



BMA

Cymru Wales

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



GPC Wales Guidance

– What to consider before handing back a GMS contract.

Contents

Introduction	2
Alternatives to handing back a contract	3
Summary	7
Annex A: Key considerations when handing back a contract	8
Annex B: Key considerations when winding up a business:	9
Annex C: Useful Contacts	10

Introduction

Handing back your practice's GMS contract to the Health Board should be seen as a last resort and only considered 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 beginning the process. There are significant financial and legal implications, and practices must make informed decisions about whether handing back their contract will leave them exposed.

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 guidance is not intended to provide a definitive view on the legal and financial implications associated with handing back a GMS contract and it is important that practices **seek appropriate professional advice** on the process and the procedures to follow (including on matters such as the sale of assets and settlement of debts and liabilities).

This document, whilst primarily intending to highlight the areas of support available, 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.

Doctors considering these options are often under serious pressure and need support. Contact details for GPC Wales, your Local Medical Committee and other support services can be found at the end of this document.

Alternatives to handing back a contract.

GPC Wales encourages all practices to fully consider the following options and resources before making a decision to hand back a contract to their Health Board:

1. Seek help and advice.

As a starting point, a practice should contact their Local Medical Committee (LMC). 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.

LMCs can also signpost practices to further information and support provided by the BMA either directly or through links with GPC Wales. *LMC contact details can be found at Annex C.*

In addition to approaching the LMC, practices should endeavour to discuss issues with their Health Board and Llais (formerly the Community Health Councils) at as early a stage as possible.

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 will have helped clarify what intentions the HB may, or may not, have regarding the future of the contract, practice premises and the potential for Transfer of Undertakings (Protection of Employment) (TUPE) 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. Contact your Health Board in the first instance who will be able to provide you with the necessary information. A version of the matrix and form can be found on the [BMA website](#).

It is particularly aimed at practices considering closure or feeling that they need to explore further measures to try and avoid reaching that position. An application should be considered as early in the process as possible as meaningful measures offered by the HB could preclude the need to hand back a GMS contract. This should not be seen as admission of failure; a proactive approach to seeking solutions can ultimately help the sustainability of the practice. It is worth remembering that HBs are large organisations with huge budgets and workforce at their disposal.

[BMA analysis](#) shows managed practices cost HBs significantly more to run and therefore investments that prevent a contract handed back should offer significant value for money.

3. Resilience and workload

GPCW has recently published guidance on '[Safe Working for GPs in Wales](#)' as well as the '[Principles of maintaining practice profitability](#)'. These include practical steps for maintaining organisational and financial resilience and should be considered by every practice.

The documents contain advice on ensuring you work to your contract in a safe and sustainable way and ensuring that practices can maximise resource to support sustainability. There are resources and template letters online that will help you redirect and refuse inappropriate workload transfer and allow you to fulfil your professional and contractual responsibilities in a more sustainable way. Working with this advice in mind may allow practices to improve their resilience to a point where resignation of a GMS contract is no longer necessary.

4. Discussions about the future

Often an impending problem will trigger considerations about the ongoing viability and sustainability of a practice by individuals and the partnership in general. For instance, these considerations can be initiated by potential retirements, plans for part-time working, intentions to leave a partnership in order to take up a sessional or other role, and severe or changing workload pressures.

Early discussions and agreement around where a practice is heading may prevent the emergence of a 'Last Person Standing' scenario. 'Last Person Standing' is where partners or salaried doctors in a practice decide to leave to avoid the risk of being the last partner left holding the inherent responsibilities and associated business costs. Anxieties around such a scenario being around the corner can be damaging for individuals and remaining partners, hence the importance of early discussions amongst partners.

Practices should be mindful of the policy support offered by LHBs and Welsh Government on these issues as per the [Welsh Health Circular issued in 2020](#) (WHC 2020 018). Practices who feel they may be affected by a 'Last Person Standing' situation should approach their HB as soon as possible to discuss the support for liabilities in line with this Ministerial policy direction.

5. List closure

Practices can notify the Health Board that they wish to close their patient list to achieve a more manageable and safer workload. The minimum list closure period is 12 weeks and the maximum 1 year.

We encourage practices 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 process to request a list closure is documented in Schedule 3 paragraphs 38-39 of the Welsh Unified GMS Contract regulations¹, 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 (i.e., recruitment). This letter must include the period of time during which the list will be closed (minimum 12 weeks, maximum 1 year).
- 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 likely 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.

¹ *The National Health Service (General Medical Services Contracts) (Wales) Regulations 2023*. Available at <http://www.legislation.gov.uk/wsi/2023/953/schedules/made>

Practices will want to consider the BMA's advice above on safe working to determine a reasonable list size that would trigger the reopening of the list. Health Boards can reject applications by practices to close their list – this rejection must be conveyed in writing outlining the specific reasons why. This decision can be challenged via an appeal to Welsh Ministers via the NHS dispute resolution procedures.

