 5.20 to 5.28.
- 7.2 Where an individual wishes to retire from a PDS agreement, where that agreement is also held by one of more other individuals, the contractor will need to notify the Commissioner that it wishes to vary the contract. The Commissioner should follow the process in paragraphs 5.31 to 5.40.
- 7.3 The Commissioner should always keep in mind the possible implications on procurement and competition when applying the guidance in this policy.
- 7.4 Any changes to the partners within a contract may require a new registration with CQC.

8. Twenty-Four Hour Retirement

- 8.1 24-hour retirement is a process by which members of the NHS pension scheme seek to qualify for their retirement benefits whilst continuing to work (albeit with a break).

- 8.2 24-hour retirement usually involves resigning from all involvement in an NHS contract, not returning to the NHS in any capacity for at least 24 hours and not working for more than 16 hours a week in the first month of retirement. The Commissioner should ensure that it is aware of the current conditions around 24-hour retirement.
- 8.3 If the Commissioner is approached by a contractor wishing to take 24-hour retirement, it must not offer advice relating to pension arrangements.
- 8.4 Where a contractor confirms that 24-hour retirement requires "resignation" from the contract, steps will need to be taken to ensure that the contractor is removed from the contract, either by:
 - 8.4.1 termination on notice in the case of a single handed contractor;
or
 - 8.4.2 termination or variation of the contracting party in the case of a partnership.
- 8.5 The Commissioner may wish to suggest single-handed practitioners take independent advice, as 24-hour retirement using the method described above would necessitate the termination of the contract as set out in paragraphs 6.1 to 6.5.
- 8.6 The Commissioner must make clear to the contractor that there is no guarantee that the Commissioner would commission services from that individual following termination.

9. Variation - Body Corporates

- 9.1 GDS contracts and PDS agreements may be held by different types of bodies corporate. Please refer to chapter 5 (Which dental contract when?) for a summary of the types of bodies corporate.
- 9.2 There are various eligibility criteria that must be satisfied before any of these types of organisation can hold GDS contract or PDS agreements. For further information, please refer to chapter 5 (Which dental contract when?).
- 9.3 A change to or from an individual or partnership contractor to or from these types of organisations is a complete change of the identity of the contracting party, regardless of whether the organisation is owned and/or run by the original contractors. This will technically require termination of the existing contract and immediate replacement with a new contract on

the same terms. This is a contract novation and is explained further in paragraph 10.

- 9.4 Where the novation involves a transfer of the contract from an individual or partnership to a corporate body, this is often referred to as "incorporation". Where the novation involves a transfer of the contract to an individual or partnership from a corporate body, this is often referred to as "dis-incorporation". Such changes will not technically be a variation to the original contract as the original contract will be replaced by the new contract.

10. Contract Novations and Incorporation/Dis-incorporation

- 10.1 Incorporation of a GDS agreement usually occurs where a contractor that is an individual or a partnership wishes to transfer the agreement to a dental corporation or a limited liability partnership.
- 10.2 Incorporation of a PDS agreement usually occurs where a contractor that is one or more individuals wishes to transfer the agreement to a dental corporation, a company limited by shares or a limited liability partnership.
- 10.3 Dis-incorporation is the same process in reverse.
- 10.4 Where one party to a contract (A) proposes to completely remove itself from the contract to be replaced by a separate party (B), this cannot be a variation to the contract. Instead this is a transfer of the rights and obligations under the contract which is termed a contract novation.
- 10.5 A contract novation is not a variation. A contract novation involves the termination of the existing contract and entering into a new contract on the same terms as the original contract but with the parties details changed. Where a new contract is awarded, regardless of the fact that it may be a contract novation or may be on the same terms as the original contract, there may be procurement law implications.
- 10.6 Contract novations are often requested where a person or company is selling its business and as part of the sale it is transferring its contracts and its customers to the buyer. The contracts are novated and the buyer agrees to take over the seller's responsibilities for performing the contracts and takes on any associated debts and obligations.
- 10.7 There is no express right for a contractor to incorporate or dis-incorporate a contract. Contractors should be made aware that incorporation or dis-incorporation could potentially result in the Commissioner deciding to competitively tender the new contract in

accordance with procurement law. The contractor to the original contract may not be successful in winning the new contract.

- 10.8 The contractor may be unwilling to relinquish its original contract, unless it receives assurances from the Commissioner that the Commissioner will commission an equivalent (or mutually agreed) level of activity from the contractor under the new contract. As set out below, there are factors that the Commissioner should consider before providing any such assurance.

Managing a request for Incorporation or Dis-incorporation

- 10.9 On receipt of a request from a contractor to incorporate or dis-incorporate, the process below should be followed:
- 10.9.1 The Commissioner should acknowledge the request and send the contractor an assessment template. A letter and the assessment template for incorporation are provided in Annex 7 with a form for internal Commissioner use provided in Annex 8. A letter and assessment template for dis-incorporation is provided in Annex 9.
 - 10.9.2 The Commissioner should make the contractor aware of the potential implications of the incorporation or dis-incorporation as outlined in paragraph 10.7.
 - 10.9.3 On receipt of the information, the Commissioner should review the information and decide whether to agree the request.
- 10.10 The Commissioner should first consider whether the proposed new contractor is eligible to enter into the contract. If it is not eligible, the Commissioner must refuse the request. A template letter of refusal of a request to incorporate is provided in Annex 10 and in respect of dis-incorporation in Annex 11.
- 10.11 Where the proposed contractor is eligible, the Commissioner should consider a number of further matters listed below. In considering these matters, the Commissioner, is required to act reasonably and otherwise in accordance with public law principles.
- 10.11.1 the Commissioner's obligations under procurement law to determine whether there is a risk of challenge in agreeing the request or whether a competitive tender process should be carried out;

- 10.11.2 the effect of the proposal on the statutory duties of NHS England, particularly the duty under Section 13K of the NHS Act (duty to promote innovation) and Section 13P (duty as respects variation in provision of health services) - for further information, please refer to chapter 4 (General duties of NHS England);
- 10.11.3 the value of the contract;
- 10.11.4 the level of market interest;
- 10.11.5 the potential for innovation;
- 10.11.6 the need to protect services in the core contract;
- 10.11.7 continuity of patient care;
- 10.11.8 the extent to which the original contractor(s) will be controlling and giving instructions to the proposed contractor to comply with contractual obligations;
- 10.11.9 that extent of change to the terms of the existing and new contract (i.e. contract value or activity level);
- 10.11.10 payments under the existing contract and value for money;
- 10.11.11 benefits to service users of the proposal;
- 10.11.12 amendments to the activity level in the contract, e.g. where there has been previous underperformance, the commissioned UDAs or UOAs may be reduced to a realistic and achievable level;
- 10.11.13 opening hours (including evening and weekend) and urgent access slots required;
- 10.11.14 whether the Commissioner requires that the existing contractor guarantees the performance of the proposed contractor – any such requirement must be proportionate to the risks associated with the novation and reasonable with a clear rationale for placing such a responsibility on the existing contractor – legal advice should be sought;
- 10.11.15 whether the proposed contractor is a company:
 - 10.11.15.1 but is not registered with Companies House (the contractor may take the view that this cannot be finalised until agreement in principle has been given by the Commissioner);

- 10.11.15.2 and any director of the company has been disqualified from another registered company (check Insolvency Website and Companies House Disqualified Directors);
 - 10.11.16 an unsatisfactory Disclosure and Barring Scheme;
 - 10.11.17 the potential to review any restricted contracts, e.g. contracts is restricted to child/exempt only. And whether the restrictions should be removed;
 - 10.11.18 whether the existing contractor has outstanding debts which may include repayment due to underperformance from previous years and whether novation is made conditional on repayment being made;
 - 10.11.19 whether the existing contractor has received a breach or remedial notice and whether novation is made conditional on the proposed contractor taking on the consequences of the notices, e.g. action the remedial activity;
 - 10.11.20 whether the circumstances that led to the issue of a breach notice or a remedial notice has any relevance to the request for incorporation/disincorporation particularly where the contractor has complied with any remedial notice issued; and/or
 - 10.11.21 whether the existing contractor has outstanding issues regarding CQC inspection or practice inspection by the Commissioner and whether the novation should be made conditional on those issues being resolved.
- 10.12 Requests for incorporation or dis-incorporation should be agreed with or without conditions unless there are concerns as to whether a request would present a benefit to patients or create a significant risk of successful procurement law challenge.

Agreeing the Request

- 10.13 Where the Commissioner agrees the request, the original contract will be novated. Legal advice should be sought on whether a deed or a simple novation agreement should be used. Please refer to Annex 12 for a template agreement notice.
- 10.14 As a contract novation is technically termination of the original contract and replacing it with a new contract, the Commissioner must make

appropriate arrangements for the termination of the original contract including:

- 10.14.1 carrying out a financial reconciliation;
 - 10.14.2 managing any under performance in terms of financial recovery, service delivery or performance concerns and details of how these will be managed going forward; and
 - 10.14.3 any other requirements in the contract relating to termination.
- 10.15 The Commissioner will need to agree a new contract with the new contractor which may vary from the original contract in terms of services provided, numbers of UDAs and UOAs and any other changes agreed.
- 10.16 Where the request is for incorporation, the new contractor will be a body corporate and the Commissioner should consider whether it is appropriate to require that the new contract contains a change of control clause. Such a clause requires the contractor to notify the Commissioner where there is a change in ownership or control of the contractor. Legal advice should be sought on the wording of the change of control clause. Where a contract contains such a clause and the Commissioner does not consent to the change but the contractor proceeds anyway, the Commissioner may issue a Remedial Notice.
- 10.17 Commencement of the new contract should be made conditional on the new contractor being CQC registered. The CQC cannot provide the Notification of Decision until the date of commencement is agreed. The contractor should, however, provide the Commissioner with written confirmation from the CQC that the CQC does not intend to impose any restrictions on registration of the new contractor.

Disputes

- 10.18 Where the contractor does not agree with the Commissioner's decision, the contractor may appeal the decision. Please refer to the policy on managing disputes (chapter 10) for further information.

NHS dental services payment system requirements

- 10.19 Following the Commissioner's decision, any changes to the contracts must be made on the relevant payment and contract management systems. Please see Annex 13 for further details.

11. Practice Mergers and/or Contractual Mergers

- 11.1 Dental practices may wish to come together in varying ways to provide support for each other, expand on the services available and/or resolve premises issues and achieve economies of scale, though contractors will have their own reasons for considering such a union.
- 11.2 An individual or partnership may hold more than one form of primary care contract with the Commissioner and can also be a party to more than one contract. For example a GDS contractor can also be a party under a PDS agreement and vice versa.
- 11.3 The underlying principles for the Commissioner to consider when any such proposal is made to them are what the benefits are for the patients and what the financial implications are for the Commissioner.
- 11.4 There are two ways in which practices may propose to merge:
 - 11.4.1 by informal arrangements such as sharing staff which requires no change to the contracts – it is a private arrangement between the practices; or
 - 11.4.2 by "merging" the contracts which may be done by:
 - 11.4.2.1 each contractor becoming a party to the other contractor's contract (through variations of the contracting parties);
 - 11.4.2.2 terminating one of the existing contracts, continuing the other contract but varying it to include the other contractor as a party to the contract; or
 - 11.4.2.3 terminating the two existing contracts and creating a single organisation or partnership which will enter into one new contract.
- 11.5 If one or both contracts are terminated, the relevant contractor must give notice to the Commissioner to terminate (giving at least three months' notice).
- 11.6 Merging contracts is a complex matter which should not be approached lightly by either the contractors or the Commissioner. Adding or removing individuals or partners may be carried out in accordance with this policy but where termination is proposed, the final commissioning decision on whether contracts should be merged lies with the Commissioner. There are a number of important issues that would need to be considered, prior to giving consent, such as:

- 11.6.1 benefits to patients - the Commissioner should require the parties to submit a service plan to support their application, which should provide detail on:
 - 11.6.1.1 how patients would access a single service;
 - 11.6.1.2 assurances that all patients will access a single service with consistency across provision, i.e. booking appointments, essential and additional services, opening hours, extended hours, and so on, single IT and phone system;
 - 11.6.1.3 premises arrangements;
 - 11.6.1.4 proposed arrangements for consulting with the patients about the proposal, communicating the change to patients and ensuring patient choice throughout;
- 11.6.2 financial arrangements – the impact of directions under the SFE, or any specific terms included in the individual contracts;
- 11.6.3 premises reimbursements;
- 11.6.4 general duties of NHS England; and
- 11.6.5 procurement and competition.
- 11.7 This is not an exhaustive list and the Commissioner should refer to and seek appropriate guidance in each case to ensure that all relevant matters are considered.
- 11.8 Commissioners should advise contractors to seek guidance from their representative bodies in this instance to ensure they follow due process and are fully aware of the implications.

12. Changes to Services

- 12.1 Commissioners will need to consider changes to local service provision as a consequence of a health needs assessment of the local community with particular regard to the diverse nature of the community and reducing health inequalities in access and outcomes.
- 12.2 The Commissioner and the contractor shall only agree to any change to the delivery of services after all legal obligations in respect of consultation, engagement or involvement of the public, patients and other organisations have been fulfilled.

- 12.3 The paragraphs below outline the principles and steps required to process the most commonly occurring service changes.
- 12.4 Where the parties have entered into a Capitation and Quality Scheme 2 Agreement, the PDS and GDS Regulations apply to amend the process for varying certain terms of the contract. Where this applies, the parties should consider Regulation 24B of the GDS Regulations or 20B of the PDS Regulations before varying any term of the contract to determine if that term is affected by the Agreement.

13. Level of Services

- 13.1 GDS contractors must provide mandatory services. PDS agreements are not required to provide mandatory services but such services can be included in the agreement.
- 13.2 A GDS contract must specify the number of UDAs to be provided by the contractor. Where a PDS agreement includes the provision of mandatory or advanced mandatory services, the agreement must specify the number of UDAs to be provided by the contractor.
- 13.3 Where a contract includes the provision of orthodontic services, the contract must also specify the number of UOAs to be provided by the contractor.
- 13.4 Either party can notify the other if it believes the number of UDAs or UOAs should be varied. The notice must specify the variation that the parties considered necessary and the reasons for the variation.
- 13.5 The Commissioner may, for example, send such a notice after a mid year review if it believes the contractor will not achieve the number of UDAs or UOAs in the contract.
- 13.6 Following such notice, both parties are required to use their best endeavours to communicate and co-operate with each other with a view to determining what (if any) variation should be made to the number of UDAs or UOAs and any related variations to the agreement which may include payments to the contractor.
- 13.7 Where a variation is agreed, it must be in writing and signed by both parties in order to be effective.

14. Premises

- 14.1 A contractor may wish to make changes to its contracted premises (including branch premises – for further information, see paragraphs 14.7 to 14.27 below) from which services are provided.
- 14.2 This would likely be a significant change to services for potential service users and as such the Commissioner and the contractor must engage in open dialogue in the first instance to consider the consequences and implications of the proposed change and discuss any possible alternatives that may be agreed between them.
- 14.3 The Commissioner and contractor, through their dialogue, may establish that there is a need to retain dental service provision in the locality and must seek to find a solution, which could include tendering for a new provider within that locality, though not necessarily within the same premises.
- 14.4 Once, and if, the final date for closure is confirmed, the Commissioner will issue a variation agreement notice to remove the registered address from the contract, and, as in other variations referred to in this policy, include the wording of the variation and the date on which it will take effect.
- 14.5 The contractor will be fully responsible for cessation or assignment of the lease for any rented premises and any disposal of owner occupied premises.
- 14.6 While it is likely that a PDS agreement would reflect the terms as laid out in the GDS contract example above, it is essential that the Commissioner reviews the individual contract for relevant provisions that relates to removing the closing premises and any rights associated with that premises.

Branch Premises Closure

- 14.7 The closure of branch premises may be as a result of an application made by the contractor to the Commissioner or due to the Commissioner instigating the closure following full consideration of the impact of such a closure.
- 14.8 In the circumstances that the Commissioner is instigating a branch closure, the Commissioner must be able to clearly demonstrate the grounds for such a closure and have fully considered any impact on the contractor's local population and any financial impact on the actual contractor. The Commissioner will be expected to demonstrate that they have considered any other options available prior to instigating a branch closure and entering into a dialogue with the contractor as to how the closure is to be managed. The Commissioner will need to have complied

with the duty (under section 13Q of the NHS Act) to involve patients in decision-making before any final decision to close a branch is made (for further information, please refer to chapter 4 (General duties of NHS England)).

- 14.9 Where a contractor wishes to close branch premises, the contractor should have preliminary discussions with the Commissioner to determine appropriate and proportionate service user involvement requirements prior to the consideration of such a service provision change. Even though the closure is being instigated by the contractor, the Commissioner will still need to comply with the section 13Q duty to involve service users in decision-making before any final decision is made.
- 14.10 The closure of branch premises would be a significant change to services for potential service users and as such the Commissioner and the contractor should engage in open dialogue in the first instance to consider the consequences and implications of the proposed change and discuss any possible alternatives that may be agreed between them.
- 14.11 Contractor and Commissioner discussions resulting ultimately in a decision about branch premises closure will often include consideration of (but not be limited to):
 - 14.11.1 financial viability;
 - 14.11.2 condition, accessibility and compliance to required standards of the premises;
 - 14.11.3 accessibility of the main premises;
 - 14.11.4 the Commissioner's strategic plans for the area;
 - 14.11.5 other primary health care provision within the locality (including other providers and their current list provision, accessibility, dispensaries and rural issues);
 - 14.11.6 any relevant premises issues;
 - 14.11.7 other payment amendments;
 - 14.11.8 possible co-location of services;
 - 14.11.9 rurality issues;
 - 14.11.10 service user feedback;

- 14.11.11 any impact on groups protected by the Equality Act 2010 (for further detail please refer to chapter 4 (General duties of NHS England));
 - 14.11.12 the impact on health and health inequalities; and
 - 14.11.13 any other relevant duties under Part 2 of the NHS Act (for further detail please refer to chapter 4 (General duties of NHS England)).
- 14.12 The Commissioner and contractor, through their dialogue, may establish that there is a need to retain service provision in the locality and must find a solution, which could include tendering for a new provider within that locality, though not necessarily within the same premises. Note that most changes in premises will trigger the Commissioner's duties to involve service users in decision-making.
- 14.13 In exceptional circumstances the Commissioner may wish to consider providing additional support to the contractor in the short term so they might maintain the branch premises where there is a potential negative affect on service users.
- 14.14 If support is mutually acceptable the branch premises should remain open for a specific period to allow matters to be resolved satisfactorily.
- 14.15 The Commissioner should confirm any such arrangements and agreements in writing to the contractor as soon as is practicably possible after the agreement is reached.
- 14.16 If the Commissioner and the contractor are unable to reach an agreement to keep the branch premises open, then the contractor will begin the public involvement process.
- 14.17 The contractor is required to follow the public involvement process as agreed with the Commissioner, to whom the legal duty to make arrangements to involve the public applies. It is the responsibility of the Commissioner to ensure that the legal duty is met, but in practice the contractor can undertake the involvement process on their behalf.
- 14.18 Once this involvement exercise has been undertaken and the results provided to the Commissioner, the contractor would then submit a formal application to close the branch premises to the Commissioner for consideration (Annex 14A).
- 14.19 The Commissioner will then assess the application regarding the closure and the outcome of the public involvement exercise with a view to either accepting or refusing the proposal. These assessments will need to again

consider all the relevant factors, including those listed at paragraph 14.11. The Commissioner should document how it has taken the various factors into account.

- 14.20 Either the contractor or the Commissioner may invite the LDC to be party to these discussions at any time.
- 14.21 The Commissioner should confirm its decision on the closure in writing to the contractor. A template acknowledgement letter is set out in Annex 14B.
- 14.22 Where the Commissioner refuses the branch premises closure through its internal assessment procedure, the contractor must be notified in writing within 28 days following the internal assessment and the contractor may then follow the relevant resolution process as referenced in the contract.
- 14.23 Where the Commissioner approves the branch premises closure, the Commissioner will need to ensure that it retrieves all NHS capital owned assets from the premises.
- 14.24 The contractor remains responsible for ensuring the transfer of patient records and confidential information to the main premises, having full regard to confidentiality and data protection requirements, Records Management: NHS Code of Practice guidance and any relevant guidance from the Health & Social Care Information Centre or the Information Commissioner's Office. Where a third party contractor is being used to handle records, they must be vetted and appropriate contractual arrangements put in place. Further information is contained in Annex 15.
- 14.25 The contractor remains responsible for carrying out the involvement exercise in accordance with the instructions given by the Commissioner and informing the registered patients of the proposed changes. Ultimately it is the Commissioner's responsibility to ensure that a proper public involvement exercise has been carried out.
- 14.26 Once the final date for closure is confirmed the Commissioner will issue a standard variation notice to remove the registered address of the branch premises from the contract, including the amended sections of the contract for completeness.
- 14.27 It is possible that a PDS agreement will reflect the terms as set out above. It is however essential that the Commissioner reviews the individual agreement for any other relevant provisions to allow a variation to effectively remove the closing premises and any rights associated with that premises alone.

Public involvement

- 14.28 As outlined above, it is the Commissioner's responsibility to ensure that an appropriate public involvement exercise takes place and that any feedback from this exercise is considered before a final decision is made. This should be done in accordance with the 'NHS England Statement of arrangements and guidance for involving patients and the public in commissioning.'
- 14.29 Where appropriate, the Commissioner must ensure that it engages with the LDC, Healthwatch, the HWB, CCGs and the local council (which is likely to have an Overview and Scrutiny Committee for this purpose), discuss the feedback and ensure that this forms part of the formal application. .

15. Financial Changes – Statement of Financial Entitlements

- 15.1 The contract will contain the terms of any payments due. Any change to those terms will require a notice of variation which should be provided no less than 28 days before the proposed variation takes effect.
- 15.2 For GDS contracts, the financial terms must reflect those set out in the SFE. There is no such requirement under PDS agreements which have been locally agreed. Any changes under the SFE should be reviewed against the terms of each of the individual contracts to ascertain what, if any, affect those changes have on local financial terms.

Annex 1

Template Variation Notice for Legislation / Regulatory Change – GDS Contracts

[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]

Notice of variation to your GDS contract

We give you notice that we intend to vary your GDS contract dated [insert start date of contract] (the "Contract") with effect from [insert date (if this date is less than 14 days after the date this notice will be served, explain why)]. We provide the wording of the variation below.

[insert variation wording or attach the model variation]

This variation is made to comply with the terms of [insert legislation that requires the change]. Under clause [insert clause number of contract (clause 125 for the Standard GDS Contract)], we may vary the Contract without your consent where this is due to legislative or regulatory change. You are not, therefore, required to acknowledge this variation notice.

Yours sincerely

[Name]

[Job title, etc]

Annex 2

Template Variation Notice for Legislation / Regulatory Change – PDS Agreement

[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]

Notice of variation to your PDS agreement

We give you notice that we intend to vary your PDS agreement dated [insert start date of contract] (the "Contract") with effect from [insert date (if this date is less than 14 days after the date this notice will be served, explain why)]. We provide the wording of the variation below.

[insert variation wording]

This variation is made to comply with the terms of [insert legislation that requires the change]. Under clause [insert clause number of contract], we may vary the Contract without your consent where this is due to legislative or regulatory change. You are not, therefore, required to acknowledge this variation notice.

Yours sincerely

[Name]

[Job title, etc]

Annexes 3 - 6

Template Requests for information – Changes to the Contracting Parties

These Annexes contain requests for information to be sent to the contractor and corresponding acknowledgements for completion by the Commissioner. The Annexes include:

Annex 3A – Request for information relating to change from individual to partnership – GDS contracts

Annex 3B – Acknowledgement of information relating to change from individual to partnership – GDS contracts

Annex 4A – Request for information relating to change from individual to more than one individual – PDS agreements

Annex 4B – Acknowledgement of information relating to change from individual to more than one individual – PDS agreements

Annex 5A – Request for information relating to change from partnership to individual – GDS contract

Annex 5B – Acknowledgement of information relating to change from partnership to individual – GDS contract

Annex 6A – Request for information relating to change from more than one individual to an individual - PDS agreement

Annex 6B – Acknowledgement of information relating to change from more than one individual to an individual - PDS agreement

Annex 3A

Request for Information Relating to Change from Individual to Partnership – GDS contracts

[date]

Dear [name]

Change from Individual to Partnership – [insert GDS contract reference]

Please provide the information below to the Commissioner no less than 28 days before the requested contract variation.

1. Affix practice stamp:

-
2. The names of the person(s) in the proposed partnership: [List all partners]
-

3. The name of the partnership, its address, telephone number, fax number and email address: [Insert]
-

4. Will the partnership be a limited partnership? Yes / No
-

If yes, who is a limited and who is a general partner? [List all partners indicating who is limited and who is general]

5. Confirm that the proposed partner(s) is/are either: [List all partners indicating whether each is a dental practitioner or a person who satisfies the conditions specified in the NHS Act]
 - a. a dental practitioner;
 - or
 - b. a person who satisfies
-

the conditions
specified in the NHS
Act

6. Confirm that the proposed partner(s) satisfies the conditions imposed by regulations 4 of the NHS (General Dental Services Contracts) Regulations 2005. [List all partners indicating whether each satisfies the conditions imposed by regulation 5 of the NHS (General Dental Services Contracts) Regulations 2005]
-

7. The proposed date from which this change is to be implemented: [insert date]

Signed by current contractor, _____
[insert name]

Date _____

Signed by proposed new partner, _____
[insert name]

Date _____

Signed by proposed new partner, _____
[insert name]

Date _____

[add further signatures lines as necessary]

Please note that providing the information does not impose any obligation on the Commissioner to agree to this change.

Yours sincerely

[name]

[title]

Annex 3B

Acknowledgement of Information Relating to Change from Individual to Partnership – GDS Contracts

[insert date]

Dear [name]

Contract details - [insert name of contract]

Thank you for providing information relating to a change in the contractor status of your GDS contract dated [insert date] (the "Contract") from an individual to a partnership.

[I can confirm that we are satisfied that the information meets the conditions to enable us to agree that the Contract will continue with the partnership with effect from [insert date]. We include a variation notice with this letter. I have included two copies of the variation notice which I would be grateful if you could return after being signed. We will then sign the documents and return a copy for you to retain for your records.]

