

FAQs – ballot on closing practice lists



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Why are we balloting?

In May 2017, the Conference of LMCs passed the following motion:

‘That conference believes that the GP Forward View is failing to deliver the resources necessary to sustain general practice and demands that GPC ballot GPs as to whether they would be prepared to collectively close their lists in response to this crisis.’

This resolution, passed by representatives of Local Medical Committees from across the country, has been acted on immediately by GPC England, and therefore we are asking all practices in England to complete this online ballot by Thursday 10 August 2017.

GPC England has been tasked by this resolution to ascertain whether or not practices would be prepared to collectively close their practice lists, with the aim of putting pressure on government to secure the resources that are necessary to sustain general practice in the interests of patients. Such collective action would be deemed industrial action (see FAQ below). It is with that aim in mind that this briefing is produced so that GP practices have the information needed prior to participating in the ballot.

It is important to note that this ballot is about assessing whether or not practices are prepared to undertake this form of action. The BMA is not at this stage asking practices to undertake any action.

Why is the BMA balloting practices not individual GPs?

Closing the practice list, whether formally or temporarily, can only be agreed by the partnership and is a practice level decision. Therefore, we are requesting each practice provides one response to the ballot on behalf of the practice as a whole.

We would strongly recommend that each practice discusses the ballot and how to respond at a partnership meeting, having regard to their partnership agreement for how decisions are reached. The liability of any decision will rest with the partners, however the BMA would also encourage and strongly recommend that practices discuss this issue with salaried and locum GP colleagues working within the practice, since any decision would affect all GPs within the practice.

The BMA has written to all GP principals that it has contact details for and to all LMCs to advise that the ballot is taking place and to remind them to ensure that this is discussed by their practice. We have also written to all sessional GPs that we have contact details for to ensure that they are aware of this issue.

What does it mean to collectively close practice lists?

There are two ways in which practices may cease the registration of new patients:

- i) Temporarily suspend new patient registrations (strictly speaking, a practice’s list is not considered ‘closed’ in these circumstances)
- ii) Apply to the commissioner for formal list closure

We are therefore balloting practices whether or not they are **prepared** to undertake either or both of the above courses of action as a form of industrial action.

Practices will need to understand what would be involved in both of these actions in order to inform their response to this ballot. The details of the two ways of ceasing registration of new patients are therefore set out separately in **appendix A (temporary suspension of new patient registration)** and **appendix B (formal list closure)**.

Would either of these options count as industrial action if undertaken?

Yes, this would be regarded as industrial action, as if enacted the BMA would be calling for the collective cessation of patient registration. It would be seen as different from the situation where individual practices make this decision based on their own specific circumstances. If taken, the intention behind either type of collective cessation of patient registration would be to put pressure upon the government to deliver the resources necessary to secure the future of general practice and to enable it to provide safe patient care.

Please note that as self-employed doctors, GP partners do not have the same (limited) immunities from the consequences of taking industrial action as employees do. If a practice refuses to do something which is a contractual obligation they could be served with a breach notice (the most severe outcome of which is a termination of the contract) – irrespective as to whether it is done as part of a campaign of industrial action (see below) or not.

Would either of these options be a breach of contract?

Practices must be fully aware as to their contractual obligations and the implications of taking such action. The implications of closing a list and temporarily suspending new registrations are quite different. As explained in appendix A, there is a risk that temporary suspension of new registrations for the purposes of taking industrial action may be deemed as a breach of contract. However there is no case law in this regard, which means definitive advice is difficult to offer. Formal list closure requires an application and approval by the commissioner. As explained in appendix B, an application to close a list is not a breach of contract, but a practice that suspends new patient registrations when their application has been refused would be in breach.

What about registering new patients who have urgent medical needs?

If a patient needs GP services urgently, and an alternative service is not suitable or available, the contract requires practices to see such patients as a temporary resident or as an immediately necessary patient.

Does closing the list or suspending patient registrations mean I will not register new patients?

Not necessarily. Temporarily suspending new patient registrations or closing the practice list means you will not register new patients when they approach you directly. However, under the regulations NHS England can allocate patients to a practice and there is no mechanism for refusing to accept allocated patients, so it is likely that you would have to continue to register new patients.

Please note that practices are contractually required to provide an explanation in writing to patients if they decline to register them. We would recommend that this should also advise patients how to contact a commissioner in order to be allocated to a practice for registration.

What impact would this have on patients?

Patients could seek another local practice that is open to new registrations (if available). Patients should contact the commissioner if they have difficulty registering with a GP, who will be able to allocate them to a practice for registration.

Are there any implications with the GMC for GPs in practices who close their practice lists or temporarily suspend patient registrations?

The requirements of the GMC's Good Medical Practice apply to the relationship between a doctor and their patients, not patients who are not registered with the practice. As stated above, you must not however refuse to see a patient who has an urgent and immediate need for GP services and where an alternative service is not suitable or available.

How might temporary suspension of registrations or closing the practice list affect practice finances?

Temporarily suspending new registrations or closing the practice list means that you will not register any new patients, unless these are assigned to you by NHS England. This means that your income may decrease as patients die or leave the practice and your list size decreases. List turnover varies from practice to practice and so the impact of this will be greater for some practices than others. Also note that if you see new patients who need urgent medical attention as a temporary or immediately necessary patient (as opposed to ordinarily registering the patient), you will not receive any registration or additional payment for this work.

What would happen if some practices closed their lists or temporarily suspended registrations while others remained open to new patient registrations?

If all practices in an area do not cease new patient registrations, patients will be able to register with practices with an open list. The commissioner would normally prioritise practices with open lists for allocation of new patients. Some practices' lists may remain open because they wish to deliberately increase or maintain their list size.

