

## Indicative ballot supporting information (October 2021)

### Introduction/background

GPC England, responding to the concerns of GPs, is calling on NHSEI and Government to withdraw its 'plan for improving access for patients and supporting general practice, 14 October 2021' and remove the introduction of additional contractual requirements for practices (to declare pay above a set threshold and to provide COVID exemptions), which could lead to abuse directed at GPs; and instead to introduce supportive measures, and ease existing requirements for all practices to ensure they can continue to provide services to their patients safely. GPC England is also calling for a new contract for general practice in England.

GPC England is holding this indicative ballot to ask practices whether they would be prepared to take any or all of the four specific actions set out below to apply pressure to NHSEI and Government to re-think their current plan and instead to offer meaningful support to practices and engage with GPC England to negotiate a new contract for general practice.

### How the indicative ballot is being conducted

The indicative ballot is being undertaken through an electronic ballot hosted on the BMA website. Information is provided in electronic format as well as in paper copy sent to each practice.

Only BMA members can take part in an official ballot. We have decided to allow any practice that has a BMA member as a contract holder (partner, principal, single-hander etc) to take part in this indicative ballot.

The actions being proposed can only be agreed by the partnership/contractor and is a practice level decision. Therefore, we are requesting each practice provides one response to the ballot on behalf of the practice as a whole.

We would strongly recommend that each practice discusses the ballot and how to respond at a partnership meeting, having regard to their partnership agreement for how decisions are reached. The liability of any decision will rest with the partners, however the BMA would encourage and strongly recommend that practices discuss this matter with salaried and locum GP colleagues and other staff working within the practice, since decisions may affect all GPs and staff within the practice.

The BMA has written to all GP principals that it has contact details for, to advise that the ballot is taking place and to remind them to ensure that this is discussed by their practice. We have also written to all GPs that we have contact details for to ensure that they are aware of this issue and to engage in relevant discussions.

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Registered as a Company limited by Guarantee. Registered No. 8848 England.  
Registered office: BMA House, Tavistock Square, London, WC1H 9JP.  
Listed as a Trade Union under the Trade Union and Labour Relations Act 1974.



## What the actions mean for your practice

- 1. A coordinated and continuous withdrawal from the PCN DES during the next opt-out period.** This would be done through submitting an undated letter of withdrawal from the PCN DES to your LMC to submit on your behalf, during the opt-out period, should a pre-determined threshold of practices withdrawals be reached.

Contract status:

Most practices in England have signed up to the PCN DES and are required to provide the services outlined in the service specification. This is a separate contract to the practice core contract.

Withdrawing from the PCN DES in the way described above would **not** constitute a breach of the PCN DES as practices are already able to withdraw from it during the opt-out period – we would though be coordinating a mass withdrawal to submit the letters to have greatest impact. This would **not** constitute a breach of the core contract.

If you take this action:

- You will withdraw from the PCN DES and cease providing the services and any other responsibilities or activities required through the PCN DES service specification
- You would lose the funding currently provided through the PCN DES
- You may lose ARRS staff (depending on the employment relationship the PCN has with the ARRS staff), and the non-DES services the ARRS staff provide (potentially increasing workload for practice staff)
- You may still hold liability for ARRS staff (depending on the employment relationship the PCN has with the ARRS staff) but would not receive the associated ARRS funding that currently supports their employment
- Your practice/PCN may lose influence in ICS and local systems

If you don't take this action:

- You will continue within the PCN DES, providing the services including any new services that are introduced
- You will continue to receive the funding currently provided and planned
- You will continue to utilise and recruit ARRS staff and receive the associated funding
- There will be no change in your current situation re workload and workforce – you continue as at present

- 2. Disengaging, on a continuous basis, from the PCN DES before the next opt-out period.**

Contract status:

Most practices in England have signed up to the PCN DES and are required to provide the services outlined in the service specification. This is a separate contract to the practice core contract.

Disengaging from the PCN DES – effectively ceasing services and not delivering the requirements of the service specification – without withdrawing during the next opt-out period, **would constitute a breach of the PCN DES.**

NHSEI has advised that breaching a DES does **not** constitute a breach of the core contract.

If you take this action:

- You will cease providing the services and any other responsibilities or activities required through the PCN DES service specification
- The Commissioner would likely take action against the practice (see below)
- You would likely lose the funding currently provided through the PCN DES
- You may lose ARRS staff (depending on the employment relationship the PCN has with the ARRS staff), and the non-DES services the ARRS staff provide (potentially increasing workload for practice staff)
- You may still hold liability for ARRS staff (depending on the employment relationship the PCN has with the ARRS staff) but would not receive the associated ARRS funding that currently supports their employment
- Your practice/PCN may lose influence in ICS and local systems

If you don't take this action:

- You will continue within the PCN DES, providing the services including any new services that are introduced
- You will continue to receive the funding currently provided and planned
- You will continue to utilise and recruit ARRS staff and receive the associated funding
- There will be no change in your current situation re workload and workforce – you continue as at present

### 3. **Not complying, on a continuous basis, with the contractual requirement to ensure GPs earning over the earnings threshold declare their income.**

Contract status:

The requirement to ensure GPs earning above a certain threshold (£150k) declare their earnings was entered (imposed) into the contract regulations from October 2021 – therefore it is a requirement. If the practice refuses to deliver a service that is required within the contract/regulations, the practice **will** be in breach of its core contract.

If GP partners, GP subcontractors or locum GPs operating under the core contract and earning above the income threshold, fail to declare their earnings, then the practice **will** be in breach of its core contract.