OR

We are not satisfied that the person(s) you have proposed is eligible to hold a GDS contract. This is because [insert]. The Contract will remain with you as individual contractor until this matter can be resolved and we agree that the Contract can be varied.]

Yours sincerely

[name]

[title]

Annex 4A

Request for Information Relating to Change from Individual to More than One Individual – PDS agreements

[The Commissioner must review the agreement to determine if there are any specific provisions that are relevant to this scenario]

[date]

Dear [name]

Change from Individual to More than One Individual – [insert PDS agreement reference]

Please provide the information below to the Commissioner no less than 28 days before the requested contract variation.

1. Affix practice stamp:

-
2. The names of the person(s) [List all persons]
who will join the agreement

-
3. The addresses, telephone numbers, fax numbers and email addresses of all persons who will join the agreement: [insert]

-
4. Confirm that the proposed partner(s) satisfies the conditions imposed by regulation 4 of the NHS (Personal Dental Services Agreements) Regulations 2005: [List all persons indicating whether each satisfies the conditions imposed by regulation 4]
-

5. The proposed date from [insert date]
which this change is to be
implemented:

Signed by current contractor, _____
[insert name]

Date _____

Signed by proposed new person, _____
[insert name]

Date _____

Signed by proposed new person, _____
[insert name]

Date _____

[add further signatures lines as
necessary]

Please note that providing the information does not impose any obligation on the Commissioner to agree to this change.

Yours sincerely

[name]

[title]

Annex 4B

Acknowledgement of Information Relating to Change from Individual to More than One Individual – PDS Agreement

[The Commissioner must review the agreement to determine if there are any specific provisions that are relevant to this scenario]

[insert date]

Dear [name]

Contract details - [insert name of contract]

Thank you for providing information relating to a change in the contractor status of your PDS agreement dated [insert date] (the "Agreement") from an individual to more than one individual.

[I can confirm that we are satisfied that the information meets the conditions to enable us to agree that the Agreement will continue with more than one individual with effect from [insert date]. We include a variation notice with this letter. I have included two copies of the variation notice which I would be grateful if you could return after being signed. We will then sign the documents and return one copy for you to retain for your records.]

OR

[We are not satisfied that the person(s) you have proposed is eligible to hold a PDS agreement. This is because [insert]. The Agreement will remain with you as individual contractor until this matter can be resolved and we agree that the Agreement can be varied.]

Yours sincerely

[name]

[title]

Annex 5A

Request for Information Relating to Change from Change from Partnership to Individual – GDS Contract

[date]

Dear [name]

Change from Partnership to Individual – [insert GDS contract reference]

Please provide the information below to the Commissioner no less than 28 days before the requested contract variation.

Affix practice stamp:

The names of the former partner who is nominated to take forward the contract: [insert the nominated partner's name]

The, address, telephone number, fax number and email address of the nominated partner: [insert]

Confirm that the nominated partner satisfies the conditions imposed by regulations 4 and 5 of the NHS (General Dental Services Contracts) Regulations 2005: [indicating whether the nominated person satisfies the conditions imposed by regulations 4 and 5]

The proposed date from which this change is to be implemented: [insert date]

Detail how the nominated partner [insert details]
will continue to deliver the full
range of services currently
provided:

Signed by current partner, _____
[insert name]

Date _____

Signed by current partner, _____
[insert name]

Date _____

Signed by proposed new person, _____
[insert name]

Date _____

[add further signatures lines as
necessary]

Please note that providing the information does not impose any obligation on the Commissioner to agree to this change.

Yours sincerely

[name]

[title]

Annex 5B

Acknowledgement of Information Relating to Change from Partnership to Individual – GDS Contract

[insert date]

Dear [name]

Contract details - [insert name of contract]

Thank you for providing information relating to a change in the contractor status of your GDS contract dated [insert date] (the "Contract") from a partnership to an individual.

[I can confirm that we are satisfied that the information meets the conditions to enable us to agree that the Contract will continue with the individual with effect from [insert date]. We include a variation notice with this letter. I have included two copies of the variation notice which I would be grateful if you could return after being signed. We will then sign the documents and return one copy for you to retain for your records.]

OR

We are not satisfied that the person you have nominated is eligible to hold a GDS contract. This is because [insert]. The Contract will remain with you the partnership until this matter can be resolved and we agree that the Contract can be varied.]

Yours sincerely

[name]

[title]

Annex 6A

Request for Information Relating to Change from More than One Individual to an Individual - PDS Agreement

[date]

Dear [name]

Change from More than One Individual to an Individual – [insert PDS agreement reference]

Please provide the information below to the Commissioner no less than 28 days before the requested contract variation.

1. Affix practice stamp:

-
2. The names of the person who will take forward the contract: [insert the person's name]

-
3. The, address, telephone number, fax number and email address of the person who will take forward the contract: [insert]

-
4. Confirm that the person satisfies the conditions imposed by regulation 4 of the NHS (Personal Dental Services Agreements) Regulations 2005: [Indicating whether the person satisfies the conditions imposed by regulation 4]

-
5. The proposed date from which this change is to be implemented: [insert date]
-

6. Detail how the person will [insert details]
continue to deliver the full
range of services currently
provided:

Signed by current partner, _____
[insert name]

Date _____

Signed by current partner, _____
[insert name]

Date _____

[add further signatures lines as
necessary]

Please note that providing the information does not impose any obligation on the Commissioner to agree to this change.

Yours sincerely

[name]

[title]

Annex 6B

Acknowledgement of Information Relating to More than One Individual to an Individual - PDS Agreement

[insert date]

Dear [name]

Contract details - [insert name of contract]

Thank you for providing information relating to a change in the contractor status of your PDS agreement dated [insert date] (the "Agreement") from more than one individual to an individual.

[I can confirm that we are satisfied that the information meets the conditions to enable us to agree that the Agreement will continue with the individual with effect from [insert date]. We include a variation notice with this letter. I have included two copies of the variation notice which I would be grateful if you could return after being signed. We will then sign the documents and return one copy for you to retain for your records.]

OR

We are not satisfied that the individual you have proposed is eligible to hold a PDS agreement. This is because [insert]. The Agreement will remain with you as more than one individual until this matter can be resolved and we agree that the Agreement can be varied.]

Yours sincerely

[name]

[title]

Annex 7

Acknowledgement of Request to Incorporate and Dental Incorporation Assessment Template

[date]

Dear [name]

Contract No [insert contract number]

Request to become a [limited liability partnership / company limited by shares / dental corporation / other]

Thank you for your letter dated [insert date], informing us of your request to incorporate. Incorporation is not considered to be a minor contractual change, so further enquiries and consideration needs to take place.

In order for us to consider your request, we ask that you complete the enclosed template and return it to us at the above address.

In addition to the template we also request that you provide copies of the documentation listed below to support the request.

We appreciate that all the documentation will not be available at the time of your request as you may only apply to Companies House and the Care Quality Commission if NHS England agrees to your request for incorporation in principle.

Those marked with * should be forwarded as soon as these become available as the contract documentation cannot be produced until these are received:

- *Companies House Certificate detailing all Directors
- Copy of GDC registration for all registered Directors
- Copy of passport for all Directors

- Professional indemnity
- Employers liability
- Public liability
- *Copy of written confirmation from the CQC that they do not intend to impose any restrictions on registration as the incorporated company
- Copy of the latest IPS Audit (HTM 01-05) and any related action plan

Yours sincerely

[name]

[title]

Enc.

Dental Incorporation Assessment Template

All contractors/partnerships wishing to incorporate must complete the details requested below.

Please note **ALL** questions must be answered in full. If a question is not applicable please write N/A in the box provided.

1. Details of the Applicant

- 1.1 Please provide the name and other required contact details of the applicant (person for contact purposes with this application).

Applicant Name:	
Address:	
Telephone:	
Fax:	
E-mail:	

- 1.2 Current status of organisation – please mark 'x' in the appropriate box:

Individual dental contractor(s)		Dental partnership	
---------------------------------	--	--------------------	--

- 1.3 Current contract type – please mark 'x' in the appropriate box:

GDS		PDS		PDS+	
-----	--	-----	--	------	--

- 1.4 Please state the nature of the incorporation – please mark 'x' in the appropriate box:

Dental Body Corporate		Limited Liability Partnership	
-----------------------	--	-------------------------------	--

- 1.5 Where the applicant is proposing to form an LLP, please supply the following:

Partnership Name:	
Current Trading Name:	
Previous Trading Name (if different):	
Address and telephone details if different to 1.1:	
CQC registration:	
Total number of members:	
Member details:	
Proposed date LLP to commence:	

- 1.6 Where the applicant is a company limited by shares, please provide a complete breakdown of share ownership.

Shareholder: Percentage of shares held:	
Shareholder: Percentage of shares held:	

- 1.7 Please provide details of the proposed Incorporated Body

Name of Incorporated Body:		
Trading Name:		
Previous Trading Name (if different):		
Registered Address:		
Total Number of proposed Directors:		
CQC registration:		
Details of proposed Directors, including full name, and professional	Name (please print)	GDC Registration Numbers

registration numbers:		
	(1)	
	(2)	
	(3)	
	(4)	
	(5)	
	(6)	
	(7)	
Proposed date of incorporation:		

2. Impact on Contract

- 2.1 Will the process of incorporation have any effect on current patient services – please mark 'x' in the appropriate box:

Yes	
-----	--

No	
----	--

- 2.2 Will the process of incorporation have any effect on the location of current service provision – please mark 'x' in the appropriate box:

Yes	
-----	--

No	
----	--

- 2.3 Will the process of incorporation have any effect on the current range of services provided – please mark 'x' in the appropriate box:

Yes	
-----	--

No	
----	--

- 2.4 Will there be any change to the practitioners providing the service – please mark 'x' in the appropriate box:

Yes		No	
-----	--	----	--

- 2.5 If any of these questions receives a YES response, please provide details of the effect:

Details:	
----------	--

- 2.6 Please confirm you have or will have (for the proposed new entity) all relevant insurance and indemnity requirements in place prior to contract signature – please mark 'x' in the appropriate box:

Insurance category:	Name of insurance company	Policy no.	Expiry Date	Amount of cover (£)	Name of staff member
Professional indemnity					
Employers liability					N/A
Public liability					N/A

- 2.7 Please confirm that your proposed Board of Directors meet the eligibility criteria set out in the NHS (General Dental Services Contracts) Regulations 2005 or NHS (Personal Dental Services Agreements) Regulations 2005 – that at least half are registered dentists or registered dental care professionals. Please mark 'x' in the appropriate box:

Yes		No	
-----	--	----	--

- 2.8 Please confirm that all practitioners will be covered by GDC Regulations. Please mark 'x' in the appropriate box:

Yes		No	
-----	--	----	--

- 2.9 Have any of the proposed directors been convicted of any of the following offences:

- Conspiracy
- Corruption
- Bribery
- Fraud
- Money laundering
- Any other offences

Please mark 'x' in the appropriate box:

Yes		No	
-----	--	----	--

If Yes, please provide details in the box below:

Details:	
----------	--

- 2.10 Legal and regulatory status details - Please provide details of any criminal conduct of any director, officer or senior employee of the current or proposed organisation resulting in conviction or in respect of which a prosecution or investigation is pending or in progress. If none, please state 'None'.

Details:	
----------	--

- 2.11 Please state whether any Dental Care Practitioners employed by the current or proposed organisation have, during the last three years, had their Professional Registration removed or suspended or whether they are currently under investigation, and provide relevant details. If none, please state 'None'.

Details:	
----------	--

3. Practice Profile and Performance

- 3.1 Current opening times:

Day	AM	PM
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		

- 3.2 Is the practice currently accepting new patients? Please mark 'x' in the appropriate box:

Yes	No
-----	----

If NO, please confirm the reasons below.

Details:	
----------	--

3.3 What is the current acceptance policy of your practice?

All NHS Patients:	
Children Only:	
Exempt Patients Only:	

3.4 Is this permitted by your contract?

Yes		No	
-----	--	----	--

3.5 Practice Demographics

Indicator	
Number of dentists working in the practice	
Number of other dental care practitioners working in the practice	
Number of new	

patients seen in the last financial year	
--	--

3.6 Re-attendance rate (current year to date – [20xx/xx]):

Re-attendance	% rate
Children - within 3 months	
Adults - within 3 months	
Children - within 3-9 months	
Adults – within 3-9 months	

3.7 Please provide details of any complaints received by the practice relating to the provision of service and actions taken as a result of the complaint. If none, please state 'None'.

Details:	
----------	--

3.8 Please provide details of how you will maintain/improve access for existing and new patients.

Details:	
----------	--

3.9 Please provide details of any other benefits to patients should we approve your application for a DBC contract. If none, please state 'None'.

Details:	
-----------------	--

Annex 8

Assessment Template for Incorporation for Commissioner

Applying Provider			
Contract Number		Date contract opened	
Current TCV		Contracted UDA/UAO	
Additional Services			
Copy of Companies House Certificate detailing all Directors			
Copy of GDC Registration for registered Directors (at least 50% of Directors must be registered)			
Insolvency Website checked for disqualified Directors			
Companies House checked for disqualified Directors			
Copy of Passport for all Directors			

Professional Indemnity Certificate(s)	
Employers Liability Certificate	
Public Liability Certificate	
CQC Comfort Letter	
HTM 01-05 (IPS audit) + action plan	
Restricted contract? If so provide details	
Outstanding debts (provide amount)	
Breach/remedial notices	
Provider under investigation?	
HTM 01-05 essential requirements achieved	
Quality Issues	
Dental Assurance Framework – details of flags	
Exception Report – details of exceptions	

Vital Signs – details of issues	
[Commissioner to add any other relevant sections]	

Annex 9

Acknowledgement of Request to Dis-incorporate and Dental Dis-incorporation Assessment Template

[date]

Dear [name]

Contract No [insert contract number]

Request to dis-incorporate to [an individual / a partnership]

Thank you for your letter dated [insert date] informing us of your request to dis-incorporate your contract. Dis-incorporation is not considered a minor contractual change so further enquiries and consideration needs to take place.

In order for us to further consider your request, we would ask that you complete the enclosed template and return to us at the above address.

Yours sincerely

[name]

[title]

Enc.

Dental Dis-Incorporation Assessment Template

All contractors wishing to revert to an individual or partnership contract must complete the details requested below.

Please note **ALL** questions must be answered in full. If a question is not applicable please write N/A in the box provided.

1. Details of the Applicant

- 1.1 Please provide the name and other required contact details of the Applicant (person for contact purposes with this application).

Applicant Name:	
Address:	
Telephone:	
Fax:	
E-mail:	

- 1.2 Current status of organisation – Please mark 'x' in the appropriate box:

Limited liability partnership		Dental body corporate	
-------------------------------	--	-----------------------	--

- 1.3 Current Contract Type – Please mark 'x' in the appropriate box:

GDS		PDS		PDS+	
-----	--	-----	--	------	--

- 1.4 Please state the nature of the reversion requested – Please mark 'x' in the appropriate box:

Individual dental contractor(s)		Dental partnership	
---------------------------------	--	--------------------	--

- 1.5 Where the applicant is proposing to form either a single handed or partnership, please supply the following information:

Partnership Name / Trading Name (delete as applicable):	
Current Trading Name:	
Previous Trading Name (if different):	
Address and telephone details if different to 1.1:	
CQC registration:	
Total Number of members:	
Member details:	
Proposed date of commencement:	

2. Impact on Contract

- 2.1 Would the change if approved have any effect on current patient services – please mark 'x' in the appropriate box:

Yes		No	
-----	--	----	--

- 2.2 Would the change if approved have any effect on the location of current service provision – please mark 'x' in the appropriate box:

Yes	
-----	--

No	
----	--

- 2.3 Would the change if approved have any effect on the current range of services provided – please mark 'x' in the appropriate box:

Yes	
-----	--

No	
----	--

- 2.4 Will there be any change in the practitioners providing the service – please mark 'x' in the appropriate box:

Yes	
-----	--

No	
----	--

If any of these questions receives a YES response, please provide details of the effect:

Details:	
----------	--

3. Legal and Regulatory Status

- 3.1 Please confirm that you have or will have (for the proposed new entity) all relevant insurance and indemnity requirements in place prior to contract signature – Please mark 'x' in the appropriate box:

Insurance category:	Name of insurance company	Policy no.	Expiry Date	Amount of cover (£)	Name of staff member
Professional indemnity					
Employers liability					
Public liability					

- 3.2 Please confirm that the eligibility criteria set out in the NHS (General Dental Services Contracts) Regulation 2005 OR NHS (Personal Dental Services Agreements) Regulations 2005 – is met. Please mark 'x' in the appropriate box:

Yes		No	
-----	--	----	--

- 3.3 Please confirm that all practitioners will be covered by the GDS regulations. Please mark 'x' in the appropriate box:

Yes		No	
-----	--	----	--

- 3.4 Have any of the proposed been convicted of any of the following offences:

- Conspiracy
- Corruption
- Bribery
- Fraud
- Money laundering
- Any other offences

Please mark 'x' in the appropriate box:

Yes		No	
-----	--	----	--

If YES, please provide details in the box below:

Details:	
----------	--

- 3.5 Legal and regulatory status details - Please provide details of any criminal conduct for anyone proposed resulting in conviction or in respect of which a prosecution or investigation is pending or in progress. If none, please state 'None'.

Details:	
----------	--

- 3.6 Please state whether any Dental Care Practitioners employed by the current or proposed organisation have, during the last three years, had their Professional Registration removed or suspended or whether they are currently under investigation, and provide relevant details. If none, please state 'None'.

Details:	
----------	--

4. Practice Profile and Performance

- 4.1 Current opening times:

Day	AM	PM
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		

- 4.2 Is the practice currently accepting new patients? Please mark 'x' in the appropriate box:

Yes		No	
-----	--	----	--

If NO, please state the reasons below:

Details:	
----------	--

4.3 What is the current acceptance policy of your practice?

All NHS Patients:	
Children Only:	
Exempt Patients Only:	

4.4 Is this permitted by your contract?

Yes		No	
-----	--	----	--

4.5 Practice Demographics:

Indicator	
Number of dentists working in the practice	
Number of other dental care practitioners working in the practice	
Number of new patients seen in the last financial	

year	
------	--

4.6 Re-attendance rate (current year to date – [20xx/xx]):

Re-attendance	% rate
Children - within 3 months	
Adults - within 3 months	
Children - within 3-9 months	
Adults – within 3-9 months	

4.7 Please provide details of any complaints received by the practice relating to the provision of service and actions taken as a result of the complaint. If none, please state 'None'.

Details:	
----------	--

4.8 Please provide details of how you will maintain/improve access for existing and new patients.

Details:	
----------	--

- 4.9 Please provide details of any other benefits to patients should we approve your application for a single handed or partnership contract. If none, please state 'None'.

Details:	
----------	--

- 4.10 Please provide further details on any future intentions with regards the application, e.g. intention to sell the practice. If none, please state 'None'.

Details:	
----------	--

Annex 10

Refusal of Request to [Incorporate / Become a Company Limited by Shares / LLP]

[date]

Dear [name]

Contract No [insert contract number]

Request to become a [limited liability partnership / company limited by shares / dental corporation / other]

Thank you for your letter dated [insert date], informing us of your intention to incorporate and returning your completed dental incorporation assessment template.

Having reviewed your request, we regret to inform you we have refused your request to incorporate. This is because:

[insert reasons – Commissioner to ensure that the rational for refusal is reasonable and legitimate]

If you do not agree with our decision, 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 Dental Committee.

Yours sincerely

[name]

[title]

Annex 11

Refusal of Request to Dis-incorporate

[date]

Dear [name]

Contract No [insert contract number]

Request to dis-incorporate to [an individual / a partnership]

Thank you for your letter dated [insert date] informing us of your request to revert from a [limited liability partnership / company limited by shares / dental corporation / other] to [an individual / a partnership] contract and for returning your completed assessment template as requested.

Having reviewed your request, we regret to inform you that we have refused the reversion for the following reasons:

[insert reason – Commissioner to ensure that the rational for refusal is reasonable and legitimate]

If you do not agree with our decision, 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 Dental Committee.

Yours sincerely

[name]

[title]

Annex 12

Template Agreement Letter

[date]

Dear [name]

Contract No [insert contract number]

Novation

Thank you for your letter dated [insert date] informing us of your request to become a [limited liability partnership / company limited by shares / dental corporation / other].

I am pleased to inform you that we have now reviewed the documents provided to us and confirm that we agree to novate your current contract to your [limited liability partnership / company limited by shares / dental corporation / other].

Please complete and return both copies of the [deed of novation/novation agreement] that has been enclosed. Once this has been received by us we will issue you with your new contract number. We will also issue your new contract documentation with a number of clauses that are specific to a [limited liability partnership / company limited by shares / dental corporation / other] and with the relevant Schedule 1 completed.

Yours sincerely

[name]

[title]

Enc.

Annex 13

NHS Dental Services Payment System

1. Arrangements

- 1.1 Where a contract is novated, the Commissioner should ensure that arrangements are in place to ensure that:
 - 1.1.1 no patient pays twice for the same course of treatment (once under the original contract and once under the new contract); and
 - 1.1.2 information regarding free repairs and replacements links across the original and new contracts.

Annex 14A

Request for Information Relating to Branch Premises Closure

[date]

Dear [name]

Branch Premises Closure

Please provide the information below to the Commissioner no less than 28 days before the requested contract variation.

1. Affix practice stamp:

-
2. Details of branch premises address proposed for closure: [insert details]

-
3. How have you involved service users regarding this proposal? [Yes / No]

-
4. How will you be communicating the actual change to service users, ensuring that service user choice is provided throughout, should the Commissioner approve this application? [insert details]

-
5. Please provide a summary of the consultation feedback and confirm that you will supply evidence of this consultation should it be requested: [insert summary]
-

-
6. Please provide as much [insert details]
detail as possible about
how this proposed closure
will impact on potential
service users, including:
- access to the main
premises site i.e. public
transport, ease of
access;
 - capacity at main
premises site;
 - booking appointments;
 - opening hours; and
 - extended hours.
-

7. From which date do you [insert date]
wish the branch premises
closure to take effect?

Signed by [insert name] _____

Date _____

[All persons who constitute the contractor must sign this notice. Please add further
signatures lines as necessary]

Where a variation to close premises is agreed by the Commissioner, the contractor shall remain fully responsible for cessation or assignment of the lease for any rented premises and any disposal of owner-occupied premises.

Please note that providing this information does not impose any obligation on the Commissioner to agree to this change

Yours sincerely

[name]

[title]

Annex 14B

Acknowledgement of Information Relating to Branch Premises Closure

[insert date]

Dear [name]

Contract details - [insert name of contract]

Thank you for providing information relating to branch premises closure.

[I can confirm your request to close the branch premises at [insert address] has been accepted and will take effect from [insert date].

Please ensure you update all websites, literature, practice leaflets and make all existing service users aware of the branch closure, the date that services will cease at the branch premises and provide reassurance in respect of their continued care from your main premises.

We include a variation notice with this letter. I have included two copies of the variation notice which I would be grateful if you could return after being signed. We will then sign the documents and return one copy for you to retain for your records.

OR

I can confirm that the request has been declined for the following reason(s):

[details]

If you wish to appeal this decision, please refer to your contract for the appropriate dispute resolution procedure.]

Yours sincerely

[name]

[title]

Annex 15

Records Management: NHS Code of Practice

Full details of the code can be found at: <http://tinyurl.com/2wwle5>

Overview

The two-part Records Management: NHS Code of Practice is a guide to the required standards of practice in the management of records for those who work within or under contract to NHS organisations in England. It is based on current legal requirements and professional best practice.

For historic purposes, the code of practice also replaces the following guidance:

- HSC 1999/053 – For the record.
- HSC 1998/217 – Preservation, retention and destruction of GP general medical services records relating to patients (replacement for FHSL (94)(30))
- HSC 1998/153 – Using electronic patient records in hospitals: Legal requirements and good practice.

The code provides a key component of information governance arrangements for the NHS. This is an evolving document because standards and practice covered by the code will change over time and will be subject to regular review and updated as necessary. As a result of a review, part 2 only of the code in relation to the retention schedules has been updated in light of guidance and advice given from the NHS and professional best practice. The updated part 2 was published on 8 January 2009.

The guidelines contained in this code of practice apply to NHS records of all types (including records of NHS patients treated on behalf of the NHS in the private healthcare sector) regardless of the media on which they are held.

CHAPTER 7

Contract Breaches and Termination

1. Introduction

- 1.1 This policy outlines the approach to be taken when primary dental services contracts are considered to have been breached. Where processes differ with regards GDS contracts and PDS agreements, these are highlighted.
- 1.2 This policy outlines the approach to be taken by the Commissioner when a contract is considered to have been breached.
- 1.3 Given that any decision to issue a Remedial or Breach notice, apply Contract Sanctions or terminate a contract 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.
- 1.4 It is essential that the Commissioner maintains thorough and accurate records of all communications and discussions in respect of all decisions and notices referred to in 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.

3. Remedial Notices and Breach Notices

- 3.1 The GDS and PDS Regulations 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 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).

Remedial Notice

- 3.3 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.
- 3.4 A flowchart highlighting the main steps that the Commissioner should take when issuing a Remedial Notice is set out in Annex 1.
- 3.5 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 7:
 - 3.5.1 provision of untrue information;
 - 3.5.2 on grounds of suitability;
 - 3.5.3 patient safety; or

- 3.5.4 material financial loss.
- 3.6 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:
 - 3.6.1 failure to compile a patient information leaflet; or
 - 3.6.2 failure to provide information to the Commissioner.
- 3.7 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 7.13.
- 3.8 Where the Commissioner has determined that a breach is capable of remedy the Commissioner must take the following steps:
 - 3.8.1 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.
 - 3.8.2 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.
 - 3.8.3 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.
 - 3.8.4 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.
 - 3.8.5 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 being issued could lead to an argument that the Commissioner has accepted the breach and waived its right to take action.
- 3.9 A Remedial Notice must specify:
 - 3.9.1 details of the breach, which led to the Remedial Notice being issued and any evidence gathered in respect of the breach;

- 3.9.2 the steps the contractor must take in order to remedy the breach to the Commissioner's satisfaction;
 - 3.9.3 the period in which the steps must be taken;
 - 3.9.4 any arrangements for reviewing the matter to ensure that the requirements of the Remedial Notice have been met; and
 - 3.9.5 the actions that the Commissioner shall take if the contractor fails to satisfactorily remedy the breach.
- 3.10 The Commissioner may wish to include in the Remedial Notice how the contractor may appeal against the decision to issue a Remedial Notice.
- 3.11 A template Remedial Notice is provided in Annex 2.
- 3.12 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.
- 3.13 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.
- 3.14 The Commissioner should ensure that arrangements are in place to follow up a Remedial Notice appropriately and in a timely fashion.
- 3.15 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.
- 3.16 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.

