

# GPC Wales Guidance – What to consider before handing back a GMS contract

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

***It is important that practices are confident that all options for help and support have been explored before the decision to hand back their GMS Contract to the Health Board (HB) is taken.***

***There are a number of financial and legal implications and it is important that practices make informed decisions about whether handing back their contract will leave them exposed.***

***We acknowledge that doctors considering these options are often under serious pressure and are in need of support. Contact details for GPC Wales, your local medical committee and other support services can be found at the end of this document.***

## Introduction

This guidance is not intended to provide a definitive view on the legal and financial implications associated with handing back a GMS contract; it does not cover in detail such matters as selling assets or the payment of debts and liabilities and it is important that practices seek appropriate professional advice on the process and the procedures to follow.

The following guidance has been produced by GPC Wales with the aim of informing practices, who may be in the position of having to consider handing back their GMS contract to the Health Board, of all options for help and support that are available and which should be considered before a final decision is taken.

This document, whilst primarily intending to highlight the areas of support available to practices, also seeks to remind and warn practices that the consequences of mismanaging a contract hand-back can be significant and long lasting; both in a financial and personal capacity.

## Alternatives to handing back a contract

GPC Wales encourages all practices to give full consideration to the following options and resources before making a decision to hand back a contract:



## 1. Seek help and advice

As a starting point, practices should contact their Local Medical Committees (LMC). Since, as well as providing an essential role of support and representation, LMCs are able to assist a practice with the completion of a sustainability assessment application. This assessment will determine, and facilitate access to, required assistance under the Sustainability Assessment Framework (SAF) – further details are below.

LMCs can also signpost practices to further information and support provided by the BMA and/or BMA Law, either directly or through the General Practitioners Committee (GPC) Wales. *Contact details can be found on page 7 of this guidance.*

In addition to approaching the LMC, practices should endeavour to discuss issues with their Health Board (HB) and Community Health Council (CHC) as both parties clearly have an interest in trying to support practices seeking to avoid handing back the GMS contract - and where possible should work to support the practice in finding solutions. If, after taking these steps, practice closure is likely, then this prior engagement might have helped clarify what intentions the HB may, or may not, have regarding the future of the practice premises and the Transfer of Undertakings (TUPE) (Protection of Employment) of remaining staff, providing as much notice as possible.

## 2. GP Sustainability Assessment Framework (SAF)

The [GP Sustainability Assessment Framework \(revised 2017\)](#) is an all-Wales sustainability agreement put in place to encourage practices to take a holistic view of their position by completing a risk matrix, and where necessary, to apply for help. It is particularly aimed at practices considering closure, or feeling that they need to explore further measures to try and avoid reaching that position.<sup>1</sup>

## 3. Resilience and workload

The BMA's "[Quality First](#)" portal helps GPs and practices to identify and stop un-resourced work and manage their workload more efficiently.<sup>2</sup> GP partners are particularly encouraged to read it and discuss strategies to take control of their workload.

## 4. Discussions about the future

Often an impending problem or challenge, the cause of which can be many, triggers consideration and discussion at individual and partnership level about the ongoing viability and sustainability of a practice – for instance, this can be initiated by potential retirements, desires/plans for part-time working, plans to leave a partnership in order to take up a sessional or other role, and severe or changing workload pressures.

Early appreciation of where a practice is heading and consideration of all feasible options for sustainability may prevent the emergence of the 'Last Person Standing' situation, or fear of it (which can be just as damaging). 'Last Person Standing' is where partners or salaried doctors in a practice

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<sup>1</sup> [GP Sustainability Assessment Framework, 2017](#)

<sup>2</sup> [Quality first: Managing workload to deliver safe patient care, \(2015\) BMA](#)

decide to, sometimes suddenly, leave to avoid the risk of being the last partner left holding the inherent responsibilities and associated business costs.

## 5. List closure

The '[List Management](#)' section of the '[Quality First](#)' documents provides guidance on both formal list closure and informal temporary suspension of patient registration.<sup>3</sup>

Practices are encouraged to engage with their LMC before pursuing a list closure application with their Health Board, as the LMC can provide detailed and valuable support throughout this process.

The practice will first need to consider how long they wish their list to be closed for, GPC Wales would advise this should be for a minimum of three months and a maximum of 12 months. In extenuating circumstances, this can be extended for a further period of a year subject to the agreement of the HB. This position is supported within the contract framework.

