



Guidance on the General Ophthalmic Services Contract

Guidance on the General Ophthalmic Services Contract

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Introduction

This guidance outlines the arrangements for Primary Care Trusts (PCTs) to enter into and manage contracts of providers of General Ophthalmic Services (GOS) i.e. NHS funded sight tests.

Linked guidance describes the arrangements for management of ophthalmic performers lists i.e. locally held lists of clinicians who carry out NHS funded sight tests.

It applies in England only.

Health Act 2006

The amendments made to the National Health Service Act 1977 (the 1977 Act) by the Health Act 2006, now consolidated into the National Health Service Act 2006, provide the legal framework for the move from ophthalmic lists of contractors to a contract based system. The key changes are:

- Ending of the “grandfathering arrangements” which are currently used where individuals or businesses have not been able to contract directly with the NHS
- Creation of a clearer framework for commissioning of Primary Ophthalmic Services
- Removal of restrictions on whom PCTs may contract with for the NHS funded sight testing service;
- Creation of ophthalmic performers lists in which any clinician who wishes to carry out NHS funded sight tests must be included, whether an employed clinician or a business owner who is himself a clinician, (separate guidance covers the performers list).

Regulations and guidance

The changes have been set out in regulations. This guidance explains the NHS GOS Contracts Regulations 2008 (“Contract Regulations”).

Separate guidance explains

- the NHS Performers List (Amendment) Regulations
- the Primary Ophthalmic Services Regulations 2008 and
- the Transitional Regulations 2008.

This note is not a substitute for reading the Contract Regulations themselves. It does not comment on all of the regulations but seeks to highlight key points and offer guidance where the regulations appear to need additional commentary.

For issues concerning Ophthalmic Performers Lists and Primary Ophthalmic Services PCTs should refer to the relevant guidance listed above.

For transitional arrangements, separate guidance has also been issued which is of key importance for the short term and therefore some points from this guidance note are repeated here.

Following the law, as in the Contract Regulations, references to “he” or “him” includes “she” or “her”, as do references in this guidance and where the contractor is a corporate body equally includes that body. In addition, “it” etc is to be taken as including “he” or “she”.

The Contract Regulations set out required content for General Ophthalmic Services contracts for both mandatory services (the traditional “high street” services) and additional services (mobile services).

The content of contracts is very largely prescribed by the Contract Regulations and there is only very limited scope to vary locally. An example of a variation would be hours when the service is available which, clearly, will vary and could not be prescribed.

Model contracts have been developed for both services. PCTs are strongly encouraged to use the model contracts, which fully reflect the Regulations and are intended to help achieve smooth implementation of the Regulations.

PCTs and contractors are not obliged to use these model contracts as the basis for their contracts but they are strongly recommended to do so.

Drafting a contract is a complex matter, requiring significant legal input. PCTs and contractors would find themselves put to considerable time, trouble and expense if they try to devise their own contracts. These contracts have been drafted and agreed with the representative optical bodies to avoid the need for any locally designed contracts.

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Certain provisions must, under the Regulations, be included in any contract and the model contracts include these, with footnotes to make it clear which provisions are mandatory.

Model application forms have also been developed for new applicants although these will not be needed for contractors with transitional rights.

Definitions

The following definitions explain the basic terms used in the regulations (see regulation 2(1)):

Contract – except where the context otherwise requires, a general ophthalmic services contract under section 117 of the NHS Act 2006.

Performers List – a PCT’s list of ophthalmic services performers (optometrists and ophthalmic medical practitioners) introduced under the National Health Service (Performers Lists) Amendment Regulations 2008.

Contractor – an individual or business that has entered into a contract to provide NHS funded sight tests. A contract may be held by any suitable person – in this context “person” includes company. A provider must hold a contract in each area where they provide NHS funded services.

Performer – an individual optometrist or ophthalmic medical practitioner who undertakes GOS sight tests for a contractor (or may himself be a contractor). In order to perform NHS funded sight tests a clinician must be on a PCT ophthalmic performers List and can only be on one such list. On the basis of being on an ophthalmic performers list the clinician may carry out NHS funded sight tests in any part of England. (NB Separate arrangements apply in Scotland, Wales and Northern Ireland.)

Mandatory Services – means the primary ophthalmic services mentioned in section 115(1)(a) (sight testing services) provided to an eligible person, except when those services are provided other than at the contractor’s premises (i.e. the “high street” service).

Additional Services – means the primary ophthalmic services under section 115(1)(b) (primary ophthalmic services), which are provided by mobile services to an eligible person, other than a prisoner. The only additional service at present is mobile services (i.e. domiciliary sight testing).