- 3.17 Where the Commissioner intends to terminate the contract, please refer to paragraphs 5 to 7.
- 3.18 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.
- 3.19 The right to terminate in paragraph 3.18 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 7.16.
- 3.20 If the contractor is in breach of any obligation and a Remedial Notice in respect of that breach 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 breach.

Breach Notice

- 3.21 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.
- 3.22 A flowchart highlighting the main steps that the Commissioner should take when issuing a Breach Notice is set out in Annex 5.
- 3.23 Breach Notices cannot be issued where the breach relates to the following rights of termination:
- 3.23.1 provision of untrue information;
 - 3.23.2 on grounds of suitability;
 - 3.23.3 patient safety; or
 - 3.23.4 material financial loss.

For further information on these rights of termination, please refer to paragraph 7.

- 3.24 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.

- 3.25 An example of a breach that is not capable of remedy is a practice closing during its contracted opening times in the previous week with no access for the contractor's patients to access essential services.
- 3.26 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 7.13.
- 3.27 Where the Commissioner has determined that a breach is not capable of remedy, the Commissioner must take the following steps:
 - 3.27.1 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.
 - 3.27.2 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.
 - 3.27.3 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.
 - 3.27.4 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.
- 3.28 The Breach Notice must specify:
 - 3.28.1 details of the breach and the requirement that the contractor must not repeat the breach again; and
 - 3.28.2 the consequences of the contractor further breaching their agreement.
- 3.29 A template Breach Notice is provided in Annex 6.
- 3.30 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.

- 3.31 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.
- 3.32 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 7.16.
- 3.33 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.

4. Contract Sanctions

- 4.1 The Commissioner must follow the process set out in this section. PDS agreements refer to "agreement sanctions" rather than Contract Sanctions. Reference to Contract Sanctions in this paragraph should be read as including reference to agreement sanctions.
- 4.2 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 as an alternative to terminating the contract. The Commissioner cannot apply Contract Sanctions and later decide to terminate the contract in the same circumstances.
- 4.3 The circumstances in which the Commissioner may apply Contract Sanctions are those set out below where a right of termination arises. Please refer to the relevant right of termination in paragraph 7 for further information on how these rights of termination arise:
 - 4.3.1 provision of untrue information;
 - 4.3.2 on grounds of suitability;
 - 4.3.3 where there is a serious risk to patient safety or NHS England is at risk of material financial loss;
 - 4.3.4 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;

- 4.3.5 where, after a Remedial Notice or Breach Notice has been issued, the contractor:
 - 4.3.5.1 repeats a breach that was the subject of a Remedial Notice or a Breach Notice; or
 - 4.3.5.2 otherwise breaches the contract resulting in a further Remedial Notice or Breach Notice;
- 4.3.6 where the contractor carries on business detrimental to the contract;
- 4.3.7 where the contractor is a dental corporation (and for PDS agreements, a company limited by shares) and there are certain matters relating to the directors of the dental corporation (or the company limited by shares) and Article 39 of the Dentists Act Order comes fully into force;
- 4.3.8 for GDS contracts, where changes in the membership of the partnership (or a limited liability partnership) is likely to have a serious adverse impact on the ability of the contractor or the Commissioner to perform obligations under the contract;
- 4.3.9 for PDS agreements, where:
 - 4.3.9.1 the contractor is a company limited by shares and the company ceases to be a company limited by shares or fails to satisfy certain conditions;
 - 4.3.9.2 the contractor is a limited liability partnership and the partnership ceases to be a limited liability partnership or fails to satisfy certain conditions; or
- 4.4 Contract Sanctions must not be applied if they terminate or suspend any obligation that relates to mandatory services.
- 4.5 Contract Sanctions may involve:
 - 4.5.1 termination of specified reciprocal obligations;
 - 4.5.2 suspension of specified reciprocal obligations for a period of up to six months; or
 - 4.5.3 withholding or deducting monies otherwise payable under the contract.
- 4.6 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.

- 4.7 Where the Commissioner decides that the most appropriate sanction would be to withhold or deduct monies, this must be calculated in accordance with set criteria in order to establish a consistent, fair and measured approach. Annex 7 provides further information on calculating a financial Contract Sanction.
- 4.8 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:
 - 4.8.1 the nature of the sanction to be applied;
 - 4.8.2 if withholding or deducting monies, how this has been calculated and the duration of any such sanction;
 - 4.8.3 if services are to be terminated, which services and from what date;
 - 4.8.4 if suspension of specified reciprocal obligations under the contract or agreement, the period of that suspension and its end date;
 - 4.8.5 an explanation of the effect of the imposition of the Contract Sanction; and
 - 4.8.6 the contractor's right to appeal the decision to apply a Contract Sanction.
- 4.9 A template Contract Sanctions notice is provided in Annex 8.
- 4.10 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.
- 4.11 Where a Contract Sanction is imposed, the Commissioner can charge the contractor reasonable administration costs of imposing the Contract Sanction.
- 4.12 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.

- 4.13 Where a dispute arises in relation to the imposition of a Contract Sanction, please refer to the policy on managing disputes (chapter 10).
- 4.14 The Commissioner should ensure that arrangements are in place to monitor the contractor's compliance with a Contract Sanction notice.

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. 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 The GDS and PDS Regulations set out certain rights of termination that are required to be in the different types of primary dental contract. These mandatory termination rights are set out below and explained more fully in paragraph 7. 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 The following circumstances relating to rights of termination are required to be in GDS and PDS contracts:
 - 5.6.1 agreement of the parties;
 - 5.6.2 death of a contractor;
 - 5.6.3 contractor serving notice;
 - 5.6.4 late payment;
 - 5.6.5 provision of untrue information;
 - 5.6.6 suitability;

- 5.6.7 patient safety;
 - 5.6.8 material financial loss;
 - 5.6.9 Remedial Notices and Breach Notices;
 - 5.6.10 carrying on business detrimental to the contract; and
 - 5.6.11 certain matters relating to directors of dental corporations.
- 5.7 GDS contracts are required to contain additional rights of termination relating to:
- 5.7.1 no longer eligible to enter into and breach of conditions of the contract;
 - 5.7.2 certain matters relating to the ceasing of a limited liability partnership; and
 - 5.7.3 certain partnership (including limited liability partnership) matters.
- 5.8 PDS agreements are required to contain additional rights of termination relating to:
- 5.8.1 certain matters relating to directors of a company limited by shares;
 - 5.8.2 certain matters relating to the ceasing of a company limited by shares and/or a limited liability partnership; and
 - 5.8.3 contractor's exercise of the right to a GDS contract.
- 5.9 Contracts may also terminate or expire by:
- 5.9.1 reaching their natural end dates (in which case, please refer to the policy on practice closedown (chapter 13) for more information);
 - 5.9.2 contract novations (in which case, please refer to the policy on contract variations (chapter 6)); and
 - 5.9.3 retirement of the contractor (in which case, please refer to the policy on contract variations (chapter 6)).
- 5.10 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.
- 5.11 A template Termination Notice is provided in Annex 9.

5.12 Where the termination relates to:

5.12.1 for GDS and PDS contracts:

5.12.1.1 provision of untrue information;

5.12.1.2 suitability;

5.12.1.3 patient safety;

5.12.1.4 material financial loss;

5.12.1.5 Remedial Notices and Breach Notices;

5.12.1.6 carrying on business detrimental to the contract;
and

5.12.1.7 certain matters relating to directors of dental corporations,

5.12.2 for GDS contracts:

5.12.2.1 certain matters relating to the ceasing of a limited liability partnership; and

5.12.2.2 certain partnership (including limited liability partnership) matters,

5.12.3 for PDS agreements:

5.12.3.1 certain matters relating to directors of a company limited by shares; and

5.12.3.2 certain matters relating to the ceasing of a company limited by shares and/or a limited liability partnership,

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.

5.13 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 10).

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 contactor with the opportunity to provide a response to allegations, wherever possible.
- 6.2 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 (refer to the policy on the death of a contractor (chapter 12)) and in some part the paragraphs on the closure of a branch surgery (refer to 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.
- 6.8 The Commissioner should ensure that it is able to signpost any patients seeking treatment, to other local dentists accepting NHS patients. This may be through making information available at the practice or via NHS 111 services, whichever is relevant.
- 6.9 Where a termination notice has been issued, the contractor should use best endeavours to ensure the completion of all open courses of treatment. This will not be possible where the termination is effective

immediately and the Commissioner will need to work with other local dental providers to secure completion of the active courses of treatment.

- 6.10 Patients seeking recourse under free repair and replacement provisions need to be made aware that there will be a fee to pay if a repair and/or replacement treatment is performed by an alternative practice. Similarly, where a continuation of treatment at the same or lower band within two months is needed, patients will be required to pay the relevant dental charge when this is carried out by another provider.
- 6.11 Where a patient is undergoing an orthodontic course of treatment, it is unlikely due to the nature of treatment patterns and their longevity, that treatment can be completed within the termination notice period. The Commissioner should work with the contractor's representatives to:
 - 6.11.1 obtain copies of any orthodontic health records for patients currently in treatment that could then be provided to an alternative provider; and
 - 6.11.2 obtain patients' details so they can be contacted regarding continuation of their treatment.
- 6.12 The Commissioner will need to secure alternative provision for those patients undergoing a course of orthodontic treatment. This can be with other local dental providers or they may need to consider commissioning these services from secondary care providers where alternative primary dental care provision is not available.
- 6.13 Currently the GDS contract or PDS agreement and the relevant SFE state the level of payment for an orthodontic course of treatment. Due to the payment structure and length of an orthodontic course of treatment, the Commissioner may wish to raise the cost pressures of paying for these patient transfers within its risk register.
- 6.14 The Commissioner may wish to procure additional activity from orthodontic providers on a non-recurrent basis, on a case by case fee structure while they consider whether or not to procure a contract or agreement. If this is the path that is chosen by the Commissioner it would be advisable to seek independent legal advice.

PDS to GDS

- 6.15 PDS agreements provide a right for the contractor to request to enter into a GDS contract. Such a request can only be refused where the contractor fails to meet the conditions set out in the PDS Regulations.

- 6.16 For further information on this, please refer to the policy on managing a PDS contractor's right to a GDS contract (chapter 8).

General duties of NHS England

- 6.17 Under section 13 of the NHS Act, NHS England has a number of statutory duties relating to the exercise of its functions including reducing health inequalities and patient involvement. The Commissioner must ensure that its actions in terminating a contract and any consequential actions ensure compliance with the section 13 duties and other applicable statutory duties of NHS England. Please refer chapter 4 (General duties of NHS England) for more information on the scope of the duties.

Premises

- 6.18 The Commissioner should ascertain who owns the premises and what arrangements apply to the premises. Where the outgoing contractor controls 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

- 6.19 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.
- 6.20 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

- 6.21 Some equipment 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 records

- 6.22 Where it is not possible to complete patients' treatments within the termination notice period, arrangements must be made to transfer

patient records securely to any other local dental providers that are completing the courses of treatment. Patients should be fairly notified of the transfer.

Prescriptions

- 6.23 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

- 6.24 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.

Financial Reconciliation

- 6.25 On termination of a GDS contract or PDS agreement, the Commissioner will need to carry out a financial reconciliation (for further information on this, please refer to the policy on financial recovery and reconciliation (chapter 11)).

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 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.

- 7.3 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.

Termination where the contractor serves notice

- 7.4 Contracts can be terminated by the contractor by serving notice in writing at any time.
- 7.5 Where a contractor serves notice to terminate, it shall terminate three months after the date on which the notice is served.
- 7.6 If the date on which the 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.

Termination where the contractor exercises the right to a GDS contract

- 7.7 Please refer to the policy on managing a PDS contractor's right to a GDS contract (chapter 8) for further information.

Termination due to late payment

- 7.8 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.
- 7.9 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.
- 7.10 For further information on the NHS dispute resolution process, please refer to the policy on managing disputes (chapter 10).

Termination for provision of untrue information

- 7.11 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:
- 7.11.1 before the contract was entered into; or

7.11.2 for GDS contracts, pursuant to paragraph 42(2) of Schedule 3 of the GDS Regulations,

in relation to regulations 4 and 5 of the GDS or PDS Regulations (whichever is applicable) was, when given, untrue or inaccurate in a material respect.

Termination due to suitability

7.12 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 dental practitioner, a partnership, a limited liability partnership, a dental corporation, a company or a director) falls within any circumstances set out in the relevant regulations. Those circumstances include where the person:

7.12.1 is disqualified from practising by a licensing body;

7.12.2 has been convicted of certain offences;

7.12.3 has been adjudged bankrupt; or

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

Details of the type of person connected with the contract and a full list of the relevant circumstances is set out in Annex 11. Part A of Annex 11 refers to GDS contracts. Part B of Annex 11 refers to PDS agreements.

Termination where there is a serious risk of patient safety

7.13 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.

Termination where there is a material financial loss

7.14 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.

Termination relating to Remedial Notices and Breach Notices

- 7.15 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.
- 7.16 The Commissioner has a further right of termination where, following the issue of a Remedial Notice or Breach Notice, a contractor:
- 7.16.1 repeats a breach that was the subject of a Remedial Notice or Breach Notice; or
 - 7.16.2 otherwise breaches the contract that results in a further Remedial Notice or Breach Notice.
- 7.17 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.
- 7.18 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.

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

- 7.19 Where the contractor is:
- 7.19.1 a dental corporation under a GDS contract; or
 - 7.19.2 a dental corporation, a company limited by shares or a limited liability partnership under a PDS agreement,
- that is carrying on business which the Commissioner considers is detrimental to the 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.
- 7.20 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).

Termination due to certain matters relating to directors of dental corporations

- 7.21 If a contractor is a dental corporation under a GDS contract or PDS agreement, there are certain matters which allow the Commissioner to issue a termination notice provided that those matters lead to the Commissioner considering that the dental corporation is no longer suitable to be a contractor.
- 7.22 The three matters are:
- 7.22.1 if the majority of the directors of the dental corporation cease to be either dental practitioners or dental care professionals;
 - 7.22.2 the dental corporation has been convicted of an offence under section 43(1) of the Dentists Act 1984; or
 - 7.22.3 the dental corporation, or a director or former director of that corporation, has had a financial penalty imposed on it or him by the General Dental Council pursuant to section 43B or 44 of the Dentists Act 1984.

Certain matters relating to directors of a company limited by shares

- 7.23 Under a PDS agreement, paragraphs 7.21 and 7.22 also apply where the contractor is a company limited by shares and references in those paragraphs to the dental corporation should be read as references to the company limited by shares.

Termination due to partnership (including limited liability partnership) matters

- 7.24 The Commissioner has a right to terminate a GDS contract where:
- 7.24.1 the contractor is two or more persons practising in partnership;
 - 7.24.2 one or more partners have left the practice during the contract; and
 - 7.24.3 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.

- 7.25 The same right of termination exists where the contractor under a GDS contract is a limited liability partnership and references to partners should be read as references to members.
- 7.26 Where these circumstances occur, 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 is likely to have a serious adverse impact on the ability of the contractor or the Commissioner to perform its obligations under the contract.
- 7.27 The Commissioners should note that this right of termination does not exist where the contractor is a limited liability partnership under a PDS agreement.

Termination due to certain matters relating to the ceasing of a limited liability partnership

- 7.28 The Commissioner must terminate a GDS contract with a limited liability partnership where the contractor ceases to be a limited liability partnership or where the contractor ceases to satisfy the conditions in section 102(2A) of the NHS Act.
- 7.29 Section 102(2A) sets conditions which must be satisfied in order for a contract to be held and continued to be held by a limited liability partnership. Once condition is that at least one member of the limited liability partnership must be a dental practitioner. There is a further condition relating to who has the power to conduct the partnership's affairs - either paragraph 7.29.1 or 7.29.2 must be satisfied:
- 7.29.1 A member who is a dental practitioner or in the list set out in paragraph 7.29.3 below must have the power to secure that the partnership's affairs are conducted in accordance with that member's wishes; or
- 7.29.2 If, in any combination of partners or members who, acting together, have the power (or who, if they were to act together, would have the power) to secure that the partnership's affairs are conducted in accordance with their wishes, at least one of them must be a dental practitioner or in the list set out in paragraph 7.29.3 below.
- 7.29.3 This list includes:
- 7.29.3.1 an NHS employee,

7.29.3.2 an individual who, in connection with the provision of services in accordance with either:

7.29.3.2.1 Article 15B of the Health and Personal Social Services (Northern Ireland) Order 1972; or

7.29.3.2.2 sections 17C, 50, 64, 92 or 107 of the NHS Act;

is employed by a person providing or performing those services

7.29.3.3 a health care professional who is engaged in the provision of services under the NHS Act or the NHS (Wales) Act 2006, or

7.29.3.4 an individual falling within section 108(1)(d) of the NHS Act.

7.30 The requirement for the Commissioner to terminate also applies where the contractor is a limited liability partnership and ceases to be so under a PDS agreement. The conditions in section 102(2A) of the NHS Act don't apply to PDS agreements. Instead the Commissioner must terminate if the contractor is a limited liability partnership and either the limited liability partnership ceases or section 108(1B) and (1C) of the NHS Act cease to apply to the limited liability partnership. These sections relate to who has the power to conduct the partnership's affairs.

Termination due to certain matters relating to where the ceasing of a company limited by shares

7.31 The Commissioner must terminate a PDS agreement with a company limited by shares where the contractor ceases to be a company limited by shares or where the contractor ceases to satisfy the conditions in section 108(1A) of the NHS Act.

7.32 Section 108(1A) of the NHS Act relates to conditions for those holding shares in such a company. There are two conditions, both of which must be satisfied:

7.32.1 every person who owns a share in the company must own it both legally and beneficially, and

7.32.2 it must not be possible for two or more members of the company who are not persons who fall within Section 108(1)(a)

to (e) to hold the majority of the voting rights conferred by shares in the company on any matter on which members have such rights.

Termination due to the contractor no longer being eligible to enter into and breach of conditions of the contract

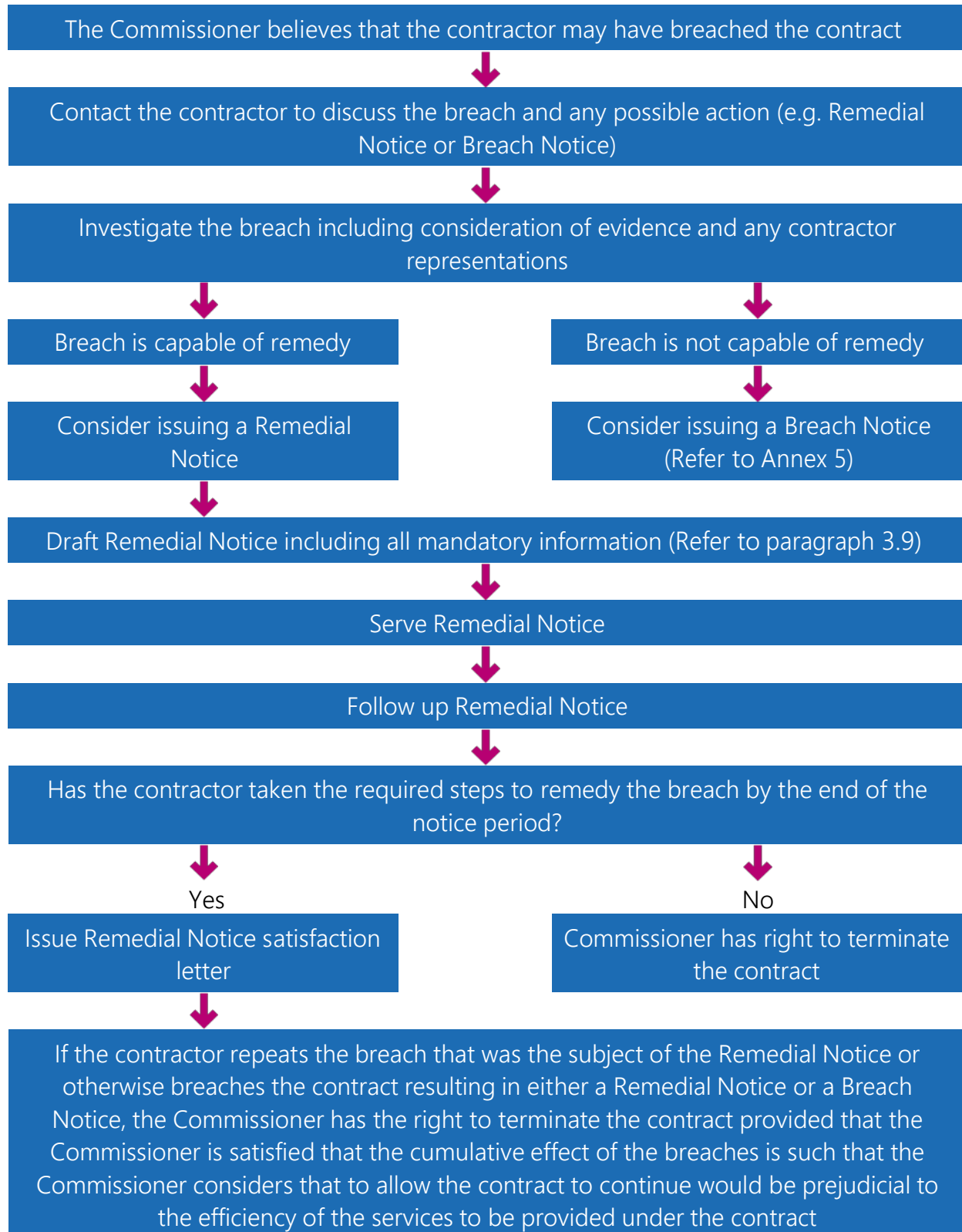
- 7.33 The Commissioner must terminate a GDS contract immediately where a contract was entered into with a dental practitioner and the contractor is no longer a dental practitioner.
- 7.34 This requirement to terminate will not apply if the contractor has been suspended as set out in Regulation 69(6) of the PDS Regulations unless:
- 7.34.1 the contractor cannot satisfy the Commissioner that adequate arrangements for providing services are in place for the suspension period; or
- 7.34.2 the Commissioner is satisfied that the contract should be terminated forthwith due to a serious risk to patient safety or due to a risk of material financial loss to NHS England.
- 7.35 The Commissioner must terminate a GDS contract immediately (or take the action set out in paragraph 7.36) where the contract is with two or more persons practising in partnership and the requirement that at least one partner is a dental practitioner is no longer satisfied. The requirement to terminate does not apply where this situation occurs due to the death of one of the persons in the partnership. Please refer to the policy on the death of a contractor (chapter 12) for further information on the process to follow.
- 7.36 Where the situation in paragraph 7.35 arises, the Commissioner may choose not to terminate the contract and instead confirm to the contractor that the contract may continue for an interim period. The Commissioner may only choose this option where it is satisfied that the contractor has in place adequate arrangements for the provision of dental services for the interim period. The interim period must only be six months or, if the requirement that at least one partner is a dental practitioner is no longer satisfied is because the relevant partner has been suspended as set out in regulation 69(6) of the PDS Regulations, for as long as the suspension lasts.
- 7.37 The Commissioner must terminate a GDS contract immediately where the contract was entered into with a dental corporation and the contractor ceases to be a dental corporation.

8. Consequences of Termination

- 8.1 Contracts usually contain certain obligations on both parties on termination of the contract. The GDS and PDS Regulations do not set out any requirements for primary dental contracts to contain such provision but the standard GDS 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 (for further information on this, please refer to the policy on financial recovery and reconciliation (chapter 11)).
- 8.2 The Commissioner should consider the relevant contract to determine what obligations relate to 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 [GDS/PDS] [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 Dental 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 [GDS/PDS] [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 [GDS/PDS] [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.

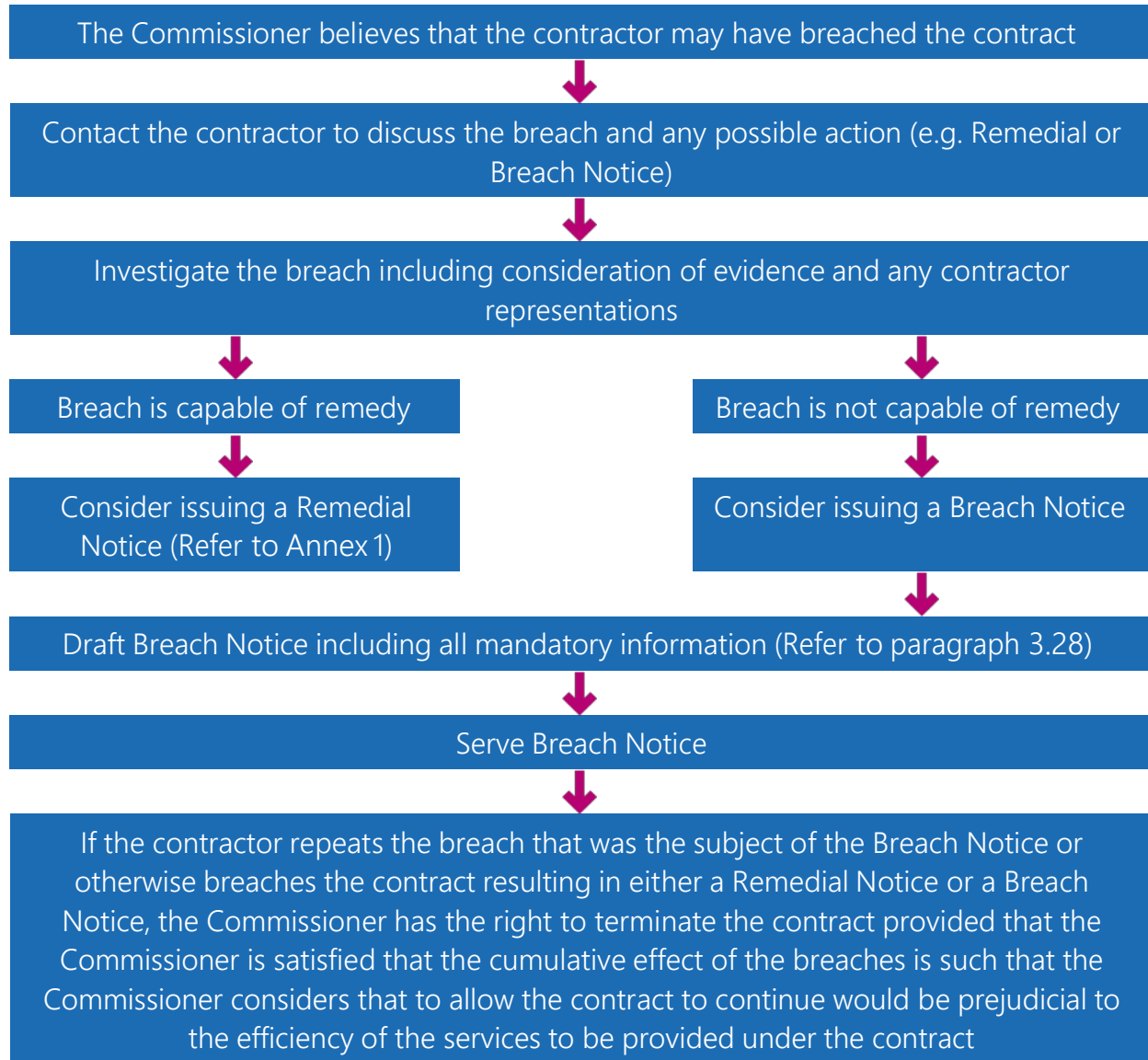
Yours sincerely

[Name]

[Job title, etc]

Annex 5

Breach Notice Flowchart



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 [GDS/PDS] [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 Dental Committee.