The process to request a list closure is documented in Schedule 6 paragraphs 29-31 of the *National Health Service (General Medical Services Contracts) (Wales) Regulations 2004*<sup>4</sup>, and can be summarised as follows:

- Make the application to close the list in writing to the Health Board (HB)
- Outline in this letter to the HB what actions the practice will implement so that the list can re-open at the end of the closed period, conditional on the underlying problem being resolved e.g. if due to inability to recruit, then if the practice cannot recruit then the list will need to remain closed.
- The HB must acknowledge receipt of the application within 7 days;
- The HB may reasonably request further information from the practice to enable the application to be considered thoroughly;
- The HB will, in all likelihood, request a meeting with the practice to talk through the difficulties including considering what support they can offer and/or discuss what changes can be implemented to enable the list to remain open;
- The HB will consult with those who would be affected by the closure and should provide the practice with a summary of the views expressed;
- The HB must make a decision within 21 days, starting on the date of the receipt of the application (14 days for an extension to the closure), unless otherwise agreed with the practice – that decision is to be notified in writing to the practice as soon as possible.

If the application is approved, the date of closure and the date that the list is to re-open will be issued and the practice must close the list on the date specified. It will remain closed for the period specified, unless otherwise agreed by the Health Board.

Should the application be rejected, the following applies:

- The Health Board must provide (in writing) the practice with reasons why it was rejected, this will also be copied to the LMC.
- If an appeal is made, the Health Board must ensure that an assessment appeal panel is appointed as soon as is practicable to consider and determine whether the practice should be

<sup>3</sup> [Quality First: Managing workload to deliver safe patient care, pg 20 \(2915\), BMA](#)

<sup>4</sup> [The National Health Service \(General Medical Services Contracts\) \(Wales\) Regulations 2004](#)

permitted to close its list, and if so, the terms on which it should be permitted to do so. The assessment panel shall consist of: Chief Executive of the Health Board; a patient representative in an area other than that of the HB holding the contract with the practice, and an LMC rep from an LMC which does not represent practitioners in the areas of the HB which is a party for the contract. Practices may wish to request that a practice representative be partially involved (e.g in the opening part of the panel).

- At least one member of the assessment panel shall visit the practice before reaching a decision.
- A decision will be reached to either reject or accept the appeal within 28 days, starting on the date which the Health Board rejected the closure notice.
- The practice will be informed in writing of the decision as soon as possible.
- If approved, the process under paragraph 30 (approval of closure notice) – will be followed.
- If refused, and even if a practice wishes to implement the NHS dispute process ([via appeal to Welsh Government](#)), the list must remain open and the Health Board will discuss with the practice the support it can provide to keep the list open.
- The practice cannot make a further application for another three month period starting from the date of the Health Board rejection.
- Future applications to extend the period of closure needs to be received by the Health Board eight weeks before the end of the closure period and should follow the initial process outlined above.

It is important to note that patients can still be registered to a practice when the list is closed. However, this should only be done in exceptional circumstances – for instance, if most of the neighbouring practices have closed lists or where the assessment panel has decided that patients may be assigned to the practice list (and that decision has not been overturned by Welsh Government or by a court).

## 6. Working at scale

The BMA has developed some useful online resources considering different opportunities for working at scale, including guiding principles and advice on the benefits and compromises for informal and formal [GP Networks and Federations](#).<sup>5</sup>

GPC Wales is currently considering ways of working at scale in Wales to aid sustainability and will be providing further guidance on this in due course.

## 7. Boundary changes

Boundaries can be changed, by agreement with the Health Board, to contract both patient numbers and travel distances, however they will have regard to the alternative provision available and cannot allow any address to be isolated from a practice boundary (i.e. there cannot be gaps in mapped practice boundaries).

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<sup>5</sup> [GP Networks and Federations,\(2016\) BMA](#)

## 8. Employment law advice

As an employer the practice also has responsibility to its staff. The closure of a practice (which can result if a GMS contract is handed back) can have a major financial impact on the remaining partners in terms of redundancy costs.

It should be remembered that redundancy issues and arrangements must extend to salaried clinicians and GPs, as well as all other employed staff. If another agency or a third-party practice takes over the contract, then employees will generally be covered by TUPE regulations. This could also be the case if a substantial part of the practice is taken over by a single new provider – which may mitigate redundancy liabilities for the practice and partners terminating the contract. Practices should take specialist legal advice in this area.

Further information and advice on handling redundancies, and the provision of TUPE Regulations, is available from the BMA - contact details can be found on page 8 of this guidance. In addition, BMA Law will provide advice on staff and other matters relating to the closure of the practice

## 9. Quality Outcomes Framework (QOF)

The following advice has been sought from BMA Law by Gwent LMC to clarify the exact position of a practice with regards to the handling of QOF payments (Aspiration and Achievement), with particular reference to contracts which may be ended during the financial year, as applied from the Statements of Fees & Entitlements. GPCW advises practices to seek further advice taking into account their individual circumstances. The outline position is as follows:-

*If a practice terminates contract in the midst of the financial year they will have been in receipt of monthly Aspiration payments based on 70% of previous year's achievement. They can put in a claim for achievement based on the QOF score at the time of termination – this will be apportioned to the outgoing practice according to the number of days / 366 that they held the contract in that year. There may then be a positive or negative balance to reconcile. If a negative amount this can be treated as an overpayment & recovered by the Health Board.*

Full detail of BMA Law opinion is available on the [Gwent LMC website](#) .