If you take this action:

- You and others in (or providing services on behalf of) your practice would not undertake the process of declaring your earnings
- You and others in (or providing services on behalf of) your practice would not be named in an NHSEI list of GPs earning above £150,000
- This would likely reduce the stress and risk of abuse from patients, if your name were to be included in the list

If you don't take this action:

- If you or other GPs providing services for your practice had total NHS earnings of £150,000 or over in 2019/20 then you will be required to declare your earnings using the NHSEI process and your name would be included in the publicly available list.
- More information on this is available in our guidance <https://www.bma.org.uk/pay-and-contracts/pay/other-doctors-pay/declaring-gp-earnings-over-150-000>

#### 4. Not complying, on a continuous basis, with the contractual requirement to provide COVID exemption certificates.

Contract status:

The requirement to provide COVID exemption certificates was entered (imposed) into the contract regulations from October 2021 – therefore it is a requirement. If the practice refuses to deliver a service that is required within the contract/regulations, the practice **will** be in breach of its core contract.

If you take this action:

- You and others in (or providing services on behalf of) your practice would not undertake the process of validating COVID exemptions to your patients when requested to do so following a preliminary screening process
- You will not be able to claim the funding associated with this work

If you don't take this action:

- You will be required to undertake this bureaucratic process to provide COVID exemptions for patients who need them
- You will be able to claim an item of service fee of £44 for each exemption processed
- More information on this is available in our guidance <https://www.bma.org.uk/advice-and-support/covid-19/gp-practices/covid-19-toolkit-for-gps-and-gp-practices/covid-19-vaccination-exemptions>

#### 5. Recording appointments data, on a continuous basis, in a pre-determined way so as to make its use difficult for NHS Digital and NHSEI.

Contract status:

The requirement to record appointments data in compliance with NHSEI guidance was introduced as a contractual requirement in October 2020 – therefore it is a requirement to do this. However, recording appointment data in slot types that are unmapped to the national categories will degrade the data quality, making it harder to identify healthcare professionals or mode of appointment types. The only information NHS Digital would receive is the appointment module information (on the day, face-to-face, telephone etc as you record it) and not the consultation module information where you can continue to record contemporaneously. Furthermore, recording every patient contact undertaken in an appointment slot is to be encouraged.

Therefore, the practice will **not** be in breach of its core contract

If you take this action:

- NHS Digital and NHSEI would be required to undertake significant work to be able to understand and analyse appointments data, if at all, thereby disrupting the main measure NHSEI and Government use to identify practices who they believe require measures to improve
- This may have an impact on the distribution of the £250m Winter Access Fund
- This would not reduce practice workload
- This would impact the IIF funding allocated for appointment mapping into national categories

If you don't take this action:

- You would continue to code all appointments in the normal way
- NHS Digital and NHSEI will continue to collect this data and use it at practice level for their own analysis, including to apply measures for improvement

### **Are there implications for LMCs holding and sending practice letters of undated withdrawal from the PCN DES?**

We have sought advice from a QC on this, which states that LMCs would not be acting unlawfully in collecting and sending practice letters of undated withdrawal from the PCN DES. The LMC would simply be lawfully acting in an administrative capacity, with the requisite authority of the practices to act in that capacity on their behalf.

### **How does a practice send an undated withdrawal letter?**

If this action is taken, the BMA would provide template withdrawal letters for practices. The practice would address the letter to their Commissioner but would send it to the LMC to submit on your behalf, during the opt-out period, should a pre-determined threshold of practices withdrawals be reached.

The BMA will also provide a template letter for the practice to send to the LMC to accompany the withdrawal letter, to notify the LMC of their wish to submit an undated letter of withdrawal. The practice would of course be able to rescind their withdrawal before it was sent to the Commissioner by notification to the LMC.

### **Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA)**

TULRCA, among other provisions, sets out rules for how trade unions conduct ballots for industrial action and set specific requirements in the taking of industrial action.

Under TULRCA, workers are afforded certain limited immunities/protections from the consequences of taking industrial action (provided that the TULRCA provisions are complied with), for example legal protection from detriment or dismissal. Practices have no such immunity/protection.

The current actions being proposed may impact on practice contracts. Therefore, the Commissioner may take action against the practice that acts in breach of a contract in the undertaking of industrial action.

This means if the practice breaches its contract, the Commissioner can take action against them (see below) and the BMA cannot prevent them from doing this due to the inadequacy of trade union laws in protecting GP Partners.

### **What being in breach of core contract means**

If a practice is in breach of its core contract the Commissioner may:

1. Apply sanctions to the practice that are appropriate and proportionate to the breach. Those sanctions can be termination of specified reciprocal obligations under the contract, suspension of specified reciprocal obligations under the contract for a period of up to six months, withholding or deducting monies otherwise payable under the

contract. The Commissioner may also charge reasonable costs of additional administration incurred due to the sanction.

2. Serve a remedial notice outlining the steps the practice must take to remedy the breach; if such steps are not taken within the specified timeframe, this can be followed by an immediate termination of the contract
3. Immediately terminate the contract, if the safety of the contractor's patients would be at serious risk if the contract is not terminated

The Commissioner must consult the LMC before it takes any of these actions, and must give notice in writing to the LMC of any sanction or termination.

### **What happens when we have the outcome of the ballot?**

This ballot is indicative and is to assess whether practices would be prepared to take any of the actions proposed. It is vital that practices express their true intent at this stage as this would be a significant step for the profession to take.