THE NEW PROVIDER SELECTION REGIME

WHAT THIS MEANS FOR GP PRACTICES, PCNS AND GP PROVIDER ORGANISATIONS

The procurement of most primary care services is in scope of The Health Care Services (Provider Selection Regime) Regulations 2023 ("**PSR**").

Most core services are commissioned on the basis of GMS Contracts, which do not have a fixed end date, and so run until terminated. However, there will be situations where Integrated Care Boards ("**ICBs**") will need to select a new provider for core services (for example, when responding to planned or unplanned contract terminations or when time-limited APMS Contracts expire) and to replace or issue new contracts for non-core services.

There is also uncertainty as to the future contracting structure of PCN (DES) services. These are currently structured as enhanced services attached to GMS Contracts / PMS Agreements but there is a possibility that the contracting of those services and the funding for them, may flow through the ICB.

In these situations, commissioners will be required to follow the appropriate provider selection process under the PSR.

As a general rule:

- New primary care services that involve an ICB selecting a provider, and where the number of providers available to patients is restricted, must be arranged by applying the **most suitable provider process** or the **competitive process**.
- New primary care services that do not involve an ICB selecting a provider, and where the number of providers available to patients is not restricted, must be arranged under **direct award process B**.
- Continuation of existing services, where the ICB does not select the provider(s), and instead any provider that meets the minimum requirement(s) is offered a contract and is placed on a list of providers for patients to choose from, must be awarded under **direct award process B**.
- Continuation of existing services where the contract of the current provider is coming to an end, the number of providers available to patients is limited, the relevant authority wishes to continue with the existing provider and decides that the existing provider is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard (taking into account the key criteria and applying the basic selection criteria), and the proposed contract is not changing considerably, may be awarded under **direct award process C**.

Turning to how the PSR may be applied when selecting providers for primary medical care services across five scenarios:

1. CONTINUATION OF EXISTING CONTRACTS

a. **GMS:** This is a nationally negotiated contract which has already been awarded and will continue to run on an ongoing basis, until terminated by the ICB or the provider. Accordingly, no day-to-day 'provider selection' is taking place.
b. **PMS:** This is a local agreement between the ICB and named providers. PMS Agreements are almost all open ended and will continue to run on an ongoing

basis, until terminated by the ICB or the provider. Accordingly, no day-to-day 'provider selection' is taking place.

c. **APMS:** APMS contracts are time-limited with the appointed provider and therefore periodically needs to be re-awarded. The following options are available to ICBs when (re)awarding a new APMS:
   i. if the proposed contract is not changing considerably and the provider is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard, then the ICB may award the contract using **direct award process C**.
   ii. If the proposed contract is changing considerably or the ICB wants to seek new providers, then the ICB may award the contract using **the most suitable provider process or the competitive process**

2. MODIFICATION OF EXISTING CONTRACTS

a. **Merger of two of more GP practices leading to changes to existing contracts**

Mergers may involve major modifications to contracts. Some may be straightforward (e.g., two GMS practices merging), while others are likely to be more complex (e.g., GMS, APMS and PMS practices merging). The ICB may need to decide whether to continue with an existing contract or to create a new contract.

Mergers that result in the same services continuing, albeit with different groups or individuals, under one of the previously existing contracts are permitted modifications under the PSR (ie the "considerable change threshold" is not met). Accordingly, **there would be no need to undertake a provider selection**.

However, mergers that result in material modifications to the contract, such as a material change to the services, require a new contract to be awarded. **The most suitable provider process or the competitive process must be applied** because the relevant authority is in effect commissioning a new service.

b. **Practice incorporation**
Where a sole practitioner or a partnership wishes to incorporate the practice, which results in the existing contract being replaced by a new one, this type of contract modification is a 'permitted modification' under the PSR, provided the service remains unchanged. Accordingly, **there is no need to undertake a provider selection.**

c. **Substantial modifications to existing contracts**
For example, adding a new branch surgery or introducing major changes to contract payment mechanisms. **This type of contract modification may be permitted under the PSR**, depending on the size and reason for the modification, and the impact it has on the services delivered.

d. **A GP partnership changing members (initiated by the practice)**
The contracting parties are changing but this does not result in changes to the services delivered. This type of contract modification is a 'permitted

modification' under the PSR, provided the service remains unchanged. Accordingly, **there is no need to undertake a provider selection**.

e. **A GP partnership changing members or dissolving and the former partners disagree about who should take over the contract to deliver the services**
If a partnership has given notice terminating its existing contract there may be disagreement amongst the partners about who can or should continue to provide the current services under a new contract. In these circumstances, the ICB has a 'selection' decision to make, as it needs to decide which of the partners should hold a contract going forward. This must be a new contract award and **the most suitable provider process or the competitive process must be applied**

f. **Substantial modifications to existing APMS contracts**
For example, an urgent care centre is changing from walk-in access to referral only access. This is not a permitted modification under the regime, because the service, and therefore the contract, is changing materially. Accordingly, the ICB has a 'selection' decision to take and must apply **the most suitable provider process or the competitive process** to select the provider(s) for the new service.

3. PLANNED PROVIDER EXIT

In these situations, the decision is either to disperse the patient list to the surrounding practices, in which case no provider selection takes place, or to choose a new provider. If a new provider is being chosen, then **the most suitable provider process or the competitive process** must be applied.

