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Requesting and holding undated PCN (primary care network) DES (directed enhanced service) resignations from practices, and coordinating lawful withdrawals via CCGs (clinical commissioning groups) at a future date

The legal advice quoted is privileged and confidential and being shared with LMCs (local medical committees) on a common interest privilege basis.

Further to concerns expressed to GPCE (GP committee England) by LMC representatives in the past week or so, in particular LMCs holding practices' undated resignations from the PCN DES and sending them to CCGs at a later date, the BMA has obtained advice from leading Queen's Counsel, Oliver Segal.

This is an extracted quote from the QC's opinion obtained by the BMA:

"The BMA's proposal is that the coordinated withdrawals would be effected in two stages, by:

- a. Those practices willing to participate submitting to their LMC an undated letter of withdrawal from the PCN DES (I assume the letter is addressed to the CCG), together with a signed authority for the LMC to date and submit that letter to the CCG on the practice's behalf during the next opt-out window, should a pre-determined threshold of practices' withdrawals be reached (e.g. 50%) – subject to each practice being able to revoke that authority in writing to the LMC at any time.*
- b. If the pre-determined threshold is reached (and assuming the BMA is at the material time of the next opt-out window still pursuing this course), the LMC would date and send to the CCG all letters submitted to it by practices in its locality who have given and not revoked authority for that to happen."*

"Withdrawing from the PCN DES in the way described above would not constitute a breach of the PCN DES contract by the practices who withdraw, as practices are, under the terms of that contract, lawfully able to withdraw from it during the opt-out window: see paras 4.9.5, 4.9.6 of the Network Contract DES Specification 2021/22."



“I advise that the LMC would not act unlawfully either in:

- a. Agreeing to receive the undated letters from GP practices in their locality, together with signed letters authorising it to date and submit those letters to their CCG at the next opt-out window; or*
- b. Dating and sending those letters to their CCG during that opt-out window, assuming any pre-determined threshold had been reached and the practice’s authority had not been revoked.*

“In performing those actions, the LMC would, in my view, be lawfully acting in an administrative capacity, with the requisite authority of the practices to act in that capacity on their behalf.”

The BMA is therefore clear that, in receiving undated resignations from the PCN DES from constituent practices and sending those to the CCG in accordance with the process described, LMCs would not be acting unlawfully.

Some LMCs have asked whether it would be lawful for them to encourage practices to submit undated letters of withdrawal from the PCN DES. LMCs must be aware that the BMA’s guidance on this question is not a substitute for LMCs taking their own legal advice on any specific actions they wish to take. LMCs operate under different legal arrangements and they need to do their own due diligence to satisfy themselves that any proposed actions are permitted within those legal arrangements.

The question is whether the LMC will be inciting practices to breach their contracts, which would be unlawful. Assuming, an LMC does not breach its own contractual obligations, it will not be acting unlawfully by encouraging practices to submit undated letters as proposed by action 1 in the indicative ballot. This is because practices will not be breaching their contracts by submitting undated letters so the LMC will not be encouraging or inciting practices to breach their contracts by submitting such letters.

If an LMC were to encourage practices to breach their contracts, for example by encouraging them to immediately cease performing their obligations under the PCN DES (as per action 2 in the ballot), then they could face legal action for inciting a breach of contract.

Should you have any questions or queries re this briefing note, please email info.lmcqueries@bma.org.uk and a member of the GPCE Secretariat Team will be in touch.