If there is advanced warning of the contract termination, practices should give careful consideration to its timing and the financial implications with regard to QOF and how this could be minimised.

## 10. Premises

GPC Wales strongly advises practices to follow BMA Law's advice to 'plan ahead' as much as possible. The 'last person standing' scenario has meant that, sadly, in some cases practices have not accounted for all business liabilities and risks, and have found themselves participating in a precipitous process when a partner leaves the practice.

It is the view of GPC Wales and Welsh LMCs that the risks, real and perceived, of taking on or being left with premises costs and responsibilities is one of the most important issues to resolve in terms of recruitment and retention of partners to general practice.

If contract hand-back is being considered, an early and thorough review of the practice's commitments both in lease and ownership terms is essential to avoid pitfalls and problems further on. Indeed, it may yield some answers to avoid a contract hand back situation being reached.

Any arrangements that predicate on the Health Board taking on premises costs in the event of contract handback have to be agreed with the Health Board explicitly, and preferably contractually, so as to avoid leaving lease and property holders with onerous liabilities.

Welsh Government has provided the following written confirmation clarifying what Health Boards can currently offer to support practices in terms of leasing solutions:

- Health Boards can seek consent to obtain a lease under the NHS Wales Act (2006) and this has already been used in Briton Ferry and in Brynmawr;
- The approach from Health Boards to premises lease issues, whether new or historic, can also include:
  - Working with practices and providing a letter of comfort detailing the approach to sustainability in the event of 'last man standing';
  - Taking the head lease in the case of a managed practice
  - Taking the head lease for a period whilst practice sustainability solutions are put in place and then the lease assigned over to the practice
  - Taking the head lease and subletting this to the practice for an agreed term of 5/10 years or such agreed between both parties.<sup>6</sup>

**GPC Wales acknowledges that the above options can be largely dependent on Health Board discretion and that more is needed to ensure practices are appropriately supported. GPC Wales will continue to pursue this further, as a priority, both within and outside of future contract negotiations.**

## Summary

Handing back a contract should be seen as a last resort and only contemplated when all other alternatives have been considered. Partners considering these options are often under serious pressure and are often in need of support. Contact details for GPC Wales, your local medical committee and other avenues of support can be found at the end of this document.

In addition to contacting the LMC, professional accounting, HR and legal advice will clearly be needed on the processes and procedures a practice will need to follow and the potential liabilities which may be faced when handing back a contract, and winding up the business.

The following points might be used as a starting point of what to consider when a decision to end a contract has been reached – the points should not however, in any way, be used as an alternative to seeking relevant professional advice.

## Key considerations when handing back a contract

1. Seek relevant professional advice early, and contact the LMC.
2. A partnership agreement (where relevant) will usually cover the termination of a contract and this should be looked at before proceeding.
3. Plan ahead as much as possible with 'pre-notice'. The GMS Contract mandates six months' notice to closure for partnerships and three months' for single handed contractors.

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<sup>6</sup> [LMC Briefing Last Man Standing Liabilities, \(2016\) GPC Wales](#)

Remember that a smaller practice is more likely to be allowed to close by the Health Board with list dispersal and therefore may have more liabilities remaining with the current partners.

4. Notify the Health Board early and seek their position on premises and staff, also consider notifying the CHC regarding the informing of patients.
5. Consider potential areas of exposure or liability- for example: IT equipment, if publicly purchased, is likely to depreciate which should limit exposure. Larger improvement grants are repayable pro rata depending on the amount of the grant and the years since its award.
6. Consider full outstanding liabilities, loans, hire purchase agreements, and mortgages – ascertain if there is an early redemption policy.
7. Consider the responsibilities to staff – including any redundancy costs and possible TUPE arrangements.
8. The lease and the partnership agreement should be read to see what the options/consequences are to terminating the lease early. Ascertain if there is a break clause, and consider options, for example: subletting, or if the Health Board is interested in taking over the premises and under what conditions.
9. Trigger the dissolution of the partnership.
10. Terminate core GMS contract, bearing in mind notice periods (and that GMS contract can continue with just one former partner i.e. be ‘handed over’ if all partners agree).
11. Consider any extraordinary costs – locum cover, professional fees, legal fees, costs to handover patient files, and check any entitlements to refunds (such as from yearly indemnity membership fees).
12. Commence the wind-up of the business including dissolution of a partnership contract (usually requires unanimity). This should ideally be left to the end of the process to coincide with the date that the core GMS contract is terminated.