Mobile Services - means the sight testing service provided by a contractor to patients –
(a) attending at a day centre, as defined in the Contract Regulations, which restricts the categories of people who can be so treated;
(b) residing at a residential centre, as defined in the Contract Regulations, which restricts the categories of people who can be so treated; or
(c) at the patient's home, where the patient is unable to leave it unaccompanied because of physical or mental illness or disability.

Key dates and actions

The following relates to the transitional period but is included here due to its importance and should be read alongside the guidance on the transitional provisions.

1 May 2008

Regulations laid. All regulations apart from the Transitional Regulations come into force on 1 August 2008. The Transitional Regulations come into effect on during May 2008.

However immediately on laying of the regulations, PCTs are advised to begin preparing to implement in line with the Transitional provisions so that implementation is complete by **1 August 2008**.

Current contractors (apart from those who are on the ophthalmic list as part of a grandfathering arrangement) do not have to apply for a contract under the new arrangements. Subject to there being no ongoing disciplinary issues and their not having been included in the list by mistake, they have a right to a contract.

They do have to indicate to the PCT in writing that they would like a contract under the new arrangements. This applies to contractors whether they provide sight tests from a practice, by means of mobile services or both.

There is no other application requirement than notifying the PCT in writing by **1st July** and then, so long as they are not included in the list under 'grandfathering' arrangements and there are not ongoing disciplinary procedures, they have a right to a contract.

PCTs are advised to ask their current contractors (apart from those on the ophthalmic list under a grandfathering arrangement) to confirm that they would like a contract under the new arrangements by **1 July 2008** at the latest. This is one month before the new regulations and is intended to allow time for any disputes over contract terms to be resolved.

On receiving notification from a provider that they wish to have a contract, PCTs should then send them a copy of the model contract, completed for the relevant provider to sign and return.

Grandfathering

In respect of those involved in grandfathering arrangements, the likelihood is that the individual who is on the ophthalmic list will not be eligible in their own right for a contract because they would not be able to provide premises, equipment etc.

PCTs are advised to make direct contact as soon as possible with the person, individual or business, for whom the optometrist or OMP was acting as a "grandfather" and advise them that they need to apply for a contract in their own right if they wish their business to continue to provide NHS funded sight tests. In these cases, this will be a new application, so a normal application will need to be made and the PCT will need to decide it in the normal way.

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Provided the grandfathering arrangement has been working satisfactorily, the PCT may well be familiar with the premises, equipment and record keeping arrangements so these elements of the application should be straightforward and more streamlined than usual. PCTs will, however, have formally to consider the individuals involved with the business who will now be the contractors and seek declarations about criminal convictions etc and references in the same way as they would for any new applicant.

1 July 2008

PCTs are advised to aim to have confirmed contracts with existing contractors who have an automatic right to a contract by this date.

They should also aim to have considered and awarded contracts to providers who had been working through grandfathering arrangements (and who have sought a contract) by this date if at all possible.

That will give PCTs and contractors the month of July to resolve any disputes over contract terms and for PCTs to finalise decisions on applications from people who had been operating through grandfathering arrangements if there are any matters outstanding.

1 August 2008

Regulations come into force. Contracts all confirmed or awarded by this date. Performers List completed. (But of course open to new applicants in both cases in the normal way).

General Ophthalmic Services contracts

Mandatory, additional and enhanced services

General Ophthalmic Services contracts are the legal form for a contract to provide any primary ophthalmic service within the framework created by the 2006 Act. Briefly, this framework comprises three levels, which are referred to as mandatory, additional and enhanced.

Mandatory services are the sight testing service when carried out at a practice. All PCTs must provide for this service and any provider with a contract for mandatory services must provide NHS funded sight tests from a practice.

Additional services are laid down in regulations and must be provided by all PCTs.

However, whilst some providers of additional services may also be providers of mandatory services, this is not a requirement. It is entirely in order to be a provider of additional services without being a provider of mandatory services (and vice versa).

The only additional service that has been prescribed in regulations is mobile services i.e. provision of NHS funded sight tests at day centres, residential care homes and individuals' own homes (see definitions above and the regulations).

Enhanced services are any other primary ophthalmic services commissioned at the discretion of PCTs. to meet what they consider to be necessary primary ophthalmic services in their areas. These will vary from PCT to PCT and the model contracts do not cover this category of service.