Will temporarily suspending registrations or closing a list affect additional or enhanced services?

The requirement that practices opt out of additional and enhanced services if they close their patient list, either formally or on a temporary basis, is no longer in the regulations. There will thus be no impact on the services practices are currently commissioned to provide. However, there may be an impact on practices being awarded any new services or incentive schemes.

What happens when we have the outcome of the ballot?

This ballot is indicative and is to assess whether practices would be prepared to collectively apply to close their lists or suspend new patient registrations as a form of industrial action. It is vital that practices express their true intent at this stage as this would be a significant step for the profession to take.

If this ballot shows that most practices in England believe this is a course of action that should be taken then GPC will request BMA Council to review the results and consider taking steps to conduct a formal ballot on industrial action.

Where can I find further/related information?

NHS England's guidance to commissioners on practice list closures
NHS England's guidance to Commissioners on breaches of contract
GPC Focus on practice list closure
GPC Focus on Industrial Action

Appendix A – Suspension of new patient registrations

What does it mean to temporarily suspend new patient registrations?

All practices have the contractual right to decline to register any new patients in certain circumstances without having to go through formal processes and without needing to obtain commissioner permission.

A practice can decide not to register new patients, provided it has reasonable and non-discriminatory grounds for doing so, (such as protecting the quality of patient services). In such cases, the regulations allow practices to refuse to register new patients (Schedule 6, Part 2, paragraph 17).

A number of practices have already legitimately taken this step given pressures on their practice. Whatever the outcome of this ballot, practices can continue to use the BMA produced advice detailed in its *Quality First* workload management document and *Focus on industrial action and undated resignations* which outline how a practice can temporarily suspend new patient registrations when there are good reasons to do so, specific to the practice in question, such as the maintenance of safe and good quality patient services.

However a response to the ballot in favour of collectively introducing a temporary suspension of new patient registrations is different to the temporary suspensions that practices enact in response to their own unique circumstances. A collective temporary suspension of patient registration would be an act of industrial action, designed to achieve a specific purpose – for example, to secure the resources needed to sustain the future of general practice.

Would temporarily suspending patient registrations be a breach of a practice's contract?

It is important for GP partners to be fully aware of their contractual obligations because they do not have the same (limited) immunities from the consequences of taking industrial action as employees do. If a practice refuses to do something which is a contractual obligation they could be served with a breach notice or have their contract terminated – irrespective as to whether it is done as part of a campaign of industrial action.

Whether or not it is lawful for the GP practice to refuse to register a patient on the grounds that their trade union had asked them to do so as part of a campaign of industrial action will hinge upon whether or not such a direction by a union constitutes 'reasonable grounds' for doing this. If the answer is 'yes' then there would not be a breach of contract and the industrial action would be lawful. If the answer is 'no' then the refusal would be a breach of contract and it is possible the Commissioner may serve a breach notice. There is no settled case law on this issue and a court would need to decide if the action was a breach. If the court decides that a breach has occurred, and that the breach was sufficiently serious, the commissioner could potentially remove the contract. Practices need to be mindful of this risk.

The BMA would only ask GP practices to take such industrial action if practices themselves agreed that the action was likely to be the best or the only way of achieving a robust, long term solution to issues of general practice workload and workforce crises, and to ensure that patient safety is preserved.

Appendix B – Applying for formal closure of a practice list

What does it mean to formally close your practice list?

A number of practices may already have decided that formal list closure has been a necessary step to take given pressures on their practice.

Practices who wish to formally close their list must go through the list closure procedures set out in the GMS regulations (paragraphs 29-31 of Part 2 of Schedule 6). This includes applying to the commissioner (NHS England area team or CCG). If the commissioner approves the closure notice, the contractor's list is officially closed to assignments. The closure period will be for a minimum of 3 months and maximum of 12 months. Permission is required from the commissioner to re-open the list earlier than the agreed date.

Formally closing your practice list requires the commissioner's approval. On application, a practice will need to demonstrate 'the options which the contractor has considered, rejected or implemented in an attempt to alleviate the difficulties which the contractor has encountered in respect of its open list'. The commissioner has 21 days to consider the application and may request further information from the practice or consult persons affected by the proposed list closure.

During the process, the commissioner must enter into discussions with the practice as to what support it can offer to them. There is nothing stipulating the format of those discussions, and the practice may be required to provide further information and explanation during this part of the process. The commissioner may consult persons affected by the proposed list closure – this could include letters to the practice's patients, letters to neighbouring practices, and also potentially to the practice's creditors, landlord (if applicable) and their insurers.

A rejected application can be appealed to the NHS Dispute resolutions procedure.

Would formally closing the practice list for the purposes of industrial action be a breach of a practice's contract?

A response to the ballot in favour of collectively requesting a formal closure of the practice list is different than the individual applications practices may make in response to their own unique circumstances. Collective applications for closure of practices' lists would be an act of industrial action, designed to achieve a specific purpose – for example, to secure the resources needed to sustain the future of general practice.

An application for a formal list closure, conducted in accordance with the contract, is not a breach of contract as it requires the permission of the commissioner. The fact that the permission of the commissioner is required in order to give effect to the formal list closure does however impact upon its effectiveness as an act of industrial action. However, the action would have an impact on commissioners. There would also likely be political, media and public attention as a result.

A practice would need to comply with the commissioner's requests for further information to support their application, as outlined above. Under the regulations, the commissioner and practice are required to use reasonable endeavours to keep the patient list open. If the practice is applying to close their list as part of a campaign of industrial action then it would seem unlikely that the commissioner would agree to this. In the event that the commissioner did agree to list closure then it would not be a breach of contract.

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