It is important to note that where a Health Board wants to assign patients to a closed practice list, they must prepare a proposal for consideration by an assessment panel (which must include LMC representation) prior to doing so. This is described at Paragraph 45 of the regulations. Should a practice wish to dispute this decision, an appeal can be made to the Welsh Ministers.

6. Working at scale

GP Clusters and Collaboratives have many shortcomings, but they have at least contractually ensured dialogue exists between local practices. Consider discussing your sustainability issues with local practices, who will inevitably be affected by any contract handback, should it occur.

There may be options you can explore for merging practices which avoid some of the liability individuals can incur on handing back a GMS contract. Some HBs have offered financial and administrative support to merging practices in the past and you should explore this if merging is an option.

7. Boundary changes

Boundaries can be changed, by agreement with the Health Board, to contract both patient numbers and travel distances. If you think a boundary change may materially help your sustainability, contact your LMC for advice and also the HB to begin discussions.

However, as commissioners of care, HBs must have regard to the alternative provision available, cannot allow any address to be isolated from a practice boundary (i.e. there cannot be gaps in mapped practice boundaries). They will also need to consult with Llais. This is also likely to require a variation to your GMS contract but if the alternative is a contract handback, there may be value in scoping this option.

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.

9. Quality Improvement Framework (QIF)

Practices must carefully consider their position regards to the handling of QIF payments (Aspiration and Achievement), as there may be financial consequences from a contract being handed back in the middle of a financial year.

GPCW advises practices to review the latest [Statements of Fees & Entitlements](#) and seek further advice taking into account their individual circumstances. The outline position from the latest SFE amendment directions is as follows:-

Assessment of Achievement Payments where a GMS contract terminates between 1 October 2023 and 31 March 2024

6.22. *If a contractor can evidence that they have completed the 3 QI projects, then the contractor is entitled to an Achievement Payment at 85 points multiplied by £189 and then multiplied by CPI with a deduction for any Aspiration Payments made. If the contractor cannot evidence the completion of the 3 QI projects, then no Achievement Payment is to be made and the Local Health Board is entitled to recover any Interim Achievement Payment made at 31 December 2023 and any Aspiration Payments made.*

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

10. Premises

GPC Wales strongly advises practices 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 continues to be 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. Professional advice in this area is essential.

Any arrangements that predicate on the Health Board taking on premises costs in the event of contract handback must be agreed with the Health Board explicitly, and preferably contractually, so as to avoid leaving lease and property holders with onerous liabilities. For leased premises, there are a range of options available to Health Boards, including obtaining a lease either wholesale or for a period of time. Other options for Third Party Developer sites are outlined in [Welsh Health Circular](#) (2020) 018.

11. Contract handback process

If a practice is left with no alternative, then they should give written notice to the LHB that they intend to resign their GMS contract. The process is described at [Schedule 3 Part 11 of the Unified GMS Contract 2023](#).

The contract now stipulates that a six-month notice period is required for all contractors, whereas Single-handed GMS practices were allowed to offer only a three-month notice period. A reasonability factor has been included to mitigate impact on single-handed GPs in extenuating circumstances.

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 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.

Annex A: Key considerations when handing back a contract

1. Seek relevant professional advice early (including your practice accountant), 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 all partnerships including single handed contractors (unless there are extenuating circumstances). 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 Llais to ensure you are informing your 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.

Annex B:

Key considerations when winding up a business:

1. Seek relevant professional advice early, in particular your practice accountant.
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 – this will be dependent on the 'sell-back' agreement (i.e. if agreement is inclusive of assets, the initial purchase agreement of said assets; funds used to appropriate asset).
10. 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.
11. Prepare and agree winding up of accounts and pay partners and any redundancy liabilities.
12. Consider ongoing indemnity for Post Dissolution Claims.

Annex C: 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

brotafimcltd@brotafimcltd.co.uk
www.brotafimc.org.uk

Gwent LMC

secretary@gwentlmc.org.uk
www.gwentlmc.org.uk/

North Wales LMC

northwaleslmc@nwlmc.co.uk
www.northwaleslmc.co.uk

Dyfed Powys LMC

admin@dplmc.co.uk
www.dyfedpowyslmc.co.uk

Morgannwg LMC

office@morgannwglmc.org.uk
www.morgannwglmc.org.uk/

GPC Wales

GPC Wales can be contacted via email on info.gpcwales@bma.org.uk.

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.

Canopi

Canopi offers a free and confidential mental health support service for social and health care staff in Wales. This is a confidential service fully funded by the Welsh Government and administered by Cardiff University.

More information can be found at <https://canopi.nhs.wales/about-us/>

BMA

British Medical Association, BMA House,
Tavistock Square, London WC1H 9JP
bma.org.uk

© British Medical Association, 2023

BMA 20230706