Eligibility for a contract

Any person, individual or corporate body, may apply for a General Ophthalmic Services contract provided they meet the national requirements set out in the Contract Regulations and do not fall within specified exclusion criteria. These criteria include requirements that the PCT be satisfied on specific things and PCTs can also judge applicants to be unsuitable. The detailed criteria are set out at Part 2, regulation 4 of the NHS GOS Contract Regulations 2008.

National requirements (applicable to all contracts)

“Regulation 4(3)(j) specifies that the PCT has to be satisfied that the contractor —
(i) has the premises, equipment and record keeping arrangements and
(ii) will employ or engage, by the date the contract is to commence, appropriate staff, to provide the services under the contract.”

Exclusion Criteria

Exclusion criteria include criminal offences, being subject to a national disqualification order and bankruptcy and that the prospective contractor. These include under regulation 4(3)(k) if the PCT is not satisfied that it is a person suitable to provide general ophthalmic services;

These are matters of judgment by the PCT of which it must be satisfied before entering into a contract with the potential contractor.

Reasons for refusal

Where a PCT is of the view that the conditions set out in the regulations for entering into a contract are not met, it shall notify the person intending to enter into the contract of—
the PCT's view and its reasons for that view; and
that person's right of appeal under regulation 6.

The PCT shall also notify of its view and its reasons for that view, a director, chief executive or secretary of a corporate body that is notified under paragraph (1), where its reason for the decision relates to that person or those persons.

Appeals and contract disqualifications

The regulations confer specific appeal rights on applicants in the event of their application being turned down – see regulation 6.

Essentially, an unsuccessful applicant may appeal to the FHSAA against the decision of the PCT that the conditions in regulation 4 are not met, by giving notice to the FHSAA within the period of 28 days, beginning on the day that the PCT served its notice.

Equally, the PCT may apply to the FHSAA for a contract disqualification in relation to the applicant and the FHSAA may make such an order when an applicant appeals to it. Such disqualifications are subject to review on application from the disqualified person after not less than three years after the disqualification was first imposed unless the FHSAA determines, at the time of applying the disqualification that another review period is more appropriate (but this would be not less than one year and not more than five years after the disqualification came into effect).

Pre-contract disputes

Regulation 7 sets out dispute resolution procedures depending on whether the contract is an NHS contract or a non-NHS contract.

If during the course of negotiations intended to lead to a contract, the PCT and the prospective contractor are unable to agree to a particular term in the contract either party may refer the dispute to the Secretary of State to consider and determine in accordance with the NHS

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dispute resolution procedure. However, PCTs and contractors should note that many terms are required under the Regulations and it is not possible to have a term that has a different effect in relation to those matters.

In cases where the prospective contractor is a Health Service body, a different procedure is followed. (See below)

Before referring the dispute for consideration and determination both parties to the prospective contract must make every reasonable effort to communicate and co-operate with each other with a view to resolving it.

In the case of a dispute referred to the Secretary of State under paragraph, the determination—

- (a) may specify terms to be included in the proposed contract;
- (b) may require the PCT to proceed with the proposed contract, but may not require the proposed contractor to proceed with the proposed contract; and
- (c) shall be binding upon the prospective parties to the contract.

Health Service body status

A prospective Contractor can opt to be a Health Service Body for the purposes of entering into a contract. If he does so then there is a different, cheaper and it is hoped quicker dispute resolution procedure to that in relation to other contracts. If a contractor chooses to be a Health Service Body he can opt to cease to be at any time (though this will not affect any existing dispute). Equally, any contractor can opt to become a Health Service Body at any time. The Contract however must include a clause stating whether or not the contractor has so opted.

Contracts – required terms

Regulations 9-19 set out required terms for contracts and these regulations should be referred to for details. These are all covered by the model contracts that have been developed which PCTs are recommended to use.

The General Ophthalmic Services contracts entered into are not for a fixed term and will run until they are terminated either in accordance with the terms of the contract or of general law. An exception to this is where a PCT has specifically decided to enter into a temporary contract, for example, to fill a gap created by the termination of a contract with another provider. (The temporary nature of such a contract, its duration and the possibilities of any extension/renewal should be clearly set out.)

Clinical Requirements

The regulations specify that the contract must contain terms in relation to the testing of sight, which have a specific effect. These are set out at Regulation 13.

The key points relate to the duties of the contractor having accepted an application for an NHS funded sight test. This makes it clear that in testing sight to determine whether a patient needs to have an optical appliance the practitioner must fulfil any duty that flows from section 26 of the Opticians Act or any regulations made under this.