Yours sincerely

[Name]

[Job title, etc]

Annex 7

Calculating a Financial Contract Sanction

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 a sedation service. 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.

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 population from another provider.

It would be these calculations that might suggest an appropriate level of financial Contract Sanction in respect of this particular breach example.

Some other examples of calculating a financial Contract Sanction are provided below for consideration:

- 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;
- The contractual service cost – where the breach has been remedied and the service cost can be quantified;
- Plus, in both the above examples, the cost in management time involved in investigating and processing the breach;
- Where the contract service cannot be quantified, the cost to the Commissioner in management time involved in investigating and processing the breach.

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.

This should all be applied in a reasonable manner. The Commissioner should act reasonably and proportionately in 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 [GDS/PDS] [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 Contract 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 Dental 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 [GDS/PDS] [contract/agreement]

Further to our recent communications, we consider that we are entitled to serve notice to terminate your [GDS/PDS] [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 your current patients to inform them of their options regarding commencing new treatment and the potential patient charges;
- work with us to support the sign posting of patients to other NHS dental providers in the area;
- use best endeavours to ensure the completion of all open courses of treatment;
- refer your current patients to the [dental helpline/NHS 111].

We will provide a financial reconciliation statement to you in accordance with the Statement of Financial Entitlements.

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 Dental 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 [GDS/PDS] [contract/agreement].

I also understand that I have the right to:

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

Please complete the following information:

Title: _____

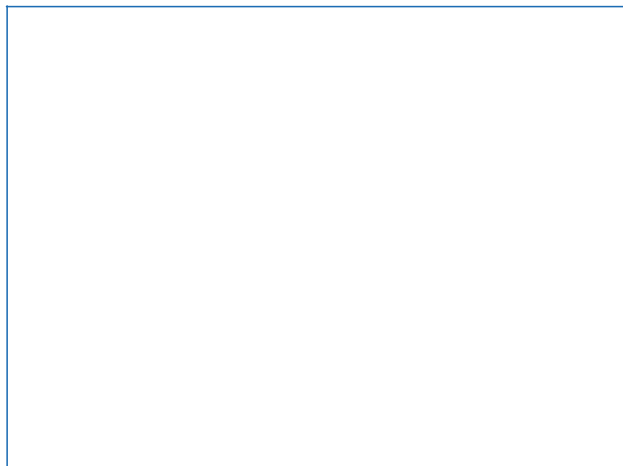
Print first name(s):
(in block capital letters) _____

Print surname:
(in block capital letters) _____

Signature: _____

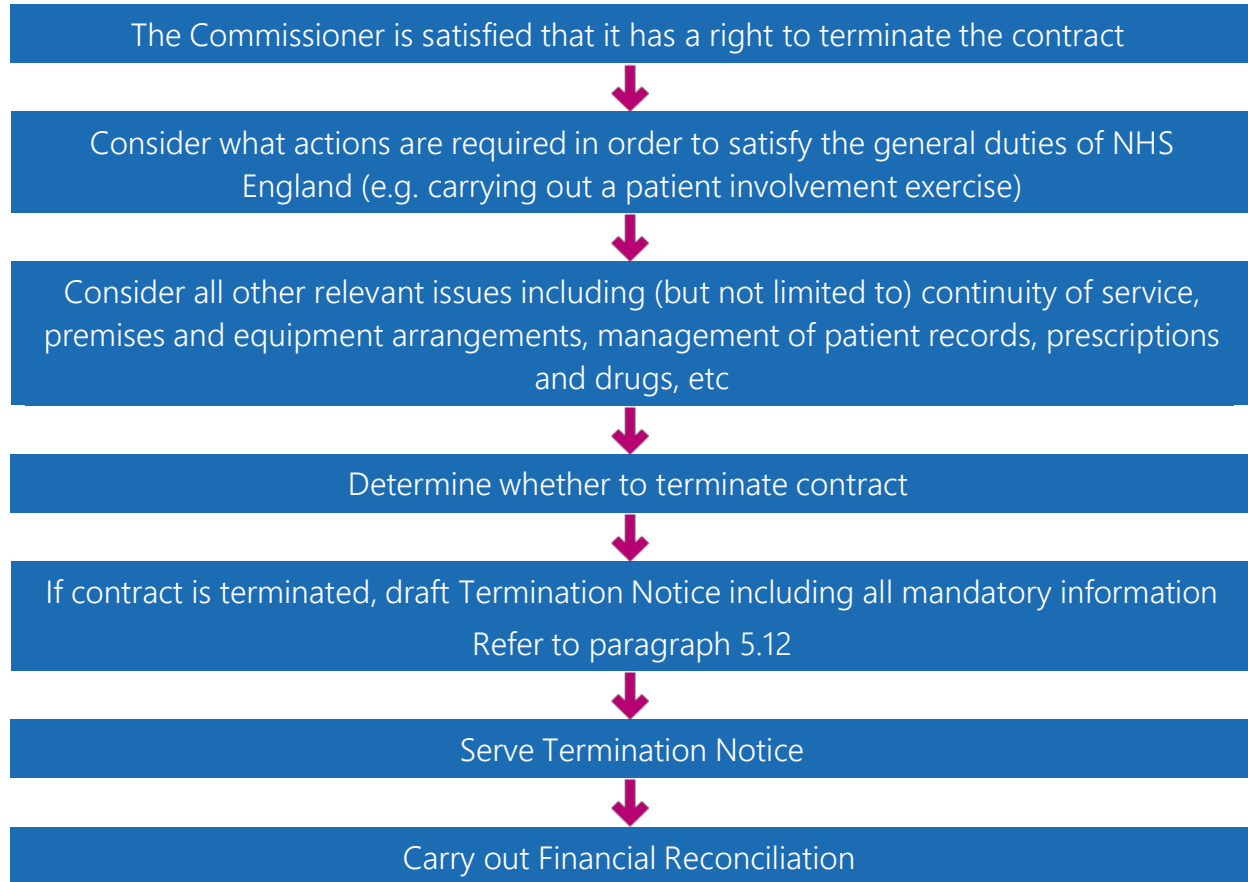
Date termination notice
received: _____

Practice stamp:



Annex 10

Termination Flowchart



Annex 11

Suitability

Part A

GDS Contracts

The wording below reflects paragraph 71 of Schedule 3 of the GDS Regulations as of 1 June 2015:

71.— Termination by the Board on grounds of suitability etc.

- (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 dental practitioner, that dental practitioner;
 - (b) in the case of a contract with two or more individuals practising in partnership, any individual or the partnership;
 - (c) in the case of a contract with a dental corporation—
 - (i) the corporation; or
 - (ii) any director, chief executive or the secretary of the corporation; and falls within sub-paragraph (2) during the existence of the contract or, if later, on or after the date on which a notice in respect of his compliance with the conditions in regulation 4 or 5 was given under paragraph 42(2);
 - (d) in the case of a contract with a limited liability partnership—
 - (i) the limited liability partnership; or
 - (ii) any member of the limited liability partnership.
- (2) A person falls within this sub-paragraph if—
 - (a) he or it is the subject of a national disqualification;
 - (b) subject to sub-paragraph (3), he or it is disqualified or suspended (other than by an interim suspension order or direction pending an investigation or a suspension on the grounds of ill-health) from practising by any licensing body anywhere in the world;
 - (c) subject to sub-paragraph (4), he 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;

- (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 49F(2), (3) and (4) of the Act respectively) unless his name has subsequently been included in such a list;
- (e) he has been convicted in the United Kingdom of—
 - (i) murder; or
 - (ii) a criminal offence other than murder, committed on or after 14th December 2001, and has been sentenced to a term of imprisonment of over six months;
- (f) subject to sub-paragraph (5), he has been convicted outside the United Kingdom of an offence—
 - (i) which would, if committed in England and Wales, constitute murder; or
 - (ii) committed on or after 14th December 2001, which would if committed in England and Wales, constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
- (g) he 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 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);
- (h) 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, or 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;
- (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;
- (i) there is—
 - (i) an administrator, administrative receiver or receiver appointed in respect of it; or
 - (ii) an administration order made in respect of it under Schedule B1 to the Insolvency Act 1986;
- (j) that person is a partnership and—
 - (i) a dissolution of the partnership is ordered by any competent court, tribunal or arbitrator; or
 - (ii) an event happens that makes it unlawful for the business of the partnership to continue, or for members of the partnership to carry on in partnership;
- (k) he 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;
- (l) 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
- (m) 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, with a dental corporation or a limited liability partnership, 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)(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 contractor;
- (b) a partner, in the case of a contract with two or more individuals practising in partnership;
- (c) in the case of a contract with a dental corporation, a director, chief executive or secretary of the corporation; or
- [(d) in the case of a contract with a limited liability partnership, a member of that limited liability partnership.

- (4) The Board shall not terminate the contract pursuant to sub-paragraph (2)—

- (a) until a period of at least three months has elapsed since the date of the dismissal of the person concerned; or
- (b) if, during the period of time specified in paragraph (a), the person concerned brings proceedings in any competent tribunal or court in respect of his dismissal, until proceedings before that tribunal or court are concluded,

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)(f) 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;
- (c) in the case of a contract with a dental corporation, a director, chief executive or secretary of the corporation; or
- (d) in the case of a contract with a limited liability partnership, a member of

that limited liability partnership.

Annex 11

Suitability

Part B

PDS Agreements

The wording below reflects paragraph 69 of Schedule 3 of the PDS Regulations as of 1 June 2015:

69.— Termination by the Board on grounds of suitability etc.

- (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; (b) in the case of an agreement with a dental corporation, any director, chief executive or secretary of that corporation;
 - (c) in the case of a company limited by shares, any director, chief executive or secretary of that company; or
 - (d) in the case of a limited liability partnership, any member of that partnership.
- (2) A person falls within this sub-paragraph if—
 - (a) he or it is the subject of a national disqualification;
 - (b) subject to sub-paragraph (3), he or it is disqualified or suspended (other than by an interim suspension order or direction pending an investigation or a suspension on the grounds of ill-health) from practising by any licensing body anywhere in the world;
 - (c) subject to sub-paragraph (4), he 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 49F(2), (3) and (4) of the Act respectively) unless his name has subsequently been included in such a list;

- (e) he has been convicted in the United Kingdom of—
 - (i) murder; or
 - (ii) a criminal offence other than murder, committed on or after 14th December 2001, and has been sentenced to a term of imprisonment of over six months;
- (f) subject to sub-paragraph (5), he has been convicted outside the United Kingdom of an offence—
 - (i) which would, if committed in England and Wales, constitute murder; or
 - (ii) committed on or after 14th December 2001, which would if committed in England and Wales, constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
- (g) he 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);
- (h) 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, or 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;
 - (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 4 of the Insolvency Act 1986;
- (i) there is—

- (i) an administrator, administrative receiver or receiver appointed in respect of it; or
 - (ii) an administration order made in respect of it under Schedule B1 to the Insolvency Act 1986;
 - (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) he has refused to comply with a request by the Board for him to be medically examined on the ground that it is concerned that he is incapable of adequately providing services under the agreement.
- (3) The Board shall not terminate the agreement pursuant to sub-paragraph (2)(b) where it 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) in the case of an agreement with a dental corporation, any director, chief executive or secretary of that corporation;
 - (c) in the case of a company limited by shares, any director, chief executive or secretary of that company; or
 - (d) in the case of a limited liability partnership, any member of that partnership.
- (4) The Board shall not terminate the agreement pursuant to sub-paragraph (2)(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.

(5) The Board shall not terminate the agreement pursuant to sub-paragraph (2)(f) where it is satisfied that the conviction does not make the person unsuitable to be—

- (a) a contractor;
- (b) in the case of an agreement with a dental corporation, any director, chief executive or secretary of that corporation;
- (c) in the case of a company limited by shares, any director, chief executive or secretary of that company; or
- (d) in the case of a limited liability partnership, any member of that partnership.

CHAPTER 8

Managing a PDS Contractor's Right to a GDS Contract

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 PDS contractor exercises its right to transfer from a PDS agreement to a GDS contract.
- 1.2 Commissioners will need to ensure that its finance department and relevant persons are made aware of the change to the contracting arrangements as there will be long term financial implications. A GDS contract is not time limited and exists until terminated. Anyone with delegated authority can sign off the transfer.
- 1.3 The NHS BSA payment and contract management system must be updated by the officer managing the transfer and the contracts linked for payment and patient free repair and replacement purposes.
- 1.4 A contractor holding a PDS or PDS plus agreement which is providing mandatory services, has the right to a GDS contract in accordance with regulation 21 of the PDS Regulations which states:

"A contractor which is providing mandatory services and which wishes a general dental 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 dental services contract to be entered into."
- 1.5 This policy sets out the decision making process that the Commissioner will follow, together with refusal and appeal processes and discussions regarding any actions that are required.

2. Notification from a Contractor

- 2.1 The Commissioner should receive at least three months' notice in writing from the contractor exercising its right to a GDS contract.
- 2.2 The contractor's notice must:
 - 2.2.1 state that the contractor wishes to terminate the PDS agreement;

- 2.2.2 state the date on which the contractor wishes the PDS agreement to terminate which must be at least three months after the date of service of the notice;
- 2.2.3 give the name of the person(s) with whom the contractor wishes the Commissioner to enter into a GDS contract (a person's name may only be given in a notice if that person is a party to the PDS agreement); and
- 2.2.4 confirm that the person(s) so named meet the conditions set out in section 102 of the NHS Act and regulations 4 and 5 (where applicable) of the GDS 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 or persons immediately prior to entering into the GDS contract will meet those conditions.

3. Process for PDS Agreements

- 3.1 The Commissioner must acknowledge receipt of the notice within seven days beginning on the day it received the notice.
- 3.2 The Commissioner will check that all necessary information has been provided in the contractors notice, undertake a review of the PDS agreement to establish if the contractor provides mandatory services and if they are eligible to hold a GDS contract (as set out in section 102 of the NHS Act persons eligible to enter into GDS contracts) and regulations 4 and 5 of the GDS Regulations (please refer to please refer to chapter 5 (Which dental contract when?) for further information on who is eligible to hold GDS contracts).
- 3.3 If the contractor does not provide mandatory services the Commissioner must notify the contractor that they are not entitled to transfer to a GDS contract. A template letter is provided in Annex 1.
- 3.4 If the contractor is not eligible to hold a GDS contract the Commissioner must refuse to enter into a GDS contract. A template letter is provided in Annex 2.
- 3.5 If the Commissioner confirms that the contractor provides mandatory services and is eligible to hold a GDS contract under section 102 of the NHS Act and regulations 4 and 5 of the GDS 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.

- 3.6 The new GDS contract must require provision of the same services as were provided by the contractor immediately prior to the PDS agreement terminating. This includes the same number of courses of treatment involving the provision of sedation services or domiciliary services specified in the PDS agreement, unless the parties otherwise agree.
- 3.7 Unless the parties otherwise agree the same number of units of dental and (where commissioned) units of orthodontic activity must be provided under the new GDS contract.
- 3.8 The contractor will be entitled to a Negotiated Annual Contract Value (NACV) for the GDS contract as set out in the GDS SFE. The Commissioner and the contractor must agree, in respect of the first financial year during which a GDS contract has effect a NACV for the GDS contract, based on the number of units of dental activity and, where applicable, orthodontic activity that the contractor is required to provide under its GDS contract.
- 3.9 The Commissioner has the right to consider and negotiate the average value of the units of dental and orthodontic activity that it commissions from the contractor. This position has been confirmed by the FHSAU case number 15189 (August 2009). The activity and services must remain the same as they were under the PDS agreement unless agreed by both parties but the average UDA (and if applicable UOA) rates may be considered and negotiated.
- 3.10 On receipt of a notice exercising the right to transfer to a GDS contract, the Commissioner shall undertake an internal review of the PDS agreement. The Commissioner can access benchmarked data (including, for example, average UDA values, NICE recall and patient access data) from NHS Dental Services to enable them to determine whether a PDS agreement is providing value for money and performance in terms of activity and compliance. The Commissioner will negotiate the NACV to bring the contractors in line with the average local UDA/UOA rates. Annex 4 contains a contract review template that should be considered. The Commissioner may negotiate a decrease or an increase to the average UDA/UOA rate for example, if the contractor is a financial outlier and to ensure that the service remains safe and is viable.
- 3.11 The Commissioner will offer the contractor, in writing, a meeting to discuss the NACV offer being made to them in view of the contract review. A template letter is provided in Annex 5.
- 3.12 During this period of negotiation the contractor may wish to issue a counter offer for consideration. Once the negotiation period has been completed the Commissioner will provide a final offer confirmed in writing.

- 3.13 If the contractor agrees the new NACV, this will be confirmed in writing, a date for the termination of the PDS agreement will be agreed and a new GDS contract issued with a start date immediately following the termination of the PDS agreement. The termination of the PDS agreement and commencement of the GDS contract should be on the date provided in the notice from the contractor exercising its right to a GDS contract unless a different date is agreed between the parties. A template letter is provided in Annex 6.
- 3.14 If the contractor does not agree the new NACV, the Commissioner cannot agree to transfer the PDS agreement to a GDS contract. The contractor must be informed of their right to dispute the decision under regulation 21(9) of the PDS Regulations. A template letter is provided in Annex 7.
- 3.15 Following the agreement to transfer the PDS agreement to a GDS contract the Commissioner must update the NHS Dental Services payment system. Details are contained in Annex 8.
- 3.16 The contractor may at any point choose to withdraw their application to transfer to a GDS contract and continue with their current PDS agreement should agreement not be reached on the NACV for the GDS contract.
- 3.17 Where a GDS contract commences on a day other than 1 April the contractor must provide, during the remainder of that financial year, any UDAs or UOAs and any courses of treatment including the provision of sedation or domiciliary services the contractor would have been obliged to provide or contribute to immediately before the GDS contract begins.

4. PDS Plus Agreements and Non Standard PDS Agreements

- 4.1 PDS plus agreements and other non standard PDS agreements are regulated by the PDS Regulations and contractors have the same right to transfer to a GDS contract. Where a notice to transfer a PDS plus or non standard PDS agreement is received the Commissioner should acknowledge receipt of the request and contact the national support team for advice on the consideration of this request.
- 4.2 The process above should be followed when a notice from a PDS plus contractor is received but should also include compliance with any terms of the PDS plus agreement which govern the transfer to a GDS contract (for example, paragraph 2.5 of Schedule 3 of the DH Standard PDS Plus Agreement states:

"In the event that the contractor exercises its right to a GDS contract the contract value that will be negotiated as the NACV will be based on the

payments that are made under the SFE. For the avoidance of doubt the payment made under the SFE is the services payment".

- 4.3 The minimum service activity of a PDS plus agreement may have been procured at a higher level than 51% of the total PDS plus agreement value.

5. Disputes

- 5.1 Where there is a dispute about whether or not a person satisfies the conditions set out in section 102 of the NHS Act or regulation 4 or 5 of the GDS Regulations, the contractor may appeal to the First-tier Tribunal.
- 5.2 Any other dispute relating to the GDS contract shall be determined by the Secretary of State (the FHSAU) in accordance with regulation 8(3) and (4) of the GDS Regulations (pre-contract disputes).
- 5.3 The Commissioner can identify whether the contract is an NHS contract or not by reviewing the contract. 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

PDS/PDS Plus Agreement Transfer to GDS Contract – Template Letter (Mandatory 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 [PDS/PDS Plus] agreement to a GDS contract

On review of your current [PDS/PDS plus] agreement, I note that you do not provide mandatory services. Regulation 21 of the National Health Service (Personal Dental Services Agreements) Regulations 2005 states:

"A contractor which is providing mandatory services and which wishes a general dental 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 dental services contract to be entered into."

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

If you do not agree with this decision, please contact us in the first instance. Where local resolution is not possible, you have the right to raise your dispute with the Secretary of State in accordance with regulation 8(3) and (4) of the National Health Service (General Dental Contracts) Regulations 2005 (pre-contract disputes).

Yours sincerely

[name]

[title]

Annex 2

PDS/PDS Plus Agreement Transfer to GDS 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 [PDS/PDS Plus] agreement to a GDS contract.

On review of your current arrangements you do not meet the conditions set out in [section 102 of the NHS Act 2006 (persons eligible to enter into GDS contracts) / regulations 4 and 5 (where applicable) of the National Health Service (General Dental Services Contracts) Regulations 2005].

[insert which requirements have not been met]

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

If you do not agree with this decision, please contact us in the first instance. If local resolution is not possible, you may appeal to the First-Tier Tribunal.

Yours sincerely

[name]

[title]

Annex 3

PDS/PDS Plus Agreement Transfer to GDS 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 [PDS/PDS Plus] agreement to a GDS 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]

Annex 4

Contract review template for transfer from PDS/PDS Plus to GDS

The following template should be used to carry out the contract review

PDS Agreement number			
Contract Value (UDA only) PA	£	Contract Value (UOA only) PA	£
UDA Numbers PA		UOA Numbers PA	
Average Price per UDA	£	Average Price per UOA	£
NHS England benchmarked UDA value	£	NHS England benchmarked UOA value	£
National average		National average	
NHS England benchmarked UDA value	£	NHS England benchmarked UOA value	£
Local average		National average	
PDS Plus agreement only			
Access payment			
Performance payment			
Achievement against activity	% UDA delivered		
Achievement against			

access	
Achievement against performance	

Annex 5

PDS/PDS Plus Agreement Transfer to GDS Contract – Template Letter to set up a Review Meeting

[date]

Dear [name]

Contract No [insert contract number]

Further to our letter dated [insert date of letter] I am writing to confirm that we have reviewed your request to transfer your [PDS/PDS Plus] agreement to a GDS contract.

In accordance with the National Health Service (Personal Dental Services Agreements) Regulations 2005, we can confirm that you currently provide mandatory services and are an eligible person as defined by section 28M of the NHS Act 1977 (now section 102 of the NHS Act 2006) and regulations 4 and 5 of the National Health Services (General Dental Services Contracts) Regulations 2005 who can hold a GDS contract.

We have reviewed your contract and would now like to arrange a meeting with you to discuss your transfer. We have a responsibility to commission services that meet the needs of patients. Under your current PDS agreement your average UDA price is [insert price]. This is [above/below] the national/local average which is [insert price] £[insert]/UDA.

You have a right to a GDS contract providing the same services as are provided under your PDS agreement and providing the same number of units of dental [and orthodontic] activity. We are taking this opportunity to negotiate your contractual value (the Negotiated Annual Contract Value (NACV)) as set out in the General Dental Services Statement of Financial Entitlements as follows:

"[NHS England] and the contractor must agree, in respect of the first financial year during which a GDS contract has effect, a NACV for the GDS contract based on the number of units of dental activity and, where applicable, orthodontic activity that the contractor is required to provide under its GDS contract."

To allow you to have time to consider the proposal we are proposing a NACV of £[insert total proposed value], which comprises [insert number] of UDAs at an average of £[insert]/UDA and [insert number] UOAs at an average of £[insert]/UDA.

I would be grateful if you could contact me at your earliest opportunity to arrange a mutually convenient time to meet to discuss the offer and transfer in more detail.

Yours sincerely

[name]

[title]

Annex 6

PDS/PDS Plus Agreement Transfer to GDS Contract – Template Letter Agreement to Transfer

[date]

Dear [name]

Contract No [insert contract number]

Further to our meeting of [insert date] I confirm that your average UDA[/UOA] level has been negotiated and agreed at £[insert]/per UDA [and £[insert]/per UOA]. Your GDS contract will be for [insert number] UDA [and [insert number] UOA], which gives you a final Negotiated Annual Contract Value of £[insert].

We agree your termination date of your [PDS/PDS Plus] agreement is [insert date] and that your GDS contract will commence immediately following termination of your PDS agreement.

In line with regulation 21 (6)(c) of the National Health Service (Personal Dental Services Agreements) Regulations 2005 you are required to complete any courses of treatment or orthodontic courses of treatment that were not complete immediately prior to your PDS agreement terminating, in accordance with the terms of your GDS contract.

I enclose two copies of your new GDS contract and request that these be signed and returned to me by [insert date].

A copy will be returned to you once it has been signed on behalf of NHS England.

Yours sincerely

[name]

[title]

Annex 7

PDS/PDS Plus Agreement Transfer to GDS Contract – Template Letter Refusal

[date]

Dear [name]

Contract No [insert contract number]

Further to our meeting of [insert date] I am writing to confirm that we were unable to reach an agreement on a Negotiated Annual Contract Value (NACV), for your new GDS contract. In the absence of agreement to the financial value of the GDS contract we cannot agree your transfer from a PDS agreement to a GDS contract.

If you do not agree with our decision, 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 Dental Committee.

