



# 2023 Contractual Access Requirements

## BBOLMCs Guidance for Practices

20<sup>th</sup> April 2023

### Background:

As practices will be aware, on 6<sup>th</sup> March 2023, NHS England declared its intention to impose contractual changes onto practices after their proposed contract was roundly rejected by the GPC England the previous month. BBOLMCs has been contacted by various constituents asking for advice on the implications of this imposition, particularly with regard to the requirements regarding patient access, in the context of increasing demand and diminished workforce. Of particular concern, has been the suggestion that the contract prevents the practice from directing the patient to defer their contact to a later date/time due to unavailable capacity.<sup>1</sup>

We have delayed publishing our own guidance on these requirements until the appropriate legislation has been passed, so that firstly the contractual requirements are clearly defined, and secondly so that the possibility for later change is minimised. Further guidance will follow in due course on other aspects of the contract, but the particular issue of the changes to the Regulations regarding access has been prioritised.

### Changes to the GMS Regulations on Access:

The changes to the regulations<sup>2</sup> regarding access were laid before Parliament on 18<sup>th</sup> April, and come into force on 15<sup>th</sup> May 2023. The change to the Regulations is as follows:

#### 10. For paragraph 4 of Schedule 3 substitute—

##### “Contact with the practice

4.—(1) The contractor must take steps to ensure that a patient who contacts the contractor—

- (a) by attendance at the contractor’s practice premises;
- (b) by telephone;
- (c) through the practice’s online consultation system; or
- (d) through any other available online system,

is provided with an appropriate response in accordance with the following sub-paragraphs.

(2) The appropriate response is that the contractor must—

- (a) invite the patient for an appointment, either to attend the contractor’s practice premises or to participate in a telephone or video consultation, at a time which is appropriate and reasonable having regard to all the circumstances;
- (b) provide appropriate advice or care to the patient by another method;
- (c) invite the patient to make use of, or direct the patient towards, appropriate services which are available to the patient, including services which the patient may access themselves; or
- (d) communicate with the patient—
  - (i) to request further information; or
  - (ii) as to when and how the patient will receive further information on the services that may be provided to them, having regard to the urgency of their clinical needs and other relevant circumstances.

(3) The appropriate response must be provided—

- (a) if the contact under sub-paragraph (1) is made outside core hours, during the following core hours;
- (b) in any other case, during the day on which the core hours fall.

<sup>1</sup> <https://www.pulsetoday.co.uk/news/contract/practices-can-no-longer-ask-patients-to-contact-them-at-later-date-under-contract-changes/>

<sup>2</sup> GMS (Amendment) Regulations 2023 [https://www.legislation.gov.uk/ukSI/2023/436/pdfs/ukSI\\_20230436\\_en.pdf](https://www.legislation.gov.uk/ukSI/2023/436/pdfs/ukSI_20230436_en.pdf)

- (4) The appropriate response must—
- (a) not jeopardise the patient’s health;
  - (b) be based on the clinical needs of the patient; and
  - (c) where appropriate, take into account the preferences of the patient.”

## Analysis:

Clause	BBOLMCs Interpretation
<p>4.—(1) The contractor must <b>take steps to ensure</b> that a patient who contacts the contractor—</p> <ul style="list-style-type: none"> <li>(a) by attendance at the contractor’s practice premises;</li> <li>(b) by telephone;</li> <li>(c) through the practice’s online consultation system; or</li> <li>(d) through any other available online system,</li> </ul> <p>is provided with an <b>appropriate response</b> in accordance with the following sub-paragraphs.</p>	<p>The practice must (i.e., this is not optional) <b>“take steps to ensure”</b> that a patient is provided with an <b>“appropriate response”</b> (defined later) if the patient has “contacted” the practice. By definition, we interpret making “contact” as the <b>establishment of communication</b>. Contact can be made by the patient:</p> <ul style="list-style-type: none"> <li>• In person</li> <li>• By phone call</li> <li>• Via online platforms (e.g., eConsult, AskMyGP, Klinik etc)</li> <li>• Via any other online system (e.g., NHS App, etc)</li> </ul> <p>For clarity, <b>we do not consider that a patient who tries to phone the practice and cannot get through to meet the definition of “contact”</b> as no communication has taken place, and at any rate, any recorded message asking the patient to please hold, would meet the definition of a request for “further information” as per (d) (i) below</p>
<p>(2) The <b>appropriate response is that</b> the contractor must—</p> <ul style="list-style-type: none"> <li>(a) invite the patient for an <b>appointment</b>, either to attend the contractor’s practice premises or to participate in a <b>telephone</b> or <b>video consultation</b>, at a time which is appropriate and reasonable having regard to all the circumstances;</li> </ul>	<p>This sub-paragraph defines what the “appropriate response” shall be, set out as a suite of options, which are:</p> <p>The practice may decide to <b>“invite” (i.e., offer, which would obviously be subject to acceptance by the patient)</b> the patient to:</p> <ul style="list-style-type: none"> <li>• An appointment in person, OR</li> <li>• A telephone call, OR</li> <li>• A video consultation</li> </ul> <p>The definition of “a time which is appropriate” would be at the discretion of the practice, with <b>“regard to all circumstances”</b> (capacity, urgency etc)</p> <p>There is no definition of time frame in this clause. For example, an “appropriate time” for a routine, non-urgent issue may be in the distant future. <b>Practices may, in order to comply with this regulation, find they have no choice but to create waiting lists for non-urgent appointments as are used in secondary care, booking patients far into the future.</b></p>
<ul style="list-style-type: none"> <li>(b) provide appropriate <b>advice</b> or care to the patient by another method;</li> </ul>	<p>The practice may alternatively send advice digitally or signpost the patient to various NHS online advice resources.</p>
<ul style="list-style-type: none"> <li>(c) invite the patient to make use of, or direct the patient towards, <b>appropriate services which are available to the patient</b>, including services which the patient may access themselves; or</li> </ul>	<p>Practices may instead direct patients to other services, such as 111, Community Pharmacies, UTCs, or A&amp;E.<sup>3</sup></p> <p><b>This clause is helpful, as previously commissioners and practices have been unclear on the contractual basis for diverting patients to other services such as 111 once safe capacity limits have been breached. Practices can now be reassured that they can cite this clause if their decision to divert patients to 111 is called into question.</b></p>
<ul style="list-style-type: none"> <li>(d) communicate with the patient—</li> <li>(i) to <b>request further information</b>; or</li> <li>(ii) as to when and how the patient will receive further information on the services that may be provided to them, having regard to the urgency of their clinical needs <b>and other relevant circumstances</b>.</li> </ul>	<p>If insufficient information has been provided by the patient in order to adequately triage them to an appropriate disposition, or meet their request, <b>the practice may defer the appropriate disposition/action</b> until further information is received from the patient. The request for further information could be sent by any medium.</p> <p>The practice may, if the circumstances of the situation allow, communicate to the patient that a definitive response has been delayed. <b>Such a delay may be necessitated by “other relevant circumstances” such as lack of capacity or more urgent patients/requests.</b></p> <p><b>No time frame/deadline for such a delay is defined</b>, and may take the form of a waiting list as described in notes on Sub-paragraph (2) above.</p>

