



NHS England  
Southside  
105 Victoria Street  
London SW1E 6QT

31 December 2013

Dear

## **Breach Notice – Breach of NHS Primary Medical Services contract**

### **1. Introduction**

This letter is a formal breach notice under clause 519 of your Primary Medical Services contract with NHS England dated (the “**Contract**”)

### **2. Relevant terms of the Contract**

Clauses 30 and 49 to 57 provide that:

#### **Attendance at practice premises**

30. The Contractor shall take reasonable steps to ensure that any patient who has not previously made an appointment and attends at the practice premises during the normal hours for essential services is provided with such services by an appropriate health care professional during that surgery period except where:

30.1. it is more appropriate for the patient to be referred elsewhere for services under the Act; or

30.2. the patient is then offered an appointment to attend again within a time which is reasonable having regard to all the circumstances and his health would not thereby be jeopardised.

#### **Essential Services**

49. The Contractor must provide the services described in clauses 50 to 57 (*essential services*) at such times, within *core hours*, as are appropriate to meet the reasonable needs of its patients, and to have in place arrangements for its patients to access such services throughout the *core hours* in case of emergency.

50. The Contractor must provide services required for the management of the Contractor's *registered patients* and *temporary residents* who are, or believe themselves to be-

50.1.1 ill, with conditions from which recovery is generally expected;

50.1.2 terminally ill; or

50.1.3 suffering from chronic disease,

delivered in the manner determined by the Contractor in discussion with the patient.

51. For the purposes of clause 50, -

51.1 "disease" means a disease included in the list of three-character categories contained in the tenth revision of the International Statistical Classification of Diseases and Related Health Problems (published by the World Health Organisation, 1992 ISBN 92 4 1544 19 8 (v.I) NLM Classification WB 15); and

51.2 "management" includes offering a consultation and, where appropriate, physical examination for the purpose of identifying the need, if any, for treatment or further investigation; and the making available of such treatment or further investigation as is necessary and appropriate, including the referral of the patient for other services under *the Act* and liaison with other *health care professionals* involved in the patient's treatment and care.

52. The services described in clauses 49 to 57 are the provision of appropriate ongoing treatment and care to all *registered patients* and *temporary residents* taking account of their specific needs including-

52.1 the provision of advice in connection with the patient's health, including relevant health promotion advice; and

52.2 the referral of the patient for other services under *the Act*.

53. The Contractor must provide primary medical services required in *core hours* for the immediately necessary treatment of any person to whom the Contractor has been requested to provide treatment owing to an accident or emergency at any place in its *practice area*.

54. For the purposes of clause 53 —emergency" includes any medical emergency whether or not related to services provided under the agreement.

55. The Contractor must provide primary medical services required in *core hours* for the immediately necessary treatment of any person falling within clause 56 who requests such treatment, for the period specified in clause 57.

56. A person falls within this clause if he is a person-

56.1 whose application for inclusion in the *Contractor's list of patients* has been refused in accordance with clauses 199 to 202 (Part 12: Patients - Refusal of applications for inclusion in the list of patients or for acceptance as a *temporary resident*) and who is not registered with another provider of *essential services* (or their equivalent) in the area of the PCT;

56.2 whose application for acceptance as a *temporary resident* has been rejected under clauses 199 to 202 (Part 12: Patients - Refusal of applications for inclusion in the list of patients or for acceptance as a *temporary resident*); or

56.3 who is present in the Contractor's *practice area* for less than 24 hours.

57. The period referred to in clause 55 is-

57.1 in the case of clause 56.1, 14 days beginning with the date on which that person's application was refused or until that person has been registered elsewhere for the provision of *essential services* (or their equivalent), whichever occurs first;

57.2 in the case of clause 56.2, 14 days beginning with the date on which that person's application was rejected or until that person has been subsequently accepted elsewhere as a *temporary resident*, whichever occurs first; and

57.3 in the case of clause 56.3, 24 hours or such shorter period as the person is present in the Contractor's *practice area*.

### **3. Breaches**

NHS England considers that you are in breach of the clauses of the Contract set out in paragraph 2 above, for the reasons set out below.

3.1. NHS England wrote to you on the 13<sup>th</sup> December 2013 clarifying that

- *"(NHS England) is unable to agree your request to close early on the 24/31 December 2013"*
- *"GMS and PMS contracts require you to deliver essential services within core hours (Mon-Fri 8-6.30, excluding bank holidays and APMS as per contract terms ), as are appropriate to meet the reasonable needs of your patients, and to have in place arrangements for its patients to access such services throughout the core hours in case of emergency."*
- *"As Christmas Eve and New Year's Eve fall on a Tuesday, practices are expected to be open as normal, core hours 8.00 am – 6.30 pm."*

3.2. Your practice was telephoned on the 24<sup>th</sup> December 2013 after 4pm.

The result of this call was the practice was not answering the phone and your answerphone offered NHS 111 as a service to your patients.

NHS England considers this a serious breach, particularly in light of the explicit clarification that was issued in respect of required opening hours on 24<sup>th</sup> December 2013.

NHS England has therefore decided to issue a breach notice (this letter) in respect of this breach, under clause 519 of the Contract, which provides:

*“519. Where the Contractor has breached the Contract other than as specified in clauses 506 to 513 and the breach is not capable of remedy, the PCT may serve notice on the Contractor requiring it not to repeat the breach (“breach notice”).”*

### **Effect of this breach notice**

Accordingly, NHS England requires you not to repeat the breaches identified in this notice. The effect of a breach notice is that if you:

- repeat the breaches that were the subject of the breach notice; or
- otherwise breach the Contract resulting in either a remedial notice or a further breach notice,

NHS England may have grounds for serving notice on you terminating the Contract with effect from such date as may be specified in that notice.

### **4. Next steps**

I would advise you to contact your Defence Union(s) to discuss this breach notice.

Should you have any questions about the content of this breach notice, please do not hesitate to contact David Tamby Rajah, Assistant Head of Primary Care Commissioning -GP & Pharmacy South London Area Team, who can be reached via:

South Team Telephone: 020 7932 1979

South Team Email: [nhs.cb.lon-sth-pcc@nhs.net](mailto:nhs.cb.lon-sth-pcc@nhs.net)

Yours sincerely



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