Yours sincerely

[name]

[title]

Annex 8

PDS to GDS transfer

1. Payment and Contract System

- 1.1 The following changes are required to the NHS Dental Services payment system:
- 1.2 Although the Commissioner must close the terminated agreement and start a new contract, NHS Dental Services needs to handle the transfer differently. This is because under regulation 21 of the PDS Regulations a contractor must ensure that no patient pays twice for the same course of treatment.
- 1.3 The Commissioner will need to amend the details on the payment system to record the changeover from PDS to GDS and enter the new contract value.
- 1.4 This change cannot take place in the middle of a processing cycle so will therefore need to take place before the end of the NHS Dental Services cycle for the Commissioner.
- 1.5 It is also advisable to email NHS Dental Services to ensure that the contracts are linked so that free repairs and replacements and courses of treatment that are part completed are not charged for twice.

CHAPTER 9

Adverse Events

1. Introduction

- 1.1 Adverse incidents are dealt with in the force majeure provisions of the standard GDS and PDS contracts. Although these provisions are not required by the GDS Regulations or the PDS Regulations, the majority of GDS and PDS contracts will include them.
- 1.2 The Commissioner is advised to check that the force majeure provisions are included in each contract and if they are to follow the guidance in this policy. This policy is only applicable where the contract in question has retained the recommended force majeure provisions.
- 1.3 The contractor is responsible for informing the Commissioner of any force majeure event within three working days of the occurrence of such circumstances or events as stipulated in Annex 1 and for lodging a claim for relief within the timescales specified within this document.
- 1.4 The Commissioner is responsible for advising contractors of the outcome of any claim once processed and applying that relief to the contractor's contract by way of carry forward activity on the payment and contract systems.
- 1.5 The decision-making process and calculation of relief tools are set out in the appendices.

2. Contract Wording

- 2.1 Clause 372 to 375 of the GDS contract and clauses 350 to 353 of the PDS agreement provide that:

'Neither party shall be responsible to the other for any failure or delay in performance of its obligations and duties under this Contract which is caused by circumstances or events beyond the reasonable control of a party. However, the affected party must in the occurrence of such circumstances or events:

 - inform the other party in writing of such circumstances or events and of what obligation or duty they have delayed or prevented being performed; and
 - take all action within its power to comply with the terms of this Contract as fully and promptly as possible.

Unless the affected party takes such steps, [the clause above] shall not have the effect of absolving it from its obligations under this Contract. For the avoidance of doubt, any actions or omissions of either party's personnel or any failures of either party's systems, procedures, premises or equipment shall not be deemed to be circumstances or events beyond the reasonable control of the relevant party for the purposes of this clause, unless the cause of failure was beyond reasonable control.'

2.2 A force majeure event is one which is caused by circumstances beyond the reasonable control of either the Commissioner or the contractor that could not have been avoided or mitigated with reasonable care and where the event has had a material effect on the fulfilment of the contract.

2.3 Examples of events that may invoke the force majeure provisions are as follows:

2.3.1 fire;

2.3.2 flood;

2.3.3 severe weather conditions and for which precautions are not ordinarily taken to avoid or mitigate the impact (for example a severe hurricane);

2.3.4 industrial action which significantly affects the provision of public services or services upon which the party is reliant;

2.3.5 death of a significant performer or close relative (for the purposes of this policy. a close relative is defined as, mother, father, sister, brother, wife, husband, civil partner, daughter, son, grandparent, grandchild, parent-in-law, son-in-law, daughter-in-law, sister-in-law, brother-in-law, step parent, step child, step sister, step brother, foster child, legal guardian, domestic partner or fiancé/fiancée);

2.3.6 pandemic disease or circumstances that might otherwise be considered "an act of God";

2.3.7 war;

2.3.8 civil war (whether declared or undeclared);

2.3.9 riot or armed conflict;

2.3.10 radioactive, chemical or biological contamination;

2.3.11 pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed;

2.3.12 acts of terrorism; and/or

2.3.13 explosion.

- 2.4 Throughout this policy the term dental relief is used. This is used as an outcome measure that will effectively determine the total units of activity that the contractor was delayed or prevented from providing during the force majeure period and which may be 'carried forward' to the following financial year, instead of the Commissioner recovering the overpayment in respect of the UDAs/UOAs not provided. The Commissioner's decision whether to grant dental relief will be based on the assessment of a contractor's claim for relief, where there has been an inability to deliver the contractual activity required. This policy provides the template documents that are relevant to the process of assessing eligibility for and granting dental relief, and also sets out the criteria, processes and examples of what would constitute a force majeure event. There is also a calculator and methodology provided for calculating the amount of dental activity that can be carried forward.
- 2.5 If the Commissioner is satisfied that a force majeure event occurred and all reasonable efforts have been made to mitigate the consequences of the force majeure event, it may allow the contractor to carry forward to the following financial year a number of unfulfilled UDAs or UOAs which, it is estimated, were not delivered as a direct result of the force majeure event. It is expected that any activity carried forward will be delivered within the next financial year.
- 2.6 Neither the standard GDS or PDS contract make provision for financial compensation or dispensation to be awarded to the contractor, so 'carry forward' activity will be permitted where it is felt that the force majeure event impacted on the contractor's ability to deliver their contractual obligations.
- 2.7 In order to be considered for dental relief a contractor must have followed the correct procedure of notifying the Commissioner, which is detailed below, within three working days of the occurrence of the force majeure event, and must have submitted at year end the claim form that is provided in Annex 3.

3. Circumstances of Force Majeure Event

- 3.1 In considering claims for dental relief it is important to take into account the event and the point in the financial year when it took place.
- 3.2 Claims for relief in respect of planned or anticipated events should not be considered because whilst they may affect service delivery in the short term, the contractor is required to deliver the activity during the relevant

financial year. The contractor is expected to plan its own delivery (within the requirements of the contract) and should plan for anticipated events that might affect the day to day delivery of units of activity (i.e. additional bank holidays).

- 3.3 It is entirely reasonable to expect a contractor to make arrangements to ensure that activity lost through an unplanned event occurring at the beginning or middle of the financial year is recovered and the contracted activity is delivered in full by 31 March, and in all circumstances can be accommodated within the 4% tolerance of delivery of activity.

4. Possible Events or Circumstances for Dental Relief Claims

- 4.1 The following is a list of examples of events or circumstances where the claim for relief may be considered, but it is not exhaustive.

Death of a performer or individual provider

- 4.2 In these circumstances it is understood that there may be a temporary interruption of services while arrangements are put in place to secure the successor to the business and/or engage the services of a clinician to resume service provision. Please refer to the policy on death of a contractor (chapter 12) as this provides clarity around contract continuations, even when held by a single handed contractor.

Death or sudden serious illness of a close relative or a significant performer

- 4.3 Death or sudden illness of a close relative (as defined in paragraph 2.3.5 of this policy) or a significant performer which could result in an inability to:

4.3A For the purposes of this policy, sudden serious illness or ill health means an illness or accident causing significant disability such that, in the case of a performer, the person is unable to work for a period of time which is likely to significantly impact on productivity. Examples of such illnesses include (but not limited to) myocardial infarction, CVA or cancer.

- 4.3.1 fill the post; or
- 4.3.2 make up shortfall in activity by year-end.

Significant period of absence due to accident or sudden serious ill health of a significant performer

- 4.4 If a performer responsible for a significant proportion of the contracted activity is suddenly taken ill and is unable to deliver the services for a significant period of time, the Commissioner may consider that this is a circumstance for which relief may be considered.

Physical damage to premises

- 4.5 Physical damage to premises from which the dental service is delivered rendering it impossible and/or an unsafe environment from which to deliver care over a period, such as the following:
- 4.5.1 fire causing significant damage which prevents the premises from being used over a prolonged period of time; or
 - 4.5.2 flood causing significant damage which prevents the premises from being used over a prolonged period of time.

Essential services failure

- 4.6 For example, in the event of a power failure or the water supply being turned off rendering it impossible for the dental services to be provided.

Pest infestation

- 4.7 Where the infestation would render the delivery of the service impossible from the premises, where the premises must be closed for a period to treat the infestation and/or repair damage that has been incurred.

Significant adverse weather

- 4.8 Significant adverse weather for which precautions are not ordinarily taken to avoid or mitigate the impact and which result in damage to the premises which prevent their use over a period of time (minimum three week period), such as following a hurricane.

Prolonged industrial action

- 4.9 Industrial action over a prolonged period of time which significantly affects the provision of public services or services upon which the contractor is reliant.

5. Unacceptable Events or Circumstances for Dental Relief Claims:

- 5.1 The following is a list of examples of events or circumstances where the claim for relief should not be considered. It is not exhaustive.

Refurbishment of premises

- 5.2 It is expected that contractors are able to deliver a high standard of quality care from premises which meet the requirements of the CQC and all relevant legislation. Premises should also meet the requirements of infection control and decontamination as detailed in the Health Technical Memorandum 01-05 (Decontamination in primary care dental practices) produced by the Department of Health.
- 5.3 Claims in respect of interruption to service as a result of refurbishment or renovation will not be considered as relevant circumstances in which relief should be given for failure of contractual obligations.

Adverse weather

- 5.4 Severe weather in the UK, particularly during the winter months when snow and ice may be prevalent for varying periods of time, is considered normal and therefore does not constitute exceptional circumstances for which contractors may be given relief, regardless of any inconvenience it may cause.

Planned events

- 5.5 A performer's elective surgery, annual leave, weddings and similar events are occurrences for which prior notification is always required. They are by their nature planned events and it is expected that the contractor will make the necessary provision to ensure the service continues to be delivered in the absence of the relevant performer.

Long term sickness causing some incapacity disability , maternity, paternity or adoption leave of a performer

- 5.6 Long term sickness causing some incapacity disability, maternity, paternity or adoption leave of a performer

The term long term "sickness is often applied when the course of the disease lasts for more than four weeks. An example of long term sickness includes but is not limited to, cancer, inflammatory arthritis and severe and enduring mental illness.

It is expected that the contractor will make necessary provision for the continuation of the service in the performer's absence. Contractors are advised to refer to the relevant SFE for information about payments in respect of long term sickness, maternity, paternity and adoption leave.

6. Evidence

- 6.1 Contractors must provide evidence of the force majeure event and the impact that it has had on service provision when they submit their claim at year end.
- 6.2 Examples are as follows:
 - 6.2.1 copy of a death certificate;
 - 6.2.2 letter from the treating medical professional, hospital or treatment centre, confirming the diagnosis or condition of the performer in question and the period for which it considers the individual should be absent from work;
 - 6.2.3 photographs of damage to premises, dated invoices or estimates for repair, photocopy of day book evidencing the premises closure; and/or
 - 6.2.4 written confirmation from a utilities company regarding service being cut off due to the force majeure circumstances.
- 6.3 Following the review of any claim for dental relief, the Commissioner should return any supporting personal information to the contractor or agree to dispose of it appropriately.

7. Contract Compliance

- 7.1 Contractors are required under the terms of their contracts to promptly notify the Commissioner (which for the purposes of this policy is considered to be within 3 working days) of a force majeure event, detailing the cause or event, what service provision is being delayed or prevented and what action(s) within their power they are taking in order to comply with the terms of the contract as fully and promptly as possible. Submitting at year end claim form
- 7.2 Failure to notify the Commissioner will mean that the contractor is not absolved from its obligations under the contract and will render any claim for dental relief invalid. This may mean that the contractor is in breach of its contract as a result of under delivery of its contracted activity which will not be mitigated against as a result of the force majeure event occurring.
- 7.3 Neither party will be responsible to the other for any failure to delay in performing its obligations and duties under the contract which is caused by an event of force majeure.

8. Clinical Governance & Risk Management/Termination

- 8.1 If the consequence of the contractor's failure to deliver services is significant and poses a risk to patient safety or the efficiency of wider primary care services, the Commissioner may wish to consider recording the incident on the risk register or invoking its termination rights.
- 8.2 If the service provision is delayed or prevented for a continuous period of three months then either party may terminate the agreement by notice in writing within a period which is reasonable (and no less than 28 days). This termination will not take effect where the service is resumed within the period of notice or if the contractor consents to this.

9. Claims for Relief

- 9.1 Claims for relief cannot be considered until the year end data produced by the NHS BSA has been released to both contractors and the commissioner. It is the responsibility of the contractor to submit a claim for relief and not for the Commissioner to pursue this with the contractor.
- 9.2 On receipt of claims for relief the Commissioner should consider the following:
 - 9.2.1 Was the Commissioner advised promptly of the event using the template provided?
 - 9.2.2 Were there satisfactory business continuity plans in place to help mitigate the consequences of the force majeure event?
 - 9.2.3 Was it demonstrated that all steps that were reasonably practicable were taken to ensure continuity of patient care during the period in relation to which relief is being claimed?

10. Process for Claiming Dental Relief

- 10.1 On receipt of a notification from a contractor that a force majeure incident has occurred, the Commissioner will send the contractor an electronic copy of the formal preliminary notice of force majeure that is contained within Annex 1.
- 10.2 The Commissioner will also explain the process for making a claim for dental relief.
- 10.3 On receipt of the completed notification form from the contractor, the Commissioner will send the contractor the acknowledgement of contractor notification letter based on the template contained at Annex 2, and the template claim form at Annex 3, advising the contractor that it must submit its claim for relief using the template claim form by the date specified in the letter, which will be after the year-end data is available from NHS BSA (usually mid-July). It is the responsibility of the contractor to submit a claim and not for the Commissioner to request or chase a claim.
- 10.4 Any claims must be submitted using the template provided at Annex 3. The template must be completed in full providing details of the force majeure event, the impact on service delivery, the period over which service was interrupted and the action taken to mitigate the impact of the event. The claim template must be accompanied with supporting evidence in order for the Commissioner to assess and award any relief.
- 10.5 On receipt of each claim the Commissioner will check for completeness and allow five working days for the contractor to clarify or provide additional information or supporting evidence as requested. The contractor should be advised that if the requested information is not forthcoming by the due date the claim may not be considered.
- 10.6 The Commissioner will record the status of the claim and acknowledge receipt of the claim. It will also notify the contractor of the date by which they may expect to be advised of the decision.
- 10.7 The Commissioner will assess the evidence provided in the claim and make a decision on whether or not to award relief on the basis of this. If a decision is made to award a claim for dental relief, the level of relief to be provided should be determined using the template calculator provided in Annex 4. Any discussions and decisions taken must be formally recorded and signed off by the relevant person within the Commissioner. The decision should be communicated to the contractor (template letters are provided in Annexes 5 and 6) by the date specified by the Commissioner when it acknowledged receipt of the claim.

11. Calculating Dental Relief

- 11.1 Calculation of the appropriate level of relief that a contractor is awarded should be based on the activity that the relevant performer(s) would normally deliver in the course of a day. This should be evidenced based and recorded on the claim form by the contractor.
- 11.2 Reference should therefore be made to the report produced by NHS BSA at year end entitled 'Year End Statement of Activity' which identifies activity (including amendments) collected from FP17s in any of the fifteen schedule months from 1 April to 30 June, where the date of completion of a course of treatment is between 1 April and 31 March (inclusive). This report identifies the activity delivered by every performer listed under the contract in the full financial period.
- 11.3 Calculation of dental relief should take account of the number of working days the performer(s) has been engaged in delivering NHS dental care under the contract in the course of the financial period, which will exclude the days that the performer could not work due to the force majeure event. If employed for a full financial year this equates to 240 days. So for example, in the case of a performer who has worked full time from 1 April to 31 March and delivered 3000 UDAs/UOAs, the estimated daily average will be 12.5. If he/she did not work for a period of five days as a consequence of the force majeure event, the lost activity is calculated to be 62.5 UDAs/UOAs. This would be calculated pro rata for a part time performer. There is a template in Annex 4 for calculating lost activity.
- 11.4 Where the contractor's whole practice is closed then the total UDAs/UOAs delivered divided by the number of days the practice was actually open would provide the daily amount. The Commissioner should remember that some dental practices are only open or provide NHS care for part of the week.

12. Appeals

- 12.1 If on consideration of the information and evidence provided, the Commissioner does not approve the claim for dental relief, the contractor has the right to appeal.
- 12.2 The parties should refer to the policy on managing disputes (chapter 10) for the process in relation to dispute.

13. Payment and Contract System

- 13.1 The Commissioner will need to record any carry forward activity that was granted on the payment system and contract file.
- 13.2 Where dental relief is not granted, a repayment plan needs to be agreed, in writing, between the Commissioner and the contractor and detailed on the payment system and contracts file.
- 13.3 The parties should discuss the effect of force majeure on payments by the Commissioner to the contractor. The Commissioner should use its reasonable discretion in determining payments with regard to the need for the contractor to continue to provide services once it is no longer affected by the force majeure event provided the contract has not been terminated.

Annex 1

Contractor's Preliminary Notice of Force Majeure Event

1. Introduction

- 1.1 This template must be submitted to the Commissioner should an unplanned event occur due to circumstances or events beyond the reasonable control of the contractor that could have a detrimental impact on service provision and may result in underperformance as at year end.
- 1.2 Notification must be provided to the Commissioner within three working days of its occurrence.
- 1.3 The template should be typed to ensure legibility and emailed to the Commissioner as well as served in accordance with the notice provisions of the contract to avoid the possibility of it being lost in the post.
- 1.4 The Commissioner will record that the event has happened and provide the contractor with an acknowledgment letter.
- 1.5 No evidence is required at the preliminary advice stage but will be required should a claim formally be submitted for consideration at year-end.

Force majeure - Notification of an unplanned event	
Date notified:	
Practice address:	
Contract number:	

I/we refer to the force majeure provisions in our contract and write to notify you that as a result of the unplanned event detailed below it may not be possible to deliver the contracted activity to 96%, the minimum level of attainment required by the contract.

Date(s) of event:	
-------------------	--

Description of event:	
Potential number of UDAs that could be lost:	
Potential number of UOAs that could be lost	
Action being taken to mitigate loss of service	

Annex 2

Acknowledgement of Contractor Notification

[date]

Dear [name]

Notification of unplanned event

Contract number: [insert]

Practice address: [insert]

Thank you for advising us of an unplanned event which may affect delivery of the activity you are contracted to deliver in the current financial year. We duly note this. It is expected that you will endeavour to make up any shortfall in activity between now and the end of the financial year.

I would advise you that if the NHS BSA year-end data confirms that the contract delivers the threshold of 96% no further action will be required. If the data shows that attainment has fallen below the required level you may wish to submit a claim which would enable us to review the incident and potentially grant you an element of dental relief to carry over to next year's activity as a result of the lost resource that you incurred as a result of the reported unplanned event.

As you will be aware the year-end data will be available at the end of June/beginning of July. On receipt of this you will need to decide whether or not you wish to lodge a claim for dental relief. If you do not submit a claim the Commissioner may issue a breach notice and apply a repayment plan to your contract in respect of the under delivery.

I must point out that no financial compensation can be given but if your claim for dental relief is successful you will be allowed to carry forward the number of UDAs/UOAs it is calculated that could not be delivered by the performer(s) due to the unplanned event. The activity will be calculated by the commissioning team based on the performer activity report produced by NHS BSA which reflects the number of UDAs/UOAs delivered by each performer across the year.

Any claim must be submitted by no later than [insert date].

I have included a copy of the claim form for your information.

Yours sincerely

[name]

[title]

Annex 3

Claim Form

Practice Address			
Contract number			
Date(s) of event		Date event notified to Commissioner	
Description of event			
Action taken to mitigate damage / disruption			
Name of performer(s) whose activity was lost during the event	Date the performer was attached to the contract if not in post on 1 April	No of days lost	No. of estimated UDAs/UOAs lost
Supporting evidence attached (please list) NB Failure to provide evidence may result in the claim not being considered			
For official use			
Contract value			

% contract delivered in previous financial year			
Any other relevant information			

Annex 4

Template for Calculating Lost Activity

Contract No	Name of contractor	Performer name	Contracted UDA/ OUA	Performer working days /week	Total working days	Days absent	Days worked	Average UDA/ UOA per day	UDAs/ UOAs lost through absence
					240		240		0.00

Annex 5

Notification to Contractor on Outcome of Claim for Dental Relief - Approved

[date]

Dear [name]

Notification on outcome of claim for dental relief

Contract number: [insert]

Practice address: [insert]

I refer to your recent claim for dental relief in respect of the force majeure event that you suffered on [insert date] which you believe affected your ability to deliver your contractual activity in full.

I would like to advise you that following a review of your claim and the supporting evidence that you submitted to the Commissioner, that you are able to carry forward [insert number] UDAs/UOAs into [insert financial year].

I hope that you are satisfied with this decision. If you do not agree with our decision, 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 Dental Committee.

If I do not hear from you I will assume you accept the decision that has been made.

I will write to you again in the near future to confirm the contract's attainment at year end, taking into account the decision to grant relief.

If you have any questions, please do not hesitate to contact me.

Yours sincerely

[name]
[title]

Annex 6

Notification to Contractor on Outcome of Claim for Dental Relief - Declined

[date]

Dear [name]

Notification on outcome of claim for dental relief

Contract number: [insert]

Practice address: [insert]

I refer to your recent claim for dental relief in respect of the force majeure event that you suffered on [insert date] which you believe affected your ability to deliver your contractual activity in full.

I regret to advise you that following a review of your claim and the supporting evidence that you submitted to the Commissioner, the decision is not to grant dental relief in this instance for the following reasons:

- [insert reasons for refusal]

I hope that you are satisfied with this decision. If you do not agree with our decision, 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 Dental Committee.

If I do not hear from you I will assume you accept the decision that has been made.

I will write to you again in the near future to confirm the contract's attainment at year end and any impact that this decision may have on your contract.

If you have any questions, please do not hesitate to contact me.

Yours sincerely

[(r)ame]

itle]

CHAPTER 10

Managing Disputes

1. Introduction

- 1.1 This policy describes the process to determine the action required when a contractor has requested to follow the NHS dispute resolution process or where the Commissioner elects to follow the NHS dispute resolution procedure.
- 1.2 This policy focuses on primary dental care contracts in their various forms.
- 1.3 The Commissioner must identify whether the contract is an NHS contract or a non-NHS contract. The Commissioner can do this by reviewing clause 14 of the standard GDS contract and PDS agreement.
- 1.4 An NHS contract (as set out at section 9 of the NHS Act) is an arrangement under which one health service body arranges for the provision of goods or services to another health service body. It must not be regarded as giving rise to contractual rights or liabilities.
- 1.5 A non-NHS contract is where the contract is legally binding.
- 1.6 Contractors have the right to be regarded as a health service body under regulation 9 of the GDS Regulations or regulation 9 of the PDS Regulations.
- 1.7 Where a contractor is regarded as being a health service body, its contract will be an NHS contract. Where a contractor is not regarded as a health service body, its contract will not be an NHS contract. Health service body status affects the eligibility and application process for NHS dispute resolution.
- 1.8 GDS contracts and PDS agreements require the parties to make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute before referring the dispute for determination in accordance with the NHS dispute resolution procedure or, where applicable, before commencing court proceedings.
- 1.9 There are two different routes that can be taken for resolving contractual disputes, depending on the contractor's health service body status:
 - 1.9.1 Where the contractor is a health service body and the contract is an NHS contract the steps laid out in this policy will be used to resolve all matters of dispute. The parties should not make a claim at Court in relation to the contracts.

- 1.9.2 Where the contractor is not a health service body and the contract is a non-NHS contract, the dispute can either be resolved using the process described within this policy or using the Court system.
- 1.10 The use of the Court system can be an expensive and public route. In normal circumstances, non-health service bodies will elect to follow NHS dispute resolution.
- 1.11 Where the parties have followed this policy and NHS dispute resolution to the end determination, the result is binding. A second referral to the Court system for a further ruling on the same issue cannot be made other than to enforce the decision as having the status of a County Court Judgement or to seek Judicial Review of the process.

2. Managing Disputes – Informal Process

- 2.1 The parties must make every reasonable effort to communicate their issues in relation to decision-making and rationale and must co-operate with each other to resolve any disputes that emerge informally before considering referring the matter for determination through formal dispute resolution procedures.
- 2.2 The formal process should not be initiated until the informal process has been exhausted and it should be noted that both parties may wish to involve the relevant professional representative (LDC).
- 2.3 The use of an informal resolution process helps develop and sustain a partnership approach between the contractor and the Commissioner.
- 2.4 The informal process may include (but is limited to):
 - 2.4.1 regular telephone communications;
 - 2.4.2 face-to-face meetings at a mutually convenient location; and/or
 - 2.4.3 written communications.
- 2.5 It is essential that the Commissioner maintains accurate and complete written records of all discussions and correspondence on the contract file in relation to the dispute at all levels of dispute resolution. The Commissioner should ensure that it responds to a contractor's concerns and communications in a timely and reasonable manner.

3. Managing Disputes – Stage 1 (Local Dispute Resolution)

- 3.1 The timescales set out in this stage 1 are indicative only. The Commissioner should ensure any timescales used are appropriate to the circumstances. Regardless of timescales, the parties must ensure that every reasonable effort to communicate and co-operate with each other is made prior to invoking stage 2 of the NHS dispute resolution procedure.
- 3.2 Where a dispute arises, the Commissioner should refer to the relevant policy that covers the issue that caused the dispute to determine whether due process has been followed.
- 3.3 The contractor should notify the Commissioner of its intention to dispute one or more decisions made in relation to its contract. This notification should usually be received no later than 28 days after the Commissioner advises the contractor of its decision except in exceptional circumstances.
- 3.4 The Commissioner will immediately cease all action in relation to the disputed notice or decision, until:
 - 3.4.1 there has been a determination of the dispute and that determination permits the Commissioner to impose the planned action; or
 - 3.4.2 the contractor ceases to pursue the NHS dispute resolution procedure or Court proceedings,whichever is the sooner.
- 3.5 Where the Commissioner is satisfied that it is necessary to terminate the contract or impose a contract sanction before the NHS dispute resolution procedure is concluded in order to:
 - 3.5.1 protect the safety of the contractor's patients; or
 - 3.5.2 protect NHS England from material financial loss,then the Commissioner shall be entitled to terminate the contract or impose the contract sanction at the end of the period of notice it served. This should only be followed with close reference to the GDS Regulations and PDS Regulations, pending the outcome of that procedure.
- 3.6 The paragraphs below set out a process that may be adopted for stage 1 (Local Dispute Resolution).
- 3.7 The Commissioner may acknowledge the notification of dispute within seven days of receipt and request the submission of supporting evidence from the contractor within a further 28 days from the date they receive the letter. An example acknowledgement letter is provided in Annex 1.