### Key considerations when winding up a business:

1. Seek relevant professional advice early.
2. Determine the practicalities of how the work will cease – for instance, how will announcements be made and how will patient enquiries be directed?
3. Determine how patient notes and records will be handled – for instance, discuss with data commissioner? How will records be transferred?
4. Arrange for the return of NHS funded assets/equipment.
5. If a dispensing practice, the management of closure of dispensary and residual stocks etc.
6. Reconcile any owed payments, usually within three months.
7. Consider avenues for dispute handling – who is the authority, what are the processes and timeframes?
8. Complete any existing contracts and transactions.
9. Begin the onward selling of assets – specifics with regards to this may be dependent on the ‘sell-back’ agreement i.e. is the agreement inclusive of assets? Additionally; the initial purchase agreement of the assets in question; funds used to appropriate asset. The type of asset and period of time it has been possession by the practice may influence or dictate options in terms of the onward selling or return of the asset e.g. to Health Board, cluster.
10. Prepare and agree winding up of accounts and pay partners and any redundancy liabilities.
11. Consider ongoing indemnity for Post Dissolution Claims.

## Useful Contacts

GPC Wales and LMCs can offer valuable support and advice to practices. If you would like to discuss your practice's circumstances (with regards to sustainability or contract handback), or any other matter, the relevant contact details can be found below:

### Local Medical Committees

#### Bro Taf LMC

*Henstaff Court Business Centre,  
Groes-faen, Pontyclun, Mid  
Glamorgan CF72 8NG*

Tel: 02920 899381

Email: [brotafmcltd@btconnect.com](mailto:brotafmcltd@btconnect.com)

Web: [www.brotafmcltd.org.uk](http://www.brotafmcltd.org.uk)

#### Gwent LMC Ltd

*Cwmbran House, Mamhilad Park Estate,  
Pontypool, Torfaen NP4 0XS*

Tel: 01495 764455

Email: [vcgwentlmc@btconnect.com](mailto:vcgwentlmc@btconnect.com)

Web: <http://www.gwentlmc.org.uk/>

#### North Wales LMC

*Yr Allt, Tan y Gopa Road,  
Abergele LL22 8DS*

Tel: 01745 825780

Email: [northwaleslmc@yahoo.co.uk](mailto:northwaleslmc@yahoo.co.uk)

Web: [www.northwaleslmc.co.uk](http://www.northwaleslmc.co.uk)

#### Dyfed Powys LMC

*Llwyncynnar, Llanfihangel Bryn  
Pabuan, Builth Wells LD2 3SH*

Tel: 01597 860565

Email: [jan@dyfedpowyslmc.co.uk](mailto:jan@dyfedpowyslmc.co.uk)

Web: [www.dyfedpowyslmc.co.uk](http://www.dyfedpowyslmc.co.uk)

#### Morgannwg LMC Ltd

*c/o The Grove Medical Centre, 6 Uplands  
Terrace, Uplands, Swansea SA2 0GU*

Tel: 029 2047 4614

Email: [morgannwglmcltd@btconnect.com](mailto:morgannwglmcltd@btconnect.com)

Web: <http://www.morgannwglmcltd.org.uk/>

### GPC Wales

GPC Wales can be contacted via email on [info.gpcwales@bma.org.uk](mailto:info.gpcwales@bma.org.uk). For the latest GPC Wales newsletter, committee information and priorities update, please visit the [GPC Wales webpages](#).

### BMA Employment Advice

The BMA Employment Advice service can be contacted on 0300 123 1233.

### BMA Counselling and Doctor Advisor service

BMA Counselling is staffed by professional telephone counsellors 24 hours a day, 7 days a week. Doctors can get ongoing counselling and arrange regular appointments with a dedicated professional. The service is available on 0300 123 1245

The Doctor Advisor service runs alongside BMA Counselling giving doctors and medical students in distress or difficulty the choice of speaking in confidence to another doctor. Doctors wishing to use the service should call 0330 123 1245 and ask to speak to a Doctor Advisor to be provided with the name of a doctor to contact and details of their availability.

### Health for Health Professionals Wales

Health for Health Professionals Wales provides a face to face counselling service for all doctors in Wales who may be in need of support for their own ill-health.



This is a confidential service fully funded by the Welsh Government and administered by Cardiff University. It provides doctors with access to a BABCP (British Association of Behavioural and Cognitive Psychotherapies) accredited therapist in their area.

If you wish to use this service please visit [www.hhpwales.co.uk](http://www.hhpwales.co.uk) or call 0800 058 2738 between 9am and 5pm Monday to Friday. Details regarding out of hours support can be found on the HHPW website.