Duty to Refer

This includes the duty to refer, where necessary, where the examination shows signs of injury, disease or abnormality in the eye, which may require medical treatment or where the patient would not attain a satisfactory standard of vision even with the use of corrective lenses.

The practitioner has, in these circumstances, a duty to refer the patient as appropriate. The practitioner may refer the patient directly to an ophthalmic hospital, which includes an ophthalmic department of a hospital, if that is appropriate. Equally, if it is appropriate to refer the patient to a GP or another optometrist then they may do that. The decision on where it would be appropriate to refer the patient will be determined by the particular case and justified by the practitioner in their patient notes. Referral should always be appropriate for the particular patient.

Whether or not a patient is referred the duty to give the patient a written statement remains. When a referral is being made, the statement should include details of the referral.

Service Hours

The contract must include the hours during which the service contracted for is normally provided at the premises covered by the contract. This means that if the contract says that services are normally provided from 9.00-5.00 Monday to Friday then the practice should be open and able to see NHS patients during these hours throughout the week. It does not mean that a particular patient has to be seen but that appointments are available for patients eligible for a NHS sight test during the specified period. If a practice provides the service, for example, only on Monday then that is what should be stated in the contract.

Financial Terms

The regulations require that contracts contain specific financial terms – details are at Regulation 15. Essentially the contract must contain terms which require prompt payment to be made to contractors by the PCT and, when appropriate, by the contractor to the PCT.

The Regulations require the contract to contain terms relating to fee, claims, charges and financial interests with specified effects – details are at Regulation 16.

A key point arising from this Regulation is:

That no fees may be charged for providing or as a precondition to being able to obtain an NHS funded sight test. Patients who are eligible for NHS funded sight tests are eligible for that sight test on the basis of being in one of the eligible groups and the sight test is paid for on the basis of the nationally agreed NHS sight test fee. Any attempt to charge for what should be provided as part of a sight test carried out in line with the duties arising from section 26 of the Opticians Act, and any relevant regulations, or to charge a fee as a precondition for a person eligible for an NHS funded sight test to obtain such a test is explicitly prohibited. This follows from section 1(3) of the NHS Act 2006 which prohibits any charge not expressly authorised by regulations. The decision of the High Court in *Costco v. Milton Keynes PCT* indicates that any contractor making such a charge is not suitable to be a contractor.

In addition, Regulation 16(4) states that:

*“The contractor in making a decision—
(b) as to what services to recommend or provide to a patient who has sought services under the contract; or
(c) to refer a patient for other services within the National Health Service,
must do so without regard to its own financial interests.”*

This is not intended to differ from existing professional duties, see for example the College of Optometrists Guidance, but there are two clear additional points. This is a contractual duty and failure to comply will be a breach of that contract upon which the PCT can act. Secondly it will apply to all contractors, whether or not they are members of a healthcare profession.

Claims Terms

The Regulations lay down procedures on claiming fees and on signing and counter signing of claims. Any claim by a contractor for fees in respect of the provision of mandatory services or additional services shall be made by completing or securing the completion of a sight test form and sending it to the PCT within six months after the date of completion of the provision of the services.

Eligibility for Services

Persons to whom mandatory services are to be provided

Part 1 of Schedule 1 to the Regulations sets out those eligible for NHS funded sight tests at optical premises and requires contractors to provide the service to any eligible person who applies subject to specific requirements. These requirements include that - the contractor satisfies himself that the person is an eligible person; recording on the sight test form if a person has been asked for but has not provided satisfactory evidence that he is an eligible person; inserting the approximate date that the patient's sight was last tested (whether NHS funded or private); and satisfying himself that the testing of sight is necessary. There are no changes to the established position in any of this.

Contractors are able to turn down a request for a sight test by a particular eligible person, but must have reasonable grounds for doing so and these must not relate to:

- (a) race, gender, social class, age, religion, sexual orientation, appearance, disability or medical or ophthalmic condition; or
- (b) decision or intended decision to accept or refuse private services in respect of himself or a family member.

If the contractor refuses to provide services under the contract on any ground other than that it is not satisfied that the person to whom it has refused to provide services is an eligible person; or that the testing of sight is not necessary it shall keep a record of that refusal, specifying in that record its grounds for doing so. This may then be examined by the PCT during an inspection of the practice records.

This does not prevent a practitioner from referring or recommending a patient sees another practitioner who may have particular skills in relation to a particular group of patients or patients with a particular condition, with the patient's agreement.

Also, it would be reasonable for a practitioner to refuse to see a patient who was, for example, drunk or abusive.