- 3.8 Upon receipt of the evidence the Commissioner should review the evidence within 28 days and invite the contractor to attend a meeting, which should be as soon as possible, but at the very latest within a further 28 days. The contractor(s) has the opportunity to invite representative bodies to support it at the meeting, for example, the LDC. An example invite letter is provided in Annex 2.
- 3.9 Once the meeting has been held, the Commissioner should notify the contractor in writing of the outcome of the meeting, whether this is that the dispute will now need to be moved to stage 2 of the NHS dispute resolution procedure (refer to the example stage 1 outcome letter in Annex 3), or that the dispute has been successfully resolved (refer to the example stage 1 outcome letter in Annex 4).
- 3.10 Where the matter is resolved the issue can now be deemed as closed and the Commissioner should document the outcome accordingly on the contract file.
- 3.11 Where the matter remains unresolved, the process may be escalated to the next stage of the dispute resolution procedure.
- 3.12 At this point the Commissioner should commence preparation of the contract file to ensure that if and when the FHSAU or Court requests submission of evidence in respect of the dispute the documentation is in order.

4. Managing Disputes – Stage 2 (NHS Dispute Resolution Procedure)

- 4.1 The informal process and stage 1 (Local Dispute Resolution) must be exhausted before proceeding to this stage of the process. The Commissioner or a contractor wishing to follow this route must submit a written request for dispute resolution to the FHSAU, which carries out the NHS dispute resolution functions of the Secretary of State in the GDS Regulations and the PDS Regulations, which should include:
 - 4.1.1 the names and addresses of the parties to the dispute;
 - 4.1.2 a copy of the contract; and
 - 4.1.3 a brief statement describing the nature and circumstances of the dispute.
- 4.2 The written request for dispute resolution must be sent within a period of three years from the date on which the matter gives rise to the dispute occurred, or should have reasonably come to the attention of the party wishing to refer the dispute. Please see FHSAU determination reference

17156 for further details on the date that the dispute should have reasonably come to the attention of the relevant party.

- 4.3 The Commissioner will be required to prepare documentation, evidence and potentially an oral presentation in response to evidence presented in support of the dispute. Each party will be asked to prepare representations on the dispute, which will be circulated to the other party and an opportunity to provide observations on the other party's representations will be given. Again, the observations of each party will be circulated to the other party.
- 4.4 The Commissioner should not underestimate the preparation that may be necessary in the event that evidence is required by the FHSAU, as all records pertaining to the contractor in question may be requested, including (but not limited to) all contract documentation and contract variations, all written correspondence (both to and from the Commissioner and the contractor) and any electronic correspondence that may have passed between the parties, in relation to the dispute. This process will benefit from a clearly recorded contract file.
- 4.5 The Commissioner must ensure that records of communications and contract files are maintained to a high standard and all documentary evidence is collated correctly prior to submission to the FHSAU.
- 4.6 Once the FHSAU has reached a conclusion (the determination) the Commissioner will receive a copy and will be required to act upon it. A copy of a Guidance Note for Parties Involved in Dispute Resolution at the NHSLA (FHSAU) is attached in Annex 5 and should be followed by the parties to the dispute.

5. Other Dispute Resolution Procedures

- 5.1 Disputes may also arise prior to a contract being entered into. Such disputes will relate to the eligibility of the person seeking to enter into the contract or contract terms.
- 5.2 Where the Commissioner is of the view that a person seeking to enter into a contract does not meet the eligibility conditions of Regulations 4 or 5 of the GDS Regulations or the PDS Regulations, the Commissioner must notify the person in writing.
- 5.3 This notice must state the Commissioner view of the person's eligibility, the reasons for that view and guidance on the person's right of appeal.

- 5.4 Where the Commissioner has issued such a notice, the recipient of the notice has a right of appeal to the First-Tier Tribunal.
- 5.5 Where the dispute relates to the parties being unable to agree on a particular proposed term of a GDS contract or PDS agreement, either party may refer the dispute to the Secretary of State to consider and determine the matter in accordance with:
 - 5.5.1 For GDS contracts, paragraphs 55(4) to 55(13) and 56(1) of Schedule 3 and paragraph 8(5) of the GDS Regulations; or
 - 5.5.2 For PDS agreements, 55(4) to 55(13) and 56(1) of Schedule 3 and paragraph 8(4) of the PDS Regulations,except where both parties to the prospective agreement are health service bodies (in which case section 9 of the NHS Act applies).

Annex 1

Example Acknowledgement Letter

[date]

Dear [contractor name]

Ref: [contract details]

Further to your recent notification, dated [notification date], I can confirm we have received your intention to dispute our decision dated [insert date] in relation to:

[matter 1 details]

[matter 2 details]

[matter 3 details]

To proceed with the dispute resolution process, please submit to the above address your supporting evidence in relation to the matters under dispute within 28 days of this letter.

Yours sincerely,

[name]

[title]

Annex 2

Example Invitation Letter

[date]

Dear [contractor name]

Ref: [contract details]

Following the receipt of evidence regarding your dispute relating to:

[matter 1 details]

[matter 2 details]

[matter 3 details]

We would like to invite you to discuss the matter at a meeting on:

[proposed date],

[proposed time],

[insert proposed location]

Our representatives, [insert names of Commissioner's representatives], will attend at the meeting.

You may have a representative from your Local Dental Committee or a friend (or other appropriate professional body colleague to attend with you). Please be aware that any representative/s present as a supportive colleague(s) will not normally be permitted to speak at the meeting. Where a solicitor accompanies you, the Chair of the meeting will make it clear that the meeting is not a requirement of the [GDS/PDS] Regulations. Professional advisors, such as solicitors or accountants, will not normally be in attendance in a representative role unless especially requested in advance of the meeting.

I would be grateful if you would confirm in writing your acceptance to attend this meeting and provide details of any representatives you may wish to accompany you.

Yours sincerely,

[name]

[title]

Annex 3

Example Stage 1 Outcome Letter (FHSAU Referral)

[date]

Dear [contractor name]

Ref: [contract details]

Further to our recent meeting on [date/time/location of meeting] to discuss your dispute, I am writing to confirm the following outcome(s):

[outcome 1 details]

[outcome 2 details]

[outcome 3 details]

As we were unable to resolve this dispute by local dispute resolution, you may now wish to refer the matter(s) to the Secretary of State for dispute resolution in accordance with the National Health Service [General Dental Services Contracts or Personal Dental Services Agreements] Regulations 2005.

If you do wish to refer the matter(s) to the Secretary of State, then please send all supporting documentation to the NHSLA (FHSAU) which undertakes the delegated function of the Secretary of State. We have enclosed a copy of the NHSLA (FHSAU) Guidance Note for parties involved in Dispute Resolution.

Yours sincerely,

[name]

[title]

Annex 4

Example Stage 1 Outcome Letter (Matter(s) Resolved)

[date]

Dear [contractor name]

Ref: [contract details]

Further to our recent meeting on [date/time/location of meeting] to discuss your dispute, I am writing to confirm the following outcome(s):

[outcome 1 details]

[outcome 2 details]

[outcome 3 details]

We are pleased to confirm the outstanding matters are now resolved and your contract file has been updated to reflect this mutual resolution.

Yours sincerely,

[name]

[title]

Annex 5

Guidance Note for Parties Involved in Dispute Resolution

Introduction

This Guidance Note is for general information purposes only. It is not exhaustive but does cover the essential elements needed for parties submitting, or responding to, applications for dispute resolution.

Who are we?

The NHS Litigation Authority ("NHS LA") is a Special Health Authority, which (amongst other things) adjudicates in contractual disputes between the NHS Commissioning Board (NHS England) and individual primary care contractors.

Although the relevant Regulations refer to the Secretary of State, these matters were delegated to the NHS LA with effect from 1 April 2005. The Family Health Services Appeal Unit based in Leeds discharges these functions for the NHS LA.

What regulations are applicable?

The relevant legislative framework is contained in one of the following:

- the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013;
- the General Ophthalmic Services Contracts Regulations 2008;
- the National Health Service (General Dental Services Contracts) Regulations 2005;
- the National Health Service (Personal Dental Services Agreements) Regulations 2005;
- the National Health Service (Personal Medical Services Agreements) Regulations 2004.

Is legal representation permitted?

Parties can be represented or assisted by whoever they wish although representatives who are not bound by The Law Society's Code of Conduct should provide an 'authority to act' letter from their client.

What information should I provide?

An application for dispute resolution should include:

- the full names and contact details of the parties involved in the dispute;
- a statement describing the nature and circumstances of the dispute (with reference to the appropriate regulations or contract provisions);
- a signed copy of the contract which is in dispute;
- what the applicant sees as the appropriate outcome of the dispute;
- confirmation that all local dispute resolution options have been exhausted.
- A comparables table (in Current Market Rent cases) in the form set out here: <http://www.nhs.uk/Pages/Publications.aspx?library=FHSAU%7cpublications>

The NHS LA's current Protocol can be found at

<http://www.nhs.uk/NHSLA/Documents/Local%20Dispute%20Resolution%20Protocol%20for%20CMR%20April%202014.pdf>

Who will take the final decision?

The decision is usually taken by an officer of the NHS LA who fulfils the role of "the Adjudicator".

What is the procedure?

On receipt of an application, the NHS LA will first consider whether it has jurisdiction to consider the dispute.

If it does, the NHS LA will then consider whether the application provides the information required by the Regulations. If the appropriate information has been provided, the NHS LA will invite representations from parties. At this stage, the parties should provide all further evidence which they wish the NHS LA to consider.

When submitting representations to the NHS LA, accompanying bundles of documents should be indexed and paginated. A chronology of events is useful in complicated cases. Parties should not assume that the NHS LA is familiar with particular systems and processes. Clear and specific reference should be made to any pages in the bundle upon which the party relies in support of a particular representation.

No document may be provided on a 'confidential basis' although a party may apply to have parts of any document withheld from publication in the NHS LA's determination. All information received will be disclosed to the other parties, so any party wishing to have material withheld from publication must send a full version of the document to the NHS LA, indicating which parts the party would like withheld and the reasons why withholding is sought.

Any representations received will be circulated for final observations before the case is placed before the Adjudicator for determination.

What happens next on GMS/PMS Current Market Rent disputes?

The NHS LA may ask the Royal Institution of Chartered Surveyors to nominate an advisor from whom the Adjudicator may seek advice on the current market rent for the premises. The NHS LA will circulate a copy of any advice received to the parties for observations on its content, before the Adjudicator reaches a final decision on the application for dispute resolution.

Will there be an Oral Hearing?

The majority of cases are decided on the basis of the correspondence. Occasionally, however, particularly where there are material differences in the facts presented by the parties, complexities, or even insufficient information, it may be necessary to hold an Oral Hearing.

Who will be present at the Oral Hearing?

The Adjudicator (who may be assisted by a clerk), the parties, their representatives and any relevant witnesses will be invited to attend an Oral Hearing.

What procedure will be followed at an Oral Hearing?

The Adjudicator will explain the procedures to be followed on the day (and may also provide written procedural information in advance).

Who will be allowed to speak?

In general terms, each party will be allowed to expand on their written evidence and each party will be given the opportunity to comment on matters raised at the hearing. The Adjudicator may question any party.

Are witnesses allowed?

Appropriate witnesses may be brought to support your case although you should provide the NHS LA with a written summary of their evidence in advance.

The Adjudicator will indicate at the hearing whether it is necessary for them to give evidence orally.

What papers will the parties receive?

If you have indicated your intention to attend the hearing, you (and all other parties attending) will receive a set of papers which will usually include:

- The application for dispute resolution; and
- Any presentations received.

Any further material you wish to present at the hearing will be considered at the

discretion of the Adjudicator.

How long will the hearing last?

This will depend on the complexity of the case and the number of witnesses involved. Hearings may last for one or more days and it will be a matter for the Adjudicator to determine the length for which the case will be listed. The Adjudicator will try to ensure parties keep to the point and that there is no repetition.

What happens after the Hearing?

The Adjudicator will consider the information put forward by the parties and make a determination with reasons. The NHS LA will then notify the parties of the decision in writing.

Parties with special and other needs?

The NHS LA is committed to ensuring the adequate facilities and equipment are provided at oral hearing venues to assist parties with disabilities. Please notify the NHS LA in advance if any particular assistance is required, providing as much notice as possible.

How long will the process take?

It may take up to 15 weeks for the FHSAU to determine cases on the papers and up to 33 weeks for cases referred to an Oral Hearing or Advisor.

To whom can I complain if I am dissatisfied with the adjudication of the dispute?

Decisions of the NHS LA can only be set aside by the High Court. Independent legal advice should be sought on this.

Any complaints about the way in which a dispute has been handled should be submitted to:

Chief Executive
NHS Litigation Authority
151 Buckingham Palace Road, London, SW1W 9SZ

or to:

Head of the FHSAU
NHS Litigation Authority
FHS Appeal Unit
1 Trevelyan Square
Leeds

LS1 6AE

Your concerns will be investigated by the Chief Executive or a nominated officer.

Is there any other information available?

The NHS LA publishes previous decisions, statistical information, a sheet of Frequently Asked Questions and other material on its website at: www.nhsla.com.

Alternatively you can email fhsau@nhsla.com

Please note however that we do not provide advice.

CHAPTER 11

Financial Recovery and Reconciliation

1. Introduction

- 1.1 The policy provides guidance on the management of the mid-year and year-end financial reconciliation and recovery process for all dental contracts.
- 1.2 The policy covers all GDS and PDS contractors regardless of their legal entity.
- 1.3 The Commissioner will need to ensure that, where there are any adjustments that are made to dental contracts, reclaimed money will need to be logged and superannuation reclaimed. Any rebasing that takes place will also need to be accounted for, as this may affect the recurrent financial obligations placed upon the Commissioner.
- 1.4 The NHS BSA payment and contract system also needs to be updated by the officer managing the processes as this will effect contractual payments to contractors.
- 1.5 This policy provides Commissioners with the process required for carrying out their mid-year and year-end reviews as required by the terms of the GDS contract and PDS agreement. It provides guidance, scenarios, flow charts and standard templates to be used in the reviews and subsequent meetings (if required) with contractors.
- 1.6 This policy refers to the specific clauses in the model GDS contract and model PDS agreement and cross-checks where applicable with the GDS Regulations, the PDS Regulations, the NHS Act and the GDS SFE and the PDS SFE.
- 1.7 This policy removes any deviation from the regulations and provides a fair and equitable process for all contractors. It also provides an element of proportionality when dealing with contractors.
- 1.8 This policy will be used to implement the contractual and regulatory processes required to:
 - 1.8.1 review activity at both mid-year and year-end;
 - 1.8.2 make the required financial recovery; and

- 1.8.3 issue a breach notice, in line with requirements as set out in paragraph 73 of Schedule 3 of the GDS Regulations, and the same provision in the PDS Regulations.

2. Mid-Year Review

- 2.1 The obligation for mid-year reviews are set out at paragraph 58 of Schedule 3 of the GDS Regulations and the same provision in the PDS Regulations. A flowchart of the mid year process is provided in Annex 1.
- 2.2 The Commissioner must, by 31 October in the relevant financial year, determine the number of UDAs and UOAs that the contractor has provided between 1 April and 30 September in that year. This information will be based on the notifications of treatment (FP17s) made by the contractor under paragraph 38 of Schedule 3 of the GDS Regulations and paragraph 39 of Schedule 3 of the PDS Regulations and provided to the Commissioner by NHS DS. Where the notifications of treatment are disputed by the contractor, the contractor should liaise directly with NHS DS for resolution of their issue.
- 2.3 Notifications of courses of treatment must be made within 2 months of a course of completed treatment. Contractors must ensure that notifications are made on time as the Commissioner is not obliged to pay for activity which is not notified in accordance with this 2 month deadline.
- 2.4 Where the Commissioner determines that the contractor has provided more than 30 percent of the activity that it is required to deliver in that financial year (between 1 April and 30 September) the Commissioner should send a letter to the contractor. A template letter is provided in Annex 2. It is also important to identify where the contractor has delivered over fifty percent of the total number of UDAs or UOAs as the contractor may over provide against the contracted total of UDAs or UOAs in the relevant year.
- 2.5 Where the Commissioner determines that the contractor has provided less than 30 percent of the activity that it is required to deliver in that financial year (between 1 April and 30 September) the Commissioner should:
 - 2.5.1 notify the contractor that it is concerned about the activity provided under the contract in the first half of the year;
 - 2.5.2 set out the number of UDAs and UOAs that the contractor has provided together with the percentage total of the total number of UDAs and UOAs that this represents; and

- 2.5.3 require the contractor to participate in a mid-year review of its performance in relation to the contract.
Develop a SMART plan with contractor

3. Mid Year Review Meeting

- 3.1 This meeting does not necessarily need to be face to face and can be conducted on the telephone if appropriate. The review should be followed by a SMART action plan to identify how the contracted activity will be delivered by the year end and/or a withholding of monies (as set out at paragraph 59(2) and (3) of Schedule 3 of the GDS Regulations and the same provision in the PDS Regulations).
- 3.2 Where the contractor provides evidence or reasonable explanations and/or remedies at the review meeting, the Commissioner may take no further action following the mid-year review. The Commissioner should be satisfied that the contractor is on target to deliver the contracted activity by the year-end.
- 3.3 At the mid-year review meeting the Commissioner and the contractor shall discuss:
 - 3.3.1 Any written evidence the contractor put forward to demonstrate that it has provided a higher number of UDAs and UOAs during the first half of the financial year than the Commissioner has indicated; and
 - 3.3.2 Any reasons the contractor provides for the level of activity in the first half of the financial year.
- 3.4 Where, having taken into account any evidence or reasons put forward by the contractor at the mid-year review (e.g. as a result of a force majeure event) and the Commissioner nevertheless has serious concerns that the contractor is unlikely to provide the number of UDAs or UOAs that are required by the year-end, the Commissioner may:
 - 3.4.1 require the contractor to comply with a written plan drawn up by the Commissioner to ensure that the level of activity during the remainder of the financial year is such that the contractor will provide the contracted total UDAs and UOAs; or
 - 3.4.2 withhold monies payable under the contract.
- 3.5 Process for the Commissioner to follow:
 - 3.5.1 send a letter asking the contractor to arrange a review meeting (a template letter is provided in Annex 3);

- 3.5.2 hold mid-year review meeting (a template agenda for the meeting is provided in Annex 4);
- 3.5.3 Follow up the mid-year review meeting:
 - 3.5.3.1 a final copy of the notes of the meeting should be sent to the contractor;
 - 3.5.3.2 if the Commissioner is still concerned about contracted delivery it may request an action plan to be followed (a template action plan is provided in Annex 5);
 - 3.5.3.3 the Commissioner may withhold any monies as appropriate and make any adjustments to the payment system in accordance with paragraph 59(2) and (3) of Schedule 3 of the GDS Regulations and the same provision of the PDS Regulations;
- 3.5.4 Send a written copy of the review and any feedback from the action plan to the contractor.

4. Withholding Payments Following a Mid-Year Review

- 4.1 Any withholding of monies needs to be calculated in line with paragraph 59 (3) of Schedule 3 of the GDS Regulations and the same provision of the PDS Regulations. The maximum amount that may be withheld is:
 - 4.1.1 the amount that is payable under the contract in respect of the number of UDAs or UOAs required to be provided in a financial year; less
 - 4.1.2 the amount that would be payable under the contract as a relevant proportion of that amount if the contractor provided in the whole of the financial year only twice the number of units of dental activity or orthodontic activity that he provided between 1 April and 30 September.
- 4.2 Where the Commissioner withholds monies it shall ensure that it pays the withheld monies to the contractor promptly following the end of the relevant financial year where the contractor has:
 - 4.2.1 provided the contracted UDAs and UOAs; or
 - 4.2.2 has failed to provide the contracted UDAs or UOAs but that failure amounts to 4 percent or less of the total contracted UDAs or UOAs.

- 4.3 The Commissioner and the contractor may agree at any time to vary the contract to adjust the number of UDAs or UOAs to be provided under the contract or the monies to be paid to the contractor under the contract. Either the Commissioner or the contractor can notify the other party of its need for a variation, specifying why this is considered to be necessary together with reasons. The parties will use their best endeavours to communicate and co-operate with each other to agree what (if any) variation should be made and the related variations to the contract. No amendment or variation to the contract will have effect unless it is in writing and signed on behalf of the Commissioner and the contractor.

5. Year-End Review – GDS, PDS and PDS Plus

- 5.1 The Commissioner will carry out a year-end reconciliation on all of its dental contracts to ensure that activity is being delivered against contracted requirements and to ensure dental activity is being commissioned accurately and in line with local oral needs assessments.
- 5.2 In June of each financial year, NHS DS will provide Commissioners with contract level data. This will provide Commissioners with the actual level of dental activity which has been delivered against each contract during the previous financial year. This figure is the total of the notifications sent by the contractor to NHS DS by way of FP17 submissions on completed courses of treatment.
- 5.3 NHS DS provides contractors with a monthly total of the notifications sent by the contractor to NHS DS.
- 5.4 If a contractor disputes the total number of notifications sent by the contractor to NHS DS, they should liaise directly with NHS DS for resolution.
- 5.5 The contractor is required to provide notification of a course of treatment, orthodontic treatment etc within 2 months in accordance with paragraph 38 of Schedule 3 of the GDS Regulations and paragraph 39 of Schedule 3 of the PDS Regulations. Where the contractor fails to provide a notification within the 2 month time limit, the Commissioner does not have to pay for this activity nor take into account its delivery and therefore does not have to have it included within the activity report.
- 5.6 The Commissioner will use data supplied by NHS DS in relation to the total number of notifications received (the total number of UDAs and UOAs). The contractor is responsible for providing written documentation

and evidence of any dispute with the NHS DS data and any outcome to the Commissioner's primary care dental lead to take into consideration.

- 5.7 When carrying out the year-end reconciliation, refer to the flow chart in Annex 6 and the financial template in Annex 7.
- 5.8 While the contract holder should aim to deliver one hundred percent of their total contracted units of activity, there will be deviations from this and they must be dealt with as set out below.

NB: Rounding up or down of year end performance figures is not allowed

6. Under Delivery of UDAs or UOAs – Below 96 Percent

- 6.1 Where a contractor has delivered less than 96 percent of their contracted activity, the Commissioner will recover the full amount of money (the overpayment to the contractor in respect of the activity actually delivered under the contract) up to the full contract value.
- 6.2 In addition to recovery of the overpayment, the Commissioner may also serve a breach notice on the contractor for the failure to deliver the contracted activity (Annex 8). The Commissioner will have regard to the reasons for under-delivery including those covered by the circumstances in Annex 11.
- 6.3 Where a variation to the contract is agreed, adjustments should also be made on the payment system. Any contract variation or 're-basing' must be agreed, in writing and signed on behalf of the Commissioner and the contractor.
- 6.4 Where a contractor chooses to make a one-off payment in respect of the repayment of the overpayment, this must be set up as a debt on the payment system.
- 6.5 Where a repayment plan is agreed, the Commissioner will need to take into account PCR charges, superannuation and levies and so on, to ensure there is enough money in the scheduled payment to cover the debt. This minimises the financial risk to the Commissioner and should ensure that it does not allow the contractor to go into negative payments, therefore creating a further cumulative debt. The repayment plan should be agreed in writing between the Commissioner and the contractor and signed by the parties.
- 6.6 The Commissioner is able to agree a mix of a lump sum payment and a repayment plan for the balance.

6.7 The repayment mechanism is through the NHS DS payment and contract management system'. The preferred repayment mechanism is through the NHS DS payment and contract management system and cheques will only be accepted by prior agreement with the Commissioner.

6.8 Not used

6.9 Not used

6.10 The timing of entering a lump sum or repayment plan on the payment and contract system must fit into NHS DS scheduled cut-off points for NHS England cycle of processing, so it is always advisable to contact the NHS DS finance team in advance on 01892 592522.

6.11 Except in exceptional circumstances, the maximum length of a repayment plan is the end of March following the review date.

7. Under Delivery of UDAs or UOAs - Between 96 Percent and 100 Percent

7.1 Where the contractor fails to deliver the full contracted UDAs or UOAs and that failure amounts to 4 percent or less of the total contracted UDAs or UOAs and the contractor agrees to provide the units it has failed to deliver within a period of no less than 60 days and agreed with the Commissioner, the Commissioner will not take any action for failure to provide the contracted UDAs or UOAs. This is commonly known as the 4 percent tolerance and permits the carrying forward of some contracted activity with the agreement of the Commissioner. This is set out at regulation 18 of the GDS Regulations and regulation 15 of the PDS Regulations.

7.2 If a contract under-delivers within the tolerance level then this activity must be delivered within the financial year. Any carry forward of activity must be entered onto the payment system.

7.3 Breach notices in relation to the under delivery of UDAs or UOAs cannot be issued if a contractor delivers activity within this range.

7.4 The Commissioner should send the contractor a copy of the standard letter and reconciliation report (Annex 9).

8. Under Delivery of Domiciliary and Sedation Services

- 8.1 Where the contractor is contracted to provide domiciliary and/or sedation services the contract must specify the number of courses of treatment the contractor is required to provide or contribute to as a referral service.
- 8.2 Where the contractor fails to provide the contracted number of courses of treatment the Commissioner may serve a breach notice on the contractor.
- 8.3 Where the contract details the financial sum payable in respect of the domiciliary and sedation services and these are not provided by the contractor in the relevant financial year, the Commissioner may seek recovery of the overpayments in this regard.

9. Over Delivery

- 9.1 Unless the contract specifies that the Commissioner will pay for the delivery of UDAs or UOAs over the contracted activity set out at clauses 77 and 78 of the standard GDS contracts and PDS agreements there is no requirement for the Commissioner to make additional payments to the contractor or to take this activity into account during the next financial year. The Commissioner may allow a tolerance of up to two percent of UDAs only, per year (therefore a maximum of 102 percent of the contracted UDA activity). The Commissioner may pay for the additional activity or it may be credited to the following contract year. This flexibility is at the discretion of the Commissioner and will need to be entered on the payment system and would be unlikely to be agreed where the contractor is in breach or has had a remedial or breach notice issued in the last 12 months.
- 9.2 A Template letter to the contractor is provided in Annex 10.
- 9.3 The Commissioner has the discretion to commission non-recurrent activity in any financial year which may be funded according to local priorities and circumstances.

