

Managing circumstances where a partnership dissolves with no clear successor – GMS contracts

Overview

The GMS Contract sets out the terms which apply when a Partnership (The Contractor) experiences internal dispute and results in the Partnership serving Notice of Dissolution, which guidance is further provided in the PGM (section 8.5.21 – 8.5.52). This however depends on formal notification of this change to the commissioner and a clear agreement by all parties of the Partnership on the continuation or termination of the GMS Contract.

Here the GMS Contract states:

“26.3.1 Subject to clause 26.3.3, where the Contractor consists of two or more persons practising in partnership, and that partnership is terminated or dissolved, the Contract may only continue with one of the former partners if that partner is

- (a) nominated in accordance with clause 26.3.2; and*
- (b) a medical practitioner who satisfies the condition in regulation 5(1)(a) of the Regulations,*

and only if the requirements in clause 26.3.2 are met.

26.3.2 The Contractor must give notice in writing to the Board of the intention to change its status from that of a partnership to that of an individual medical practitioner under clause 26.3.1 at least 28 days before the date on which the Contractor proposes to change its status.”

However, the GMS Contract and the 2015 Regulations do not provide clear terms on how to manage circumstances where the partnership dissolves with no clear successor for the GMS Contract, due to no agreed nomination by all Parties of the Partnership agreeing who will continue as the new Contractor.



In February 2024, the High Court determined that under the current Regulations and GMS Contract, commissioners are not permitted to terminate GMS contracts solely on the grounds of Partnership Dissolution as the contract is to be treated as made with the partnership “as it is from time to time constituted” and if it was to terminate this would be clear on the front of the contract. This therefore leaves commissioners in a complex position when a partnership dispute breaks down to the extent no clear successor can be identified for continuation of the GMS Contract.

This annex therefore provides commissioners with further guidance on managing circumstances where partnership dissolves with no clear successor, and the steps commissioners may take.

Step 1: Receipt of notification of Partnership dissolution / termination and request for GMS Contractor change

In the event a notification of partnership dissolution is received by the commissioner with a Contract Change Notice including nomination for a successor to the Contract, but this is not signed by all applicable parties of the Partnership, then the notifying party should be invited to re-submit the change request once signed by all parties of the partnership.

If a claim is made by the notifying party that they are unable to achieve sign-off by all parties of the partnership, then a written statement setting out from their perspective the current circumstances to why the notifying party cannot meet this requirement, should be submitted to the commissioner for review.

This may be due to a number of circumstances and it is important that the commissioner at this stage does not ‘pick sides’ or allow themselves to get embroiled in internal partnership disputes. The statement is intended to provide further information which can support the following steps.

Step 2: Determination of which parties of the dissolved partnership (if any) consider themselves a successor for the GMS Contract

Following receipt of a statement from the notifying partner setting out from their perspective the current circumstances, the commissioner may consider contacting the parties of the partnership who have not signed off the Contractor change request, setting out that a nomination has been made for the successor of the GMS Contract and inviting these parties to confirm in writing that they have no objection, or that non-response within 28 days would result in the commissioner accepting the nomination without the disengaged party approval.



If the respective parties of the partnership respond indicating no objection, or fails to respond within 28 days notice, then the commissioner may use their discretion to accept the Contract change request and appoint the notifying party as the GMS contract successor.

If the respective parties of the partnership respond objecting to the nomination, then move to stage 3.

Step 3: Determination of which parties of the dissolved partnership (if any) should confirmed as successor for the GMS Contract

If a Partnership dissolves and there are competing nominations for the succession of the GMS Contract by the previous partnership, then the commissioner may need to intervene and facilitate a process to identify a successor. There are two approaches the commissioner may consider:

1. Choosing a successor following a fair and transparent procedure where a selection is made through the application of agreed criteria. For such purposes commissioners may wish to adopt the key criteria for selection decisions provided under the [Provider Selection Regime](#) which would mean consideration of the following criteria to identify the most suitable nominated successor to continue the GMS Contract:
 - a. Quality and innovation
 - b. Value
 - c. Integration, collaboration and service sustainability
 - d. Improving access, reducing health inequalities and facilitating choice
 - e. Social value.

This option may be more appropriate if it is deemed splitting the contract would not be viable, noting this option is not awarding a new contract (as the contract has not terminated) so PSR would not technically apply whereas it (the PSR) would apply in splitting of the contract as new contracts would be awarded.

2. Splitting the Contract so all parties considered nominated as successors, are awarded new contracts to continue separately. Existing guidance in the PGM can be followed to support this approach. This should only be considered if splitting the practice into multiple practices is considered viable and would not create significant disruption or detriment to patients as part of implementation or onwards management of services. However as above PSR considerations would apply.



Step 4: Determination that no parties of the dissolved partnership have been identified as suitable successors of the GMS Contract

Should the commissioner reach a view that all nominations of successors to the GMS Contract are not appropriate, then there may be some circumstances where it is appropriate to issue termination of the Contract to all parties of the dissolved partnership. However, it is important for commissioners to consider what legal and contractual basis permits them to issue termination. Legal advice should be sought before issuing termination. Below shares some of the provisions which may be considered.

The [GMS Contract Clause 26.15](#) (and [paragraph 71 of Schedule 3 of the 2015 Regulations](#)) gives the commissioner the power to terminate a contract with a partnership following a change in the composition, as follows:

“Where the Contractor consists of two or more persons practising in partnership and one or more of those persons has or have left the partnership during the existence of the Contract, the Board may give notice in writing to the Contractor terminating the contract on such date as may be specified in the notice if, in the Board's reasonable opinion, the change in the membership of the partnership is likely to have a serious adverse impact on the ability of the Contractor or the Board to perform its obligations under the Contract.”

[Paragraph 67\(1\)\(a\) of Schedule 3 of the 2015 Regulations](#) provides that the Board may give notice in writing to a contractor terminating the contract with immediate effect, or from such date as may be specified in the notice, if sub-paragraph (3) applies to the contractor during the existence of a contract. Sub-paragraph 67(3) sets out a long list of circumstances which may give NHSE power to give notice to terminate a contract, such as the conduct of the contractor or its insolvency. The list includes at paragraph 67(3)(t):

“(t) the contractor 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;”*