4. SUDDEN AND/OR UNPLANNED CHANGES TO EXISTING CONTRACTS

a. **Sudden closure of existing GMS, PMS, or APMS contract holder**
For example, due to the death of a GP who is the sole contract holder or loss of Care Quality Commission (CQC) registration. In these situations, the decision is either to disperse the patient list to the surrounding practices, in which case no provider selection takes place, or to choose a new provider (this may either be as a temporary contract or a longer-term solution).

If a new provider is being chosen, then the urgent provisions within the PSR may be used to secure immediate needs, e.g., to establish caretaker arrangements. However, as this will be a temporary arrangement it must be reconsidered after a set period. The urgent circumstances section of the PSR provides further information about this but a temporary contract under the GMS Regulations could only be put in place for a maximum of one year.

The **most suitable provider process or the competitive process** must be applied to establish a new permanent arrangement.

b. **Urgent provision is needed to cover a service because a provider has opted out of providing it**
Examples include a provider leaves the market unexpectedly and a directed enhanced service needs rearranging rapidly due to a provider unexpectedly declining to participate. In these situations, the decision is either to disperse the patient list to the surrounding practices, in which case no provider selection

takes place, or to choose a new provider (this may either be as a temporary cover or a permanent long-term solution).

If a new provider is being chosen, then the urgent provisions within the PSR may be used to secure immediate needs, e.g., to establish caretaker arrangements. However, as this will be a temporary arrangement it must be reconsidered after a set period. The urgent circumstances section of the PSR provides further information about this but a temporary contract under the GMS Regulations could only be put in place for a maximum of one year .

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5. NEW AND INTEGRATED SERVICES

a. **Establishment of a new GP service (using GMS, PMS or APMS contracts)**
In these circumstances, a new provider is being selected for a new contract, and so an ICB must apply **the most suitable provider process or the competitive process**.

b. **Arranging a new service under an APMS contract**
For example, arranging a new walk-in GP service within a hospital. This may be a freestanding APMS contract located within the hospital, or an NHS trust may contract for the business and either directly employ GPs or subcontract to GPs. As a provider is being selected for a new service, an ICB must apply the **most suitable provider process or the competitive process**.

c. **Mixed primary medical care and non-primary care services**
For example, integrated NHS 111 services, which are usually set up under the NHS Standard Contract (with APMS 'bolt-on' schedule) and comprise primary medical care and urgent care services. As a provider is being selected for a new service, an ICB must apply the **most suitable provider process or the competitive process.**

d. **Commissioning local enhanced services and/or local incentive schemes**
    i. **GPs**: For example, GPs with specialist expertise (e.g. in dermatology or vasectomies) carrying out 'traditional' secondary care health care services in primary care settings. These services may be carried out under a subcontract with an NHS trust or foundation trust or may be directly commissioned from the GPs. Because a provider is being selected for a new service, an ICB must apply the **most suitable provider process or the competitive process**.
    Where the ICB is inviting all GP practices to provide a wider range of services in general practice, or to provide their core general practice services to a higher standard, then these services may be carried out under a contract modification.

    ii. **PCNS:** If the members of a primary care network (PCN) are commissioned to deliver the services, then the ICB 'commissions' the PCN, but it is for the PCN (through its collaboration/network agreement structures) to determine how the practices within the PCN

operate to deliver the services. PCNs are not legal entities and therefore a PCN itself cannot hold a contract. This means that either a lead practice will hold all the contracts for the PCN, or the ICB will hold a contract with each individual practice in the PCN, which then come together through a collaboration agreement.

Some PCNs have established a company (or other corporate entity) to carry out services or other functions on its behalf. That company is a separate legal entity to the PCN. Such a company may be treated as any other potential provider when considering awarding a contract and selecting the appropriate contract award process.

Where the PCN is to be commissioned, the ICB must apply the **most suitable provider process or the competitive process** to decide which PCN the service should be delivered by, but the regime is not applied when the PCN decides which practice should hold the contract or deliver the service.

e. **Commissioning a directed enhanced service that can only be provided by a single provider to meet the needs of the wider population (Special Allocation Scheme)**
Such services are usually secured via APMS contracts, and in these circumstances a new provider is selected for a new contract. Therefore, the ICB must apply the **most suitable provider process or the competitive process**.

f. **Establishment of a new integrated urgent care service (including out-of-hours service)**
New contracts are largely set out under the NHS Standard Contract and comprise some primary medical care and some urgent care, all routed through NHS 111. In these circumstances, a provider is selected for a new service, and so the ICB must apply the **most suitable provider process or the competitive process**.

g. **A PCN takes on a new responsibility to provide secure (subcontract) enhanced access to GP services**
Some PCNs may choose to subcontract enhanced access services, and they may continue to use the same providers. The ICB must apply the **most suitable provider process or the competitive process** to decide which PCN the services should be delivered by.

PCNs are not legal entities and therefore a PCN itself cannot hold a contract. This means that either a lead practice will hold all the contracts for the PCN, or the ICB will hold a contract with each individual practice in the PCN, which then come together through a collaboration agreement. Some PCNs have established a company to carry out services or other functions on its behalf. That company is a separate legal entity to the PCN. Such a company may be treated as any other potential provider when considering awarding a contract and selecting the appropriate contract award process.

The PSR does not apply to the PCN deciding which practice should hold the contract or deliver the service. However, the PCN's lead provider, if that is the agreed model, may subcontract further (e.g., to a GP federation outside the PCN). In these situations, the **PCN must apply controls on subcontracting from the original commissioning contract it received**.