10. Exceptional Circumstances

- 10.1 In exceptional circumstances, there may be instances in which a contract holder is unable to fulfil its contractual requirement to deliver the contracted activity. These cases need to be considered on an individual basis and could include a decision by the Commissioner to wave its rights to recover overpayments in exceptional circumstances where agreement is reached on how the activity will be delivered or the funding repaid over

a longer period than is set out above. Where appropriate the Commissioner should refer to the policy on adverse events (chapter 9).

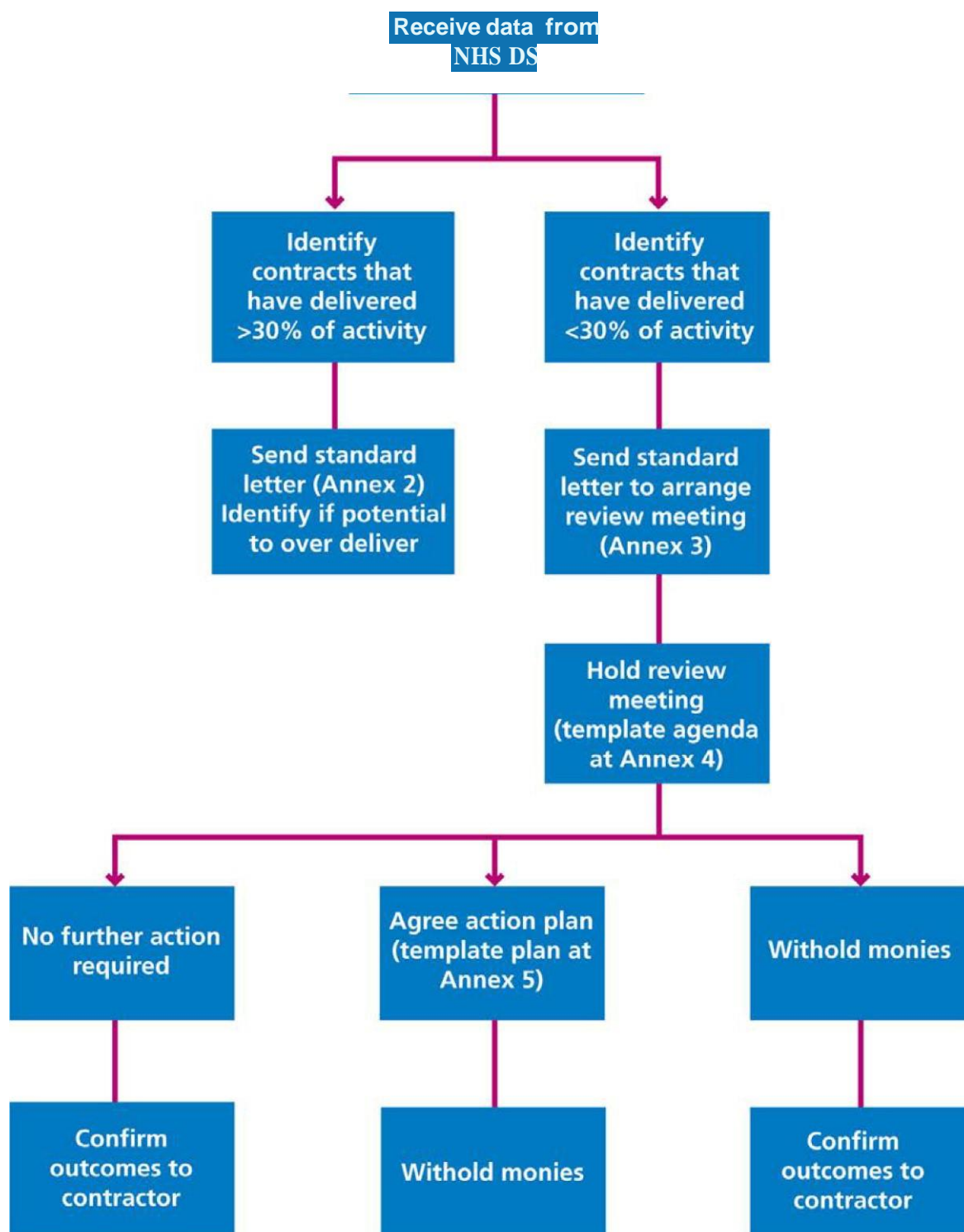
- 10.2 Annex 11 contains a table of some elements which could be considered exceptional circumstances. This list is not exhaustive.

11. PDS Plus

- 11.1 The Commissioner will follow both the mid-year and year end procedures set out above, in line with the PDS Regulations and SFE for any PDS plus agreements.
- 11.2 Schedule 3 of the PDS Plus agreement provides the breakdown of agreement values in to service payment, access payment and performance payment. All payments are paid monthly and paragraph 8 of Schedule 3 of the PDS plus agreement outlines the annual reconciliation for the service, access and performance payments. Commissioners will need to calculate any under performance in line with the details contained within each specific PDS Plus agreement.

Annex 1

Flowchart of Mid-year Process



Annex 2

Template Letter - Performance exceeds 30%

To be sent by 31 October

[date]

Dear [name]

Contract no: [contract number]

Mid-year review [year]

We are required to determine the number of units of dental [and orthodontic] activity that you have provided under your contract during the period 1 April to 30 September of this financial year.

A review has taken place using the FP17 data that you have sent to NHS DS. This information can also be found on your monthly schedules.

Below is a summary of your contractual obligation and your delivery against it as at 30 September [year]:

- UDAs/UOAs contracted = [insert]
- UDAs/UOAs carried forward = [insert]
- UDAs/UOAs to be delivered in [year] = [insert]
- UDAs/UOAs delivered as at 30 September [year] = [insert]
- Percentage of UDAs/UOAs delivered against contracted requirement = [insert]

You have provided more than 30 percent of the total contracted units of dental [and/or orthodontic] activity and accordingly, we do not require you to undertake a formal mid-year review.

We would like to remind you that any over delivery of your contracted activity will not be paid for although we may agree to carry forward up to 2 percent of activity in the following financial year.

Thank you for your ongoing commitment to provide NHS dentistry.

Yours sincerely

[name]

[title]

Annex 3

Template Letter - Performance is less than 30%

To be sent by 31 October

[date]

Dear [name]

Contract no: [contract number]

Mid-year review [year] – under-delivery identified

We are required to determine the number of units of dental [and orthodontic] activity that you have provided under your contract during the period 1 April to 30 September of this financial year.

A review has taken place using the FP17 data that you have sent to NHS DS. This information can also be found on your monthly schedules.

Below is a summary of your contractual obligation and your delivery against it as at 30 September [year]:

- UDAs/UOAs contracted = [insert]
- UDAs/UOAs carried forward = [insert]
- UDAs/UOAs to be delivered in [year] = [insert]
- UDAs/UOAs delivered as at 30 September [year] = [insert]
- Percentage of UDAs/UOAs delivered against contracted requirement = [insert]

You have provided less than 30 percent of the total contracted units of dental [and/or orthodontic] activity and accordingly, we require you to participate in a mid-year review meeting to discuss your position.

The mid-year review is an opportunity for us to discuss the performance of the contract and to review any reasons for the level of activity provided and written evidence demonstrating that a greater number of UDAs or UOAs were delivered during the period 1 April to 30 September.

If you wish to dispute the total number of notified UDAs [and/or UOAs], you will need to contact NHS DS directly and provide me with written evidence of this alongside any other evidence you wish to submit.

The review meeting may result in a remedial action plan and/or a withholding of monies or no further action.

I would be grateful if you could contact me at your earliest convenience to arrange the review meeting.

Yours sincerely

[name]

[title]

Annex 4

Template Agenda - Mid-year Review Meeting

Units of dental activity and /or units of orthodontic activity

- The amount and type of activity undertaken by the practice from 1 April to 30 September.
- Agreement of NHS DS data to practice data.
- Issues affecting achievement of UDAs (FTAs/CPD/recruitment issues and so on).
- If activity is at a variance with expectations, discussion of plans to reduce this

Other contractual Issues

- Opportunity for the contractor to raise any other issues with the Commissioner.
- Quality measures – dental assurance framework reports, vital signs reports, complaints for example.

Any other business

- Any issues not covered in the above agenda (items will be requested and agreed at the beginning of the meeting).

Annex 5**Template Action Plan****Contract no:** [insert]**Provider name and address:** [insert]

Contracted UDAs [year]:	[insert]
NHS DS scheduled delivery recorded to 30 September:	[insert]
Percentage delivery:	[insert]

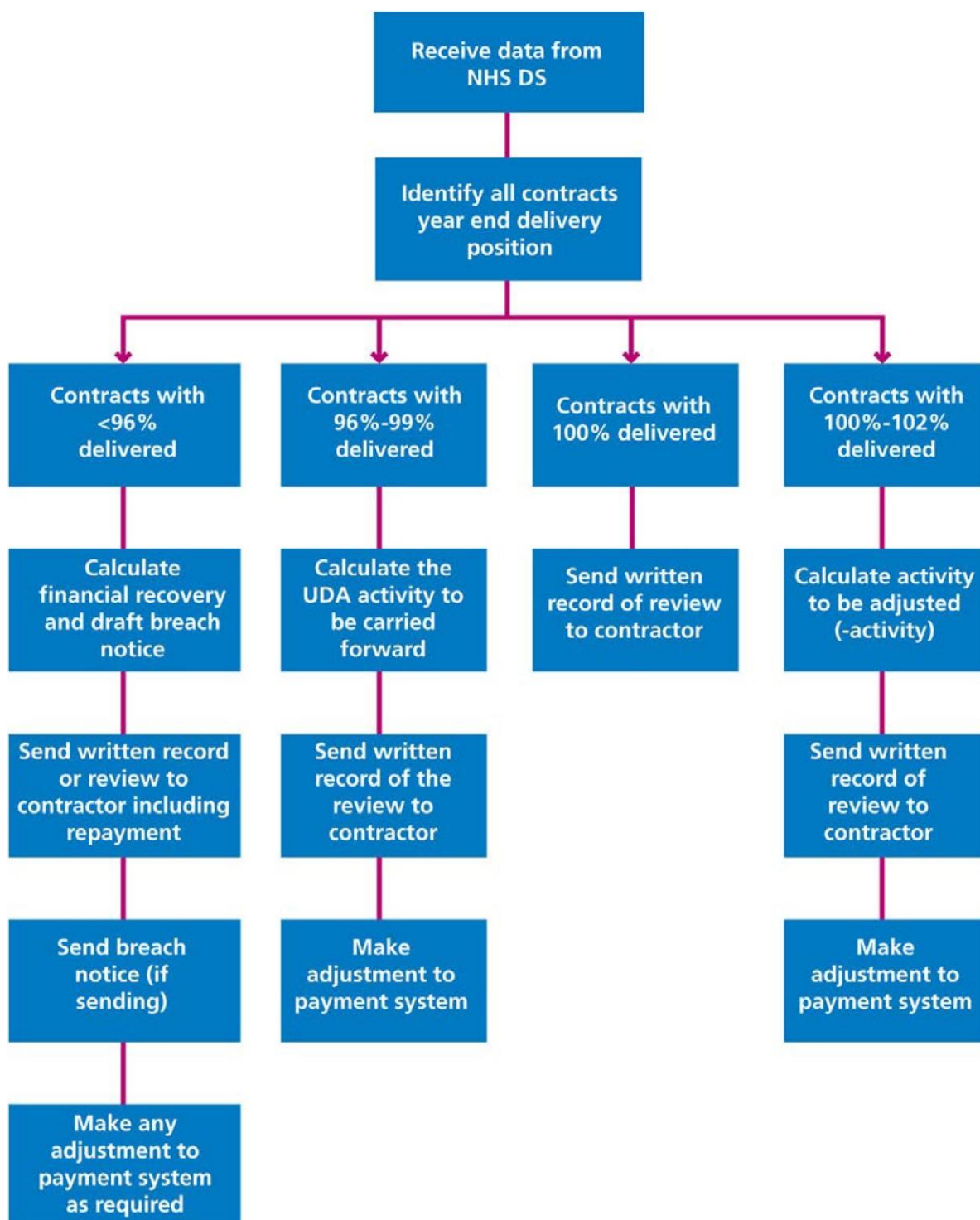
Practice:	[insert]
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Issue	Explanation and action	Timeframe
The amount and type of activity undertaken by the practice from 1 April to 30 September		
Agreement of NHS DS data to practice data		
Issues affecting achievement of UDAs/UOAs (FTAs CPD/ recruitment issues and so on)		
If activity is at a variance with expectations, what are the plans to reduce this?		

Issue	Explanation and action	Timeframe
Any proposal of a reduction in monthly scheduled payments or activity to minimise risks to both Commissioner and contractor at year end		
Quality measures – dental assurance framework, vital signs reports, complaints and so on.	Commissioner to complete Practice to comment	
Any other comments or information that the practice would like the Commissioner to note		

Annex 6

Year-end process



Annex 7

Year-end reconciliation templates

Please refer to the calculator document that has been provided in addition to this document. This provides the Commissioner with all the calculations required to carry out the mid-year and year-end reviews.

On completion the Commissioner will be able to copy and paste a results table into each mid-year and year end statement for each individual contractor.

Annex 8

Year-end under delivery – under 96 percent of the contract delivered

[date]

Dear [name]

Calculations of financial reclaim – contract no: [number]

We have now finalised your year-end delivery position in accordance with the [National Health Service (General Dental Services Contracts) Regulations 2005, OR National Health Service (Personal Dental Services Agreement) Regulations 2005] using the data provided to us by NHS Dental Services.

A summary of the position is tabled below:

[insert table using result and headings from the calculator template]

As a result of this under delivery of contracted activity, we will recover from you the overpayment of the sum of [amount]. You can send the full amount to NHS DS by [date] either by direct bank transfer using the following details:

[insert details]

[Insert address of NHS DS]

If you prefer, we are able to set up a repayment plan on the payment system deducting the payments directly from your schedule. If you choose this option the monthly payments will commence in September and cease no later than March and will be for [figure] a month.

Your UDA/UOA target for the financial year will remain the same unless you have indicated to us that you wish it to be reduced.

[Delete this paragraph if not issuing breach notice] As your contract has underperformed against its contractual delivery NHS England is also issuing a breach notice. I appreciate that this is a difficult time for practice(s). If you wish to discuss any aspect of this process with me, please do not hesitate to contact me on the above number.

If you dispute any of the above information, please contact me in the first instance and we will be able to explain the disputes process with you.

If you would prefer us to set up a repayment plan please contact us by [insert date] failing which we will automatically set up the deductions using the payment system.

Yours sincerely

[name]

[title]

Breach Notice

Dear [Name]

Breach Notice

We hereby serve notice that we consider that you are in breach of your [GDS/PDS] [contract/agreement] dated [insert start date of contract] (the "Contract") on the following grounds:

- You have not delivered the amount of services specified in the Contract.
- Your year-end delivery was [insert year-end figure]. Your contractual obligation was to deliver [insert contractual figure, include any carry forward from previous year if applicable].

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, 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 Dental Committee.

Yours sincerely

[Name]
[Job title, etc]

Annex 9

Year-end Under Delivery: Less than Four Percent Under-Delivery

[date]

Dear [name]

Calculation of carry forward activity – contract no: [number]:

We have now finalised your year-end delivery position in accordance with the [National Health Service (General Dental Services Contracts) Regulations 2005, OR the National Health Service (Personal Dental Services Agreement) Regulations 2005] using the data provided to us by NHS Dental Services. A summary of the position is tabled below:

[insert table using result and headings from the calculator template]

As this level of activity is within 4 percent of the total contracted activity we will carry forward [units of activity] which must be provided by the end of the current financial year.

This activity will be added to your annual contractual delivery so you will be expected to provide [number of units] during [year]. This will be entered on the payment system during [month] and will show on your following schedule.

I would like to take this opportunity to thank you for your ongoing commitment to providing NHS dentistry and I look forward to working with you in the future.

Yours sincerely

[name]

[title]

Annex 10

Year-end Delivery 100 Percent and Over

[date]

Dear [name]

Year-end review – contract no: [number]

We have now finalised your year-end delivery position in accordance with the [National Health Service (General Dental Services Contracts) Regulations 2005, OR the National Health Service (Personal Dental Services Agreement) Regulations 2005] using the data provided to us by NHS Dental Services. A summary of the position is set out in the table below:

[insert table using result and headings from the calculator template]

As you will see, you have [achieved your contractual commitments OR over performed by [amount] percent]. We permit up to 2 percent of activity being carried forward into the next financial year. As a result of this you will have [amount] UDAs [and [amount] UOAs] carried forward on the payment system. This means that your delivery for [year] will be [amount] UDAs [and [amount] UOAs].

I would like to take this opportunity to thank you for your ongoing commitment to providing NHS dentistry and I look forward to working with you in the future.

Yours sincerely

[name]

[title]

Annex 11

Year-end Under Delivery – Less than Four Percent Under-Delivery

There may, on occasion, be instances where a contractor is unable to fulfil its contractual obligations to the Commissioner.

The table below highlights some of the circumstances that are likely to be considered as exceptional by the Commissioner. The list is not exhaustive and each case should be considered on its individual merits.

Circumstances that may be considered exceptional subject to the provision of supporting evidence	Non-allowable circumstances
Death of, or serious accident or illness to, contract holder (or close relative of contract holder)	Death of, or serious accident to, distant relative or friend of either contractor holder or performer
Death of, or serious accident or illness to, main or significant performer (or close relative of same)	Failure to register with CQC, or comply with CQC registration requirements
Serious fire or accidental damage to practice premises rendering building unfit for business	Minor fire or damage to premises
Recruitment difficulties resulting from undue delay on the local office's part (eg admission to the dental performers' list)	Re-decoration of premises
Move to a new premises resulting in operational delays, due to circumstances beyond the contractor's control, eg unforeseen planning controls	Recruitment difficulties
	Holidays and other absence such as paternity/maternity or CPD events for provider

	Patient failed to attend (FTAs)
	High-needs patients
	Failure to understand contractual obligations
	IT system failure
	Planned absence of a performer
	Vocational dental practitioner activity taken into consideration

CHAPTER 12

Death of a Contractor

1. Introduction

- 1.1 The aim of this policy is to provide consistency when dealing with the death of a contractor, whether they are a single-handed contractor, in a partnership or a corporate organisation. This policy includes consideration of GDS and PDS contracts.
- 1.2 This policy outlines the procedure to follow when the death of a contractor occurs. This is a rare occurrence, but there are certain steps to follow within agreed timescales that are laid down in legislation.

2. Individual - GDS and PDS Contracts

- 2.1 Where a contract is with an individual dental contractor and that contractor dies, the contract must terminate at the end of the period of 28 days after the date of the contractor's death unless, before the end of that period:
 - 2.1.1 the Commissioner has agreed in writing with the contractor's personal representatives that the contract should continue for a further period, not exceeding six months after the end of the period of 28 days; and
 - 2.1.2 the contractor's personal representatives have confirmed in writing to the Commissioner that they are employing or engaging one or more dental practitioners to assist in the provision of dental services under the contract throughout the period for which it continues.
- 2.2 Where the contractor's personal representatives have confirmed in writing to the Commissioner that they are employing or engaging one or more dental practitioners, the Commissioner should issue a Notification Letter setting out the timescales of the continuation. A template Notification Letter is provided in Annex 1.
- 2.3 Where the Commissioner is of the opinion that another contractor may wish to enter into a contract in respect of the mandatory services which were provided by the deceased dental contractor then the six month period referred to paragraph 2.1.1 may be extended by a period not exceeding a further six months. A template Notification Letter is provided in Annex 2.

- 2.4 The Dentist Act 1984 states at section 41(4) that on the death of a registered dentist who was carrying on a dentist business, that person's personal representatives, widow, children (or trustees on behalf of his widow or any of his children) may carry on the business for three years after that person's death. It should be noted that this does not confer the right to an NHS dental contract for the same period.

3. Partnership – GDS Contract

- 3.1 The GDS Regulations state that where the contract is with two or more individuals practising in partnership, the contract shall be treated as made with the partnership as it is from time to time constituted.
- 3.2 The default position in partnership law is that every partnership is dissolved as regards all the partners by the death of any partner. The partners can, however, change this position and agree between themselves that the partnership will not dissolve on the death of any partner. It is likely that most partnerships will have dealt with this issue in their partnership deeds to avoid termination of their contract.
- 3.3 The GDS Regulations require GDS contracts to contain specific provisions relating to the dissolution or termination of partnerships.
- 3.4 Where a partner dies, the GDS Regulations distinguish between GDS contracts that are entered into with a contractor that consists of only two individuals practising in partnership and those GDS contracts where the contractor consists of more than two individuals.

Two individuals practising in partnership - GDS Contract

- 3.5 Where the contractor consists of two individuals practising in partnership and the partnership is dissolved or terminated due to the death of one of the partners, the surviving partner must notify the Commissioner in writing as soon as is reasonably practicable of the death of their partner.
- 3.6 Where the Commissioner receives such a notice, it must acknowledge receipt of the notice in writing.
- 3.7 If the surviving partner is a dental practitioner, the contract will continue with that individual. The Commissioner may vary the contract but only to the extent that it is satisfied it is necessary to reflect the change in status of the contractor from a partnership to an individual dental practitioner. The Commissioner must notify the contractor in writing of the wording of the proposed variation and the date upon which that variation is to take effect.

- 3.8 A template Notification Letter is provided in Annex 3. A variation agreement will need to be included with this letter.
- 3.9 To provide assurance that the individual is able to meet the contractual obligations, the Commissioner should discuss with the individual continued service delivery options bearing in mind the range of services provided and any potential capacity issues.
- 3.10 If the surviving partner is not a general dental practitioner, the Commissioner will need to terminate the contract. Please refer to the policy on contract breaches and termination (chapter 7) for more information.

More than two individuals practising in partnership - GDS contract

- 3.11 Where there are more than two individuals practising in partnership, the death of one of the partners may result in the partnership being dissolved. This may not always be the case as the partnership arrangements between the partners may state that the partnership will continue or make other provision on the death of a partner that does not result in the dissolution of the partnership.
- 3.12 Where the partnership is not dissolved or terminated, the contract will continue and the provisions below will not apply provided that the partnership remains eligible to hold a GDS contract. Please refer to eligibility requirements in chapter 5 (Which dental contract when?).
- 3.13 Where the partnership is dissolved or terminated for whatever reason (which may be due to the death of a partner) and the contractor consists of more than two individuals practising in partnership, it is possible for the contract to continue with one of the former partners if the following conditions apply:
 - 3.13.1 the former partner must be nominated by the contractor; and
 - 3.13.2 the former partner must be a dental practitioner.
- 3.14 The nomination of the former partner by the contractor must be:
 - 3.14.1 in writing and signed by all of the persons who are practising in partnership;
 - 3.14.2 specify the date on which the contractor proposes to change its status from that of a partnership to that of an individual dental practitioner;
 - 3.14.3 be provided to the Commissioner at least 28 days in advance

of the date on which the contractor proposes to change its status from that of a partnership to that of an individual dental practitioner; and

- 3.14.4 specify the name of the dental practitioner with whom the contract will continue, which must be one of the partners.
- 3.15 Where the Commissioner receives such a nomination, it must acknowledge receipt of the notice in writing before the date specified in the nomination as the date on which the contractor proposes to change its status from that of a partnership to that of an individual dental practitioner. The Commissioner should ascertain on a case by case basis which persons are required to sign the nomination.
- 3.16 The Commissioner may vary the contract but only to the extent that it is satisfied it is necessary to reflect the change the status of the contractor from a partnership to an individual dental practitioner. The Commissioner must notify the contractor in writing of the wording of the proposed variation and the date upon which that variation is to take effect.
- 3.17 A template Acknowledgement Letter is provided in Annex 4. A variation agreement will need to be included with this letter.

4. Two or More Signatories - PDS Agreement

- 4.1 The PDS Regulations do not allow PDS agreements to be treated as made with a partnership. Where individuals are practising in partnership, the PDS agreement will be entered into with each individual (who may or may not be in partnership). The individual signatories to a PDS agreement collectively form the contractor. The PDS Regulations do not require a PDS agreement to define a specific process for any variation to the signatories. The Commissioner must, therefore, review the relevant PDS agreement to determine whether any provisions have been added relating to this and prior to following any process for variation.
- 4.2 Ideally, a surviving signatory to a PDS agreement will notify the Commissioner in writing as soon as reasonably practicable of the death of their co-signatory.
- 4.3 Upon receipt of the notification from the surviving co-signatory(ies), the Commissioner will need to consider the implications that the death of the co-signatory will have on the ongoing provision of services under the agreement.

- 4.4 Where the Commissioner is satisfied that the remaining signatory(ies) is eligible to hold the agreement and agrees that the agreement is to continue, the agreement will need to be varied to remove the deceased as a signatory.
- 4.5 The process above does not affect any right that the Commissioner may have to terminate the agreement under any terms of the agreement.

5. Dental Corporation, Company Limited by Shares and Limited Liability Partnership - PDS and GDS Contracts

- 5.1 Where a contract is entered into with a dental corporation, a company limited by shares or a Limited Liability Partnerships, it is not possible for the contractor to die. It is possible that such contractors may indicate to the Commissioner where a performer, a member, a director, a chief executive or a company secretary has died.
- 5.2 Following such notification, the Commissioner must identify whether the organisation remains eligible to hold the contract. Where the organisation is no longer eligible to hold a contract and the issue is not rectified in accordance with any provisions allowing rectification in the contract, the Commissioner must terminate the contract. Please refer to the policy on contract breaches and termination (chapter 7) for more information.

6. Practical Issues Arising from Death of a Contractor

Request to form a partnership

- 6.1 Where a GDS contract is held by an individual (whether as a result of the death of a partner or otherwise), that individual may propose to practice in partnership with one or more persons during the existence of the contract. Please refer to the policy on contract variations (chapter 6) for more information on the relevant process and obligations of the Commissioner.

Procuring a new contract

- 6.2 Prior to the completion of the continuation, the Commissioner will need to decide whether to procure primary care dental services to replace the contract. Any procurement process for a new contract should be completed within the continuation period to allow for continued provision of service.

