Annex 7

Calculating a Financial Contract Sanction

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## 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 childhood immunisation. A repeat of any such failure, following the issue or 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 registered population from another provider and would be able to refer to the SFE in order to calculate the appropriate deduction from the contract value and payments.

## 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 to the Commissioner 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 is deciding on the appropriate level of financial sanction. Where possible, the hourly cost for management time should be set out in advance.