The Regulations also allow for a request to be made for an NHS funded sight test on behalf of another person in specific circumstances.

Premises, equipment and facilities

The Regulations require that the contractor ensure that practice premises and equipment are suitable for the delivery of the services contracted for and sufficient to meet the reasonable needs of the contractor's patients. This includes providing proper and sufficient waiting accommodation for patients. Contractors are also required to provide such other facilities as are necessary to enable it to properly perform the service which has been contracted for. It is important to note that this refers to "reasonable needs". This does not mean that contractors

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are obliged to meet any request made by a patient and does not empower PCTs to specify particular types of equipment the practice should have unless there is only one piece of equipment that would meet the purpose. The PCT must be satisfied that the practice has the necessary equipment to provide the service contracted for but if there is more than one piece of equipment which can meet that purpose then it is for the practice to decide which to purchase.

Safety of the public

Schedule 1, Part 7 to the Regulations make requirements in relation to safety of patients. The Regulations do not prescribe particular arrangements and relate specifically to duties that flow from legal requirements, recommendations of the MHRA and professional practice. This clause of the contract is not one by which PCTs are to determine requirements but rather one under which they must be satisfied that established requirements in the areas referred to in the regulations are complied with.

Persons who perform services

Schedule 1, Part 3, para 8 make it clear that in order to carry out NHS funded sight tests under the contract the individual performer must be on a PCT Performers List and not be subject to a suspension.

Where the registration of an ophthalmic practitioner, or their inclusion in a Performer's List, is subject to conditions then the contractor must ensure compliance with those conditions in so far as they are relevant to the contract and the services provided under it.

Schedule 1, Part 3, para 10 sets out that contractors only employ ophthalmic practitioners to perform services under the contract subject to specific requirements, including qualifications, experience and proper references.

Schedule 1, Part 3, para 11 requires that before employing any person to assist it in the provision of services under the contract, the contractor shall take reasonable care to satisfy itself that the person in question is both suitably qualified and competent to discharge the duties for which he is to be employed. This relates to non-clinical staff who may assist in clinical work and does not relate to, for example, the normal work of receptionists which is the responsibility of the employer.

Patient records

Schedule 1, Part 4, para 13 requires the contractor to ensure a *“full, accurate and contemporaneous record is kept in the patient record in respect of each patient to whom it provides services under the contract, giving appropriate details of sight testing.”* This relates to services under the contract which is NHS funded sight testing. These records must be kept for at least seven years and may be kept in electronic form.

In addition, the new optical voucher regulations make a new requirement that a supplier must produce relevant records to the PCT within 14 days of a request being made in respect of

- (a) any specific voucher or
- (b) all vouchers,

which the supplier is seeking to redeem or has redeemed in the two years prior to the request being made to see records. This obligation takes effect from the date that the Determination comes into force (see separate guidance on these regulations).

Patient information

Contractors are required to ensure that there is displayed in a prominent position in its practice premises, in a part to which patients have access an information notice supplied or approved by the PCT. Details are at Schedule 1, Part 4, para 15.

Provision of and access to information: PCT

Schedule 1, Part 4, para 16 requires that the contractor, at the request of the PCT, produce to the PCT or a person authorised in writing by the PCT information that is reasonably required by the PCT. This relates to information in connection with the contract and any other information, which is reasonably required in connection with the PCT's functions. The information covered by this duty includes the contractor's GOS patient records.

The Regulations specifically refer to information that is "reasonably required" and the law requires that PCTs have regard to this in framing any requests; otherwise their requests may be challenged by the contractor.

Notification to the PCT

Schedule 1, Part 4, para 16 requires that in addition to any requirements of notification elsewhere in the Regulations, the contractor shall notify the PCT, as soon as reasonably practicable, or—

- (a) any serious incident that, in the reasonable opinion of the contractor, affects or is likely to affect the contractor's performance of its obligations under the contract; or
- (b) any circumstances which give rise to the PCT's right to terminate the contract under Part 7 of this Schedule.

Here a "serious incident" is intended to mean something, which might prevent the service from being delivered.

Entry and inspection by the PCT

Schedule 1, Part 4, para 22 requires the contractor to allow persons authorised by the PCT to enter and inspect the practice premises at any reasonable time. This requirement is subject to reasonable notice having been given, written evidence of the authority of the person seeking entry is produced to the contractor on request and entry is not made to any premises or part of the premises used as residential accommodation without the consent of the resident.

Entry and inspection by Local Involvement Networks (LiNKs) and others

Schedule 1 paragraphs