Considering requests to continue the contract

- 6.3 Where the Commissioner receives a request from the deceased contractor's personal representatives to extend the contract, before the end of the initial 28 day period it must:
- 6.3.1 seek assurance that the dental staff employed are on the national performers list and have the appropriate qualifications and training to provide all mandatory and additional services under the contract;
 - 6.3.2 ensure the deceased contractor's personal representatives agree that any course of dental treatment started within the agreed continuation period must be completed prior to termination of the contract;
 - 6.3.3 ensure that the deceased contractor's personal representatives agree that:
 - 6.3.3.1 where there is an open course of orthodontic treatment, all endeavour is taken to complete the patient's care during the agreed continuation period; and
 - 6.3.3.2 at an agreed date during the agreed continuation period, they will communicate with patients, as appropriate, and as agreed with the Commissioner, that:
 - 6.3.3.2.1 the practice will be under new ownership and a new contractor will be delivering services; or
 - 6.3.3.2.2 that the practice will be closing/ceasing to offer NHS dental services with patients signposted to local dental practices that are accepting NHS patients and/or referred to NHS111;
 - 6.3.4 Discuss with the contractor on a case by case basis how the Commissioner will support the transition to a new contract (if applicable).
- 6.4 Timeframes for communication with patients are largely dependent upon the length of contract/agreement continuation and the circumstances and impact that this would have on service delivery to

patients – for example a contract novation or a contract continuing with a partner would not have a financial impact on a patient in terms of additional patient charges but would mean that their dentist may or would change.

- 6.5 Once a contract continuation period has been agreed, the Commissioner will need to amend the existing contract to reflect the continuation period of the contract and work with NHS BSA to make all relevant changes to the payment and contract systems. Changes may vary in individual circumstances to allow the deceased contractor's estate to access any NHS Pension rights and for payments to continue to be made under the contract. Advice will need to be taken from both NHS Pensions and NHS BSA and the processes followed as advised by them.

If the practice is to be sold/transferred to a new contractor

- 6.6 The deceased contractor's personal representatives have the right to sell the practice to any prospective buyer. The Commissioner must make the deceased contractor's personal representatives aware that the NHS contract cannot be sold with the practice.
- 6.7 The Commissioner may consider a contract novation to a new provider if all three parties agree. The three parties would be the Commissioner, the deceased contractor's personal representatives and the prospective buyer. The Commissioner needs to be aware that novation may lead to challenge. Please refer to the policy on contract variations (chapter 6) for more information on contract novations.

7. Non-Continuation or Termination of the Contract

- 7.1 Where the deceased contractor's personal representatives do not agree to continue the contract, patients will need to seek another dentist. The Commissioner will need to work with those patients who are currently undergoing a course of treatment to secure alternative provision. There may be a financial impact on patients who may need to pay for the completion of their course of treatment by an alternative provider.
- 7.2 A plan to communicate with patients will need to be discussed and agreed between the contractor /contractor's representatives and the Commissioner.

If the practice is to be closed or the contract is terminated

- 7.3 Under current contractual arrangements practices do not have

registered patient lists and are only responsible for patients in an active course of treatment. The processes for the management of these patients are below.

- 7.4 The Commissioner, should ensure that it is able to signpost any patients seeking treatment, to other local dentists accepting NHS patients. This may be through making information available at the practice or via the NHS 111 services, whichever is relevant.

For patients who are currently undergoing a banded course of treatment

- 7.5 The deceased contractor's family or personal representative(s) must make every effort to complete patients' treatments within the 28 day period. Where this is not possible for whatever reason, the Commissioner will need to work with other local dental providers to secure completion of the active courses of treatment.
- 7.6 Patients seeking recourse under free repair and replacement provisions need to be made aware that there will be a fee to pay if a repair and/or replacement treatment is performed by an alternative practice; or a continuation of treatment at the same or lower band within two months is needed they will be required to pay the relevant dental charge when this is carried out by another provider.

For patients who are part way through an orthodontic course of treatment

- 7.7 Where a patient is undergoing an orthodontic course of treatment, it is unlikely due to the nature of treatment patterns and their longevity, that treatment can be completed within the 28 day period. The Commissioner should work with the contractor's representatives to:
 - 7.7.1 obtain copies of any orthodontic health records for patients currently in treatment that could then be provided to an alternative provider; and
 - 7.7.2 obtain patients' details so that they can be contacted regarding continuation of their treatment.
- 7.8 The Commissioner will need to secure alternative provision for those patients undergoing a course of orthodontic treatment. This can be with other local dental providers or they may need to consider commissioning these services from secondary care providers where alternative primary dental care provision is not available.
- 7.9 Currently the GDS contract or PDS agreement and the relevant Statement of Financial Entitlements state the level of payment for an

orthodontic course of treatment. Due to the payment structure and length of an orthodontic course of treatment, the Commissioner may wish to raise the cost pressures of paying for these patient transfers within its risk register.

- 7.10 The Commissioner may wish to procure additional activity from orthodontic providers on a non-recurrent basis, on a case by case fee structure while they consider whether or not to procure a contract or agreement. If this is the path that is chosen by the Commissioner it would be advisable to seek independent legal advice.
- 7.11 Where the contract is not continued the Commissioner will need to terminate the existing contract and should follow the policy on contract breaches and termination (chapter 7).

Annex 1

Template Acknowledgment Letter (Individual – GDS or PDS Contract)

[insert date]

Dear [name]

Contract details - [insert name of contract]

We acknowledge receipt of your recent letter informing us of the death of [insert name].

[insert personal message of condolences]

I can confirm that you are engaging the services of one or more dental practitioners to perform the required services under the contract and that the contract will continue for a period of [insert period or insert until (insert end date)].

Yours sincerely

[name]

[title]

Annex 2

Template Acknowledgment Letter (Individual – GDS or PDS Contract)

[insert date]

Dear [name]

Contract details - [insert name of contract]

Further to our recent discussions, I can confirm that we have agreed that you are able to enter into an arrangement with [insert name of dental practitioner and the address of where services are to be provided].

The contract will continue for a period of [insert period or until (insert end date)]. During this period we will continue to work with you to resolve the longer term arrangements regarding the above contract.

Please do not hesitate to contact me if you have any questions or if I can be of any further assistance to you.

Yours sincerely

[name]

[title]

Annex 3

Template Acknowledgement Letter

This letter should be used where the GDS contract is held by two individuals working in partnership and the surviving partner is a dental practitioner.

[insert date]

Dear [name]

Contract details - [insert name of contract]

We acknowledge receipt of your recent letter informing us of the death of [insert name].

[insert personal message of condolences]

I can confirm that we are satisfied that you meet the conditions to hold a GDS contract and, therefore, the contract will continue with you.

I have attached two copies of a variation document which I would be grateful if you could sign and return, after which we will sign and return a copy for you to retain for your records.

Yours sincerely

[name]

[title]

Annex 4

Template Acknowledgement Letter

This letter should be used where the GDS contract is held by two or more individuals working in partnership, the partnership has dissolved and the contractor has nominated one of the former partners, who is a dental practitioner, to continue the contract.

[insert date]

Dear [name]

Contract details - [insert name of contract]

We acknowledge receipt of your recent letter informing us of the death of [insert name].

[insert personal message of condolences]

We note from your letter that you propose to change the status of the contractor under the contract from that of partnership to that of an individual dental practitioner from [insert date]. You have nominated one of the former partners, [insert name], to be the dental practitioner with whom the contract will continue.

I can confirm that we are satisfied that [insert the nominated partner's name] meets the conditions to hold a GDS contract and, therefore, the contract will continue from [insert date].

I have attached two copies of a variation document which I would be grateful if you could return after being signed by all remaining partners who were signatories to the contract. We will then sign the document and return a copy for you to retain for your records.

Yours sincerely

[name]

[title]

CHAPTER 13

Practice Closedown

1. Introduction

- 1.1 This policy outlines the approach to be taken when a time-limited primary dental services contract is coming to an end.
- 1.2 Time-limited contracts can be in place regarding GDS and PDS contract types. GDS contracts, however, do not usually have an end date but it is possible for a temporary GDS contract to be put in place for a period not exceeding 12 months, for the provision of services to the former patients of a contractor following the termination of that contractor's contract.
- 1.3 PDS agreements may be in perpetuity or for a time limited period. Commissioners should review the relevant PDS agreement to establish if there is a defined end-date.
- 1.4 In each of the cases above there are generic principles that will apply and individual circumstances that will need to be considered. This policy covers the steps to be taken in advance of the end of any contract and will support the Commissioner in planning procurement cycles and future service provision.
- 1.5 The Commissioner must consider whether the expiring contract contains provisions relating to the end of the contract that impact on any practice closedown actions. The standard form GDS Contract contains provisions relating to the consequences of termination including a requirement that the contractor co-operates with the Commissioner and arrangements for a financial reconciliation exercise.
- 1.6 Contracts may come to an end by reasons other than by expiry including by:
 - 1.6.1 being terminated by either the Commissioner or the contractor (in which case please refer to the policy on contract breaches and termination (chapter 7));
 - 1.6.2 an adverse event (in which case please refer to the policy on adverse events (chapter 9));
 - 1.6.3 the death of the contractor (in which case please refer to the policy on the death of a contractor (chapter 12)); or
 - 1.6.4 retirement of the contractor (in which case please refer to the policy on contract variations (chapter 6)).

2. Timetable for Managing Contracts Coming to an End

- 2.1 The Commissioner needs to be aware of the end dates of all contracts held so that advance planning can be undertaken to ensure both capacity and timescales can be aligned with the key stages outlined below.
- 2.2 It is essential that the Commissioner ensures continued communication with contractors throughout the stages to enable them to have a clear understanding of the processes, expectations and obligations. Outlined in Annexes 1 and 2 are guides to communications with contractors and a proposed checklist for documentation recording.
- 2.3 In each of the stages below there are a range of activities that may need to be undertaken, depending on the Commissioner's preferred route, and the Commissioner may wish to consult with the appropriate LDC throughout.

3. Summary of Key Stages

- 3.1 There are three key stages:
 - 3.1.1 stage 1 – minimum 9 to 15 months before contract end (all essential):
 - 3.1.1.1 needs assessment;
 - 3.1.1.2 value for money;
 - 3.1.1.3 impact assessment; and
 - 3.1.1.4 consultation proposal.
 - 3.1.2 stage 2 – 12 months before contract end:
 - 3.1.2.1 notice period – exit plan;
 - 3.1.2.2 wind-down of services;
 - 3.1.2.3 commence procurement and either:
 - 3.1.2.3.1 begin negotiations for continuation with contractor; or

3.1.2.3.2 begin exit arrangements of incumbent provider and mobilisation of any new provider.

3.1.3 Stage 3 – at contract end:

3.1.3.1 arrangements for ongoing treatment of patients under existing course of treatment;

3.1.3.2 variation to contract/extension: and

3.1.3.3 commencement of new provider.

4. Stage 1 – 9 – 15 Months before Contract End

4.1 The considerations that should be given when completing each action are provided below. This list is not exhaustive but does provide a platform for Commissioners to fully assess the existing and future service needs of its population. Commissioners should ensure that all appropriate stakeholders are given the opportunity to input into the needs assessment for their population, including but not limited to public health.

Needs assessment

- 4.2 Is there still a demand for this service in this locality and a requirement for it to continue? For example to reduce inequalities in access or health outcomes
- 4.3 Does the contract specification still address current local priorities?
- 4.4 Has the contract delivered on the expected outcomes?
- 4.5 Has it provided added value to the local population and service provision?
- 4.6 Have you assessed the potential service needs for any forthcoming new developments?
- 4.7 What is the capacity of other local providers and the market for other providers to deliver services?
- 4.8 Have you given consideration to any specialist services needs in the locality?
- 4.9 Are there any needs which are not met by the contract which could be delivered?

Value for money

- 4.10 Have you considered all available outcome and delivery data held nationally and locally, regarding the current service?
- 4.11 Have you compared the cost of the current service against other providers i.e. cost per head of population whilst taking into account any differences in the scope of the services provided?
- 4.12 Is the current service still affordable within projected future budgets?
- 4.13 Has the contract delivered on the expected financial outcomes?
- 4.14 What other objectives might be set within the existing budget?

Impact assessment

- 4.15 Have you considered the potential impact on service users/patients?
- 4.16 Have you considered the potential impact on other service providers, e.g. GPs, pharmacy, local trust, out of hours, community services?
- 4.17 Have you considered the potential impact on the current provider, i.e. continued viability within the locality?
- 4.18 Have you considered patient choice and equality?
- 4.19 Have you considered the potential risks i.e. reputational (adverse publicity, commissioner/provider relationship), market testing, timescales and financial?
- 4.20 Have you considered how the expiry of the contract affects compliance with the general duties of NHS England? For further information on these duties, please refer to chapter 4 (General duties of NHS England).

Consultation proposal

- 4.21 Each situation will need to be managed regarding each individual circumstance and the nature of the procurement process to be followed, if at all. However, where it has been deemed appropriate to complete a form of consultation before taking action, the Commissioner should consider:
 - 4.21.1 have service users/patients been involved? Refer to chapter 4 (General duties of NHS England) for more information on this requirement;

- 4.21.2 have other local providers and other interested parties i.e. LDC, local members of parliament, review and scrutiny committee, etc been consulted?
- 4.21.3 have the local CCGs been consulted?
- 4.22 If the answer is 'no' regarding any of the above, the Commissioner should be able to identify the grounds under which they felt consultation was unnecessary and these should be included in the report defined below.

Completion of Stage 1

- 4.23 Completion of stage 1 will provide all the information required to enable the Commissioner to make an informed commissioning decision on whether to re-commission, procure or allow the service to end. At this stage, the Commissioner should develop a detailed report (a template is provided in Annex 3) about the investigations undertaken, consultation and outcomes. This report shall demonstrate that the Commissioner has considered all possible options and the rationale behind the decision taken.

5. Stage 2 - 12 Months before Contract End

- 5.1 Below are the potential next stages following stage 1 based upon the Commissioner's decision regarding the proposed way forward. It is important to note that where a contract has a duration or an end date specified, and the intention is to allow the contract to naturally expire, there is no requirement to issue a formal termination notice. It would be best practice to issue a formal letter of notice detailing the Commissioner's intentions and the obligations on the contractor throughout the remainder of the contract period.

Notice period – exit plan

- 5.2 Issue a letter of notice of intentions.
- 5.3 Develop an exit plan (a template is provided in Annex 4) with the contractor with clearly defined commissioner/contractor responsibilities. This should be developed whether the contract is to cease or transfer to a new provider. Commissioner should review the contract and ensure any exit arrangements detailed in the contract are followed.

Wind-down of services

- 5.4 The contractor should use best endeavours to complete patients' treatments prior to close-down because, where a continuation of treatment at the same or lower band within two months is needed, patients will be required to pay the relevant dental charge when this is carried out by another provider.
- 5.5 The Commissioner should discuss with the contractor on a case by case basis how the Commissioner will support the transition to a new provider (if applicable),

Procurement

- 5.6 Ensure any new contract is procured in accordance with procurement law.
- 5.7 Once a preferred provider is established, agree an operational management plan (a template is provided in Annex 5 – this template should only be used where the contract does not contain exit arrangements as any such arrangements take precedence over the template).

Begin negotiations for continuation of the contract with the existing contractor, if appropriate

- 5.8 Extending any contract beyond a previously agreed end date could be considered a material change to the terms of that contract which could lead to a procurement challenge.
- 5.9 If there is no extension period already included in the contract, the Commissioner will need to consider carefully whether such an extension should instead be subject to a full procurement process to ensure best value and mitigate the risk of challenge from previous and/or potential alternative service providers. If the Commissioner's decision is that no procurement process is necessary then it must ensure it is aware of the necessary steps which must be taken to satisfy procurement law.
- 5.10 Once the decision to extend has been reached and all correct processes have been followed the Commissioner will need to consider:
 - 5.10.1 the length of extension;
 - 5.10.2 any alterations to the existing contract (including the financial arrangements); and
 - 5.10.3 any agreement of new key performance indicators (KPIs).

Completion of stage 2

- 5.11 Completion of stage 2 will provide the Commissioner with the firm foundations and detailed preparations ready to manage the end of the contract.

6. Stage 3 – At Contract End

- 6.1 Below are the possible outcomes culminating from stages 1 and 2.

Arrangements for ongoing treatment of patients under existing course of treatment

- 6.2 Where courses of treatment have not been completed, the Commissioner should ensure that patients are aware that where a continuation of treatment at the same or lower band within two months is needed, patients will be required to pay the relevant dental charge when this is carried out by another provider. Similarly, patients seeking recourse under free repair and replacement provisions need to be made aware that there will be a fee to pay if a repair and/or replacement treatment is performed by an alternative practice.
- 6.3 Where a patient is undergoing an orthodontic course of treatment, it may not be possible, due to the nature of treatment patterns and their longevity, that treatment can be completed prior to close-down. The Commissioner should work with the contractor's representatives to:
- 6.3.1 obtain copies of any orthodontic health records for patients currently in treatment that could then be provided to an alternative provider; and
 - 6.3.2 obtain patients' details so that they can be contacted regarding continuation of their treatment.
- 6.4 The Commissioner will need to secure alternative provision for those patients undergoing a course of orthodontic treatment. This can be with other local dental providers or they may need to consider commissioning these services from secondary care providers where alternative primary dental care provision is not available.
- 6.5 Currently the GDS contract or PDS agreement and the relevant SFE state the level of payment for an orthodontic course of treatment. Due to the payment structure and length of an orthodontic course of treatment, the Commissioner may wish to raise the cost pressures of paying for these patient transfers within its risk register.
- 6.6 The Commissioner may wish to procure additional activity from orthodontic providers on a non-recurrent basis, on a case by case fee

structure while they consider whether or not to procure a contract or agreement. If this is the path that is chosen by the Commissioner it would be advisable to seek independent legal advice.

Contract end

- 6.7 Service ceases.
- 6.8 Communication to be sent out to all those parties involved e.g. management of patient communication working with provider, management of the press, notification of contract end to relevant stakeholders.

Variation to contract – extension

- 6.9 Contract variation issued and signed off by both parties.

Commencement of new provider

- 6.10 Issue of new contract.
- 6.11 Operational management plan implemented.
- 6.12 Relevant communications undertaken, internally and externally.
- 6.13 On completion of stage 3, the Commissioner will have reached an agreed, structured outcome about the management of contract end.

Annex 1

Guide to Communication with Contractors

1. All direct communications, whether face to face or over the telephone, should be recorded in writing and held on the file.
2. All written communications with contractors should not arrive 'out of the blue' as the contractor should be aware of the situation from a prior meeting or telephone call.
3. These meetings should cover as a minimum, reasons for extension/contract end, future plans for the service/exit plan, terms of extension, communication strategy with staff and patients.
4. All meetings should be minuted by an agreed party and shared with the contractor for acceptance as an accurate record of the discussions.
5. Following all meetings the minutes should be accompanied by any action plan agreed regarding the next steps with responsible parties identified. The minutes should be shared with the contractor.
6. Staged follow-up meetings should be held at appropriate intervals, to ensure all actions agreed upon are being implemented and are on track to have been appropriately executed before contract end or extension.

Annex 2

Checklist for Documentation Recording when Contract Ends

1. Statement of rationale – clear and objective reasons providing justification for the decision to cease the service at contract end.
2. Minutes from all meetings held throughout the process.
3. Assessments – copies of needs assessment, value for money, impact assessment and consultation proposal. This information could be documented by way of the detailed report at the completion of stage 1.
4. Formal notice of termination (where required by the contract) or notice of intention to end contract – a copy of the letter sent to the contractor stating that the Commissioner will be terminating the contract / will not be renewing the contract when it expires.
5. Exit plan – a copy of the exit plan agreed with the contractor to ensure that all elements of the services are managed smoothly and effectively.
6. All written communications between the contractor and the Commissioner about contract end including any file notes of telephone conversations that are pertinent to the decision making process.

Annex 3

Template Detailed Report

Consolidation report to inform commissioning decision

1. Introduction and background to existing service

- a. Length of current provision
- b. Type of contract held
- c. End date of contract
- d. Current population/demographics
- e. Current services provided outside of core
- f. Current performance against contracted requirements
- g. Current contract value
- h. Current premises arrangements

2. Needs assessment

- a. Summary of needs assessment findings to be inserted
- b. Is there still a demand for this service in this locality and a requirement for it to continue?
- c. Does the contract specification still address current local priorities?
- d. Has the contract delivered on the expected outcomes?
- e. Has it provided added value to the local population and service provision?
- f. Have you assessed the potential service needs for any forthcoming new developments?
- g. What is the capacity of other local providers and the market for other providers to deliver services?
- h. Have you given consideration to any specialist services needs in the locality?
- i. Are there any needs which are not met by the contract, which could be delivered?

3. Value for money

- a. Summary of value for money findings to be inserted

- b. Have you considered all available outcome and delivery data held nationally and locally, regarding the current service?
- c. Have you compared the cost of the current service against other providers of like services i.e. cost per head of population?
- d. Is the current service still affordable within projected future budgets?
- e. Has the contract delivered on the expected financial outcomes?
- f. What other objectives might be set within the existing budget?

4. Impact assessment

- a. Summary of impact assessment findings to be inserted
- b. Have you considered the potential impact on service users/patients?
- c. Have you considered the potential impact on other service providers, e.g. GPs, pharmacy, local trust, out of hours, community services?
- d. Have you considered the potential impact on the current provider, i.e. continued viability within the locality?
- e. Have you considered patient choice and equality?
- f. Have you considered the potential risks i.e. reputational (adverse publicity, commissioner/provider relationship), market testing, timescales and financial?
- g. Have you considered how the expiry of the contract affects compliance with the Section 13 duties?

5. Options appraisal

- a. Extension of current arrangements
- b. Reconfiguration of service
- c. Procurement of new provider

6. Consultation

- a. Summary of consultation process followed and outcomes to be inserted
- b. Have you consulted with service users/patients?
- c. Have you consulted with other local providers and other interested parties e.g. LDC, local members of parliament, overview and scrutiny Committee?
- d. Have you consulted with the local CCGs?

7. Conclusion

- a. Recommended outcome regarding commissioning decision to be inserted for consideration and final decision by the Commissioner

Annex 4

Template Exit Plan

1. Introduction

- 1.1 The exit plan is a list of processes to manage the exit of any contractor from performing a service.
- 1.2 This should be developed in accordance with the terms of the contract as a minimum.
- 1.3 The exit plan comes into effect as the notice to cease the service is issued by the Commissioner and a joint exit group should be established comprising staff of both parties to manage the contract coming to an end. The role of the joint exit group will be to manage all activities to ensure a smooth culmination of the contract or transition to a new provider, where appropriate.
- 1.4 Unless it is set out within the contract, there is no obligation on behalf of the contractor to comply with the establishment of a joint exit group; however a joint approach would be in the best interest of the local population/service users.

2. Template Exit Plan

- 2.1 This template exit plan is for use where no exit arrangements are set out within the contract.

Areas for consideration	Details of tasks to be undertaken	Timescales	Responsible lead
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1. Clinical	Up-to-date clinical summaries for all patients; referrals and transfer of care; prescriptions; test results; patient related communications		
2. Workforce	Consideration of staffing issues – if contract ceasing, the responsibility regarding the staff would normally sit with the contractor. If the service is to transfer to a new provider, TUPE may apply		
3. Documentation and records	<p>All relevant documentation and records related to the delivery of services to patients will be transferred to the relevant primary care support services organisation or the new provider, whichever is applicable.</p> <p>The transfer of records must be conducted in accordance with NHS security requirements.</p>		
4. IM&T	<p>All relevant electronic documentation and records held by the contractor related to the delivery of services to patients are to be transferred in a recognised industry-standard computer format to the relevant primary care support services organisation or the new provider whichever is applicable.</p> <p>The transfer of records must be conducted in accordance with NHS security requirements.</p> <p>Licences should be transferred where possible.</p>		

5. Premises	<p>Consideration of the practice premises and whether the premises will cease to be used or whether arrangements could be negotiated with the new provider.</p> <p>An inspection of the premises must be conducted to ensure that no records or equipment are left behind.</p>		
6. Equipment	<p>Consideration of any IT hardware or other equipment held by the contractor that requires return to the relevant owner will usually be the responsibility of the contractor. Full stock list should be compiled defining which items will be remaining.</p> <p>The transfer or disposal of equipment must be conducted in accordance with NHS security requirements.</p>		
7. Facilities	<p>Consideration of any existing facilities contracts and whether these will cease or transfer to a new provider.</p>		
8. Patient and Public involvement	<p>Consideration of the needs to consult and inform throughout.</p>		
9. Drugs	<p>Practice held drugs 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.</p>		

10. Other	As required		
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Annex 5

Template Operational Management Plan

1. Introduction

- 1.1 It is good practice for any new contract to contain an operational management plan, which should be produced by the new contractor and contain detailed information regarding the implementation of the service.
- 1.2 This plan should describe their key tasks, milestones, timeframes and responsible leads including the stages leading up to contract commencement.
- 1.3 Implementation of the operational plan should commence before the contract start date, to ensure that the new contractor will be in a position to begin service delivery on the contract start date.
- 1.4 The timeframes for completion of each element must be agreed with the Commissioner to provide assurance of the contractor's readiness at the appropriate stages of the project.

2. Template Operational Management Plan

Areas for consideration	Details of tasks to be undertaken including milestones – examples	Timescales	Responsible lead
1. Clinical	Clinical team identified and in place; Due diligence checks such as GDC registration performers' list and Disclosure and Barring service checks completed.		
2. Workforce	Workforce identified and in place.		
3. Training and induction	Have all team members received adequate training		

	and formal induction including information governance training?		
4. IM&T	<p>Have all relevant electronic/hard copy files been transferred from the previous provider?</p> <p>Is the IT infrastructure in place and ready for use?</p> <p>Have necessary licences been acquired?</p> <p>Have staff been trained on use of IT system?</p> <p>Go-live date of any new system.</p>		
5. Premises	<p>Are the premises secured and lease arrangements in place if applicable?</p> <p>If new build – what is the completion date? (Time should be allowed for 'snagging' before opening).</p>		
6. Equipment	Identification of all equipment required licences and maintenance contracts secured.		
7. Facilities	Are all relevant facilities management contracts in place?		
8. Regulatory	CQC registration checked.		
9. Other	As required.		