<sup>3</sup> <https://www.bma.org.uk/advice-and-support/gp-practices/gp-service-provision/gp-access-meeting-the-reasonable-needs-of-patients>

<p>(3) The appropriate response must be provided –</p> <p>(a) if the contact under sub-paragraph (1) is made outside core hours, during the following core hours;</p> <p>(b) in any other case, during the day on which the core hours fall.</p>	<p>The “appropriate response” must be sent to the patient on the same day it is received, or, if it is received out of hours (e.g. online platform) on the next working day of the practice’s core hours.</p>
<p>(4) The appropriate response must –</p> <p>(a) <b>not jeopardise the patient’s health;</b></p> <p>(b) be based on the clinical needs of the patient; and</p> <p>(c) where appropriate, take into account the preferences of the patient.”</p>	<p>This is an illogical clause which is so broad in its definition as to be essentially useless. As “jeopardise” is not defined, nor is what aspect of the patient’s “health” then it is questionable how it should be interpreted. Obviously, if a response is “appropriate” it would not “jeopardise the patient’s health” – the clause makes no sense.</p> <p>Taken literally this clause forces the practice to direct the patient to another service [as per sub-para (2), subsection (c) above], in the interests of patient safety if the practice is not able to meet the patient’s needs that day, OR if it is not possible to guarantee their health will not be “jeopardised” by delaying their consultation/request to a later date.</p> <p><u>This clause will likely result in practices diverting extremely large numbers of patients to 111 and A&amp;E for fear of being held in contract breach, due to the unclear meaning of this clause.</u></p>

### Summary of BBOLMCs Advice:

1. Practices must “take steps to ensure” that an “appropriate response” is sent to any patient who “makes contact” (establishes communication) with them, and that response must be sent the same day (or the next day if the communication is received outside of core hours).
2. If the practice lacks the capacity/resource to accommodate the patient’s request the same day, and clinical criteria safely permit, they may book the patient a consultation in the future (no time frame mandated) or indeed defer even the booking/confirmation of such a consultation until a later date (no time frame mandated) provided the patient is informed of this (by any medium).
3. If the practice feels that it is impractical or unsafe to defer the consultation or booking of such consultation to a later date as per point 2 above, they may direct the patient to another service such as 111 or A&E. Indeed, sub-paragraph (4) subsection (a) noted above arguably significantly lowers the threshold for such diversion. Practices can be assured that as per sub-paragraph (2) subsection (c) above, it has evidently been contractually clarified that practices can safely divert patients to other such services if their safe capacity limits have been breached. This is also in line with BMA guidance.<sup>4</sup>
4. Practices are reminded of and signposted to BMA guidance on safe working limits and BBOLMCs strongly recommends practices use this guidance and set these safe working limits in place in the interests of patient safety and staff safety.<sup>5</sup>
5. Practices are reminded to ensure their Directory of Services (DoS) status is accurate and reflects their ability to handle incoming demand from other services, and to factor in the above BMA safe working limits in this decision. We direct you to our guidance circulated on 26<sup>th</sup> January 2023 for instructions on how to do this.
6. As always, if practices have any queries or concerns, contact us at: [assistance@bbolmc.co.uk](mailto:assistance@bbolmc.co.uk)

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<sup>4</sup> <https://www.bma.org.uk/advice-and-support/gp-practices/gp-service-provision/gp-access-meeting-the-reasonable-needs-of-patients>

<sup>5</sup> <https://www.bma.org.uk/advice-and-support/gp-practices/managing-workload/safe-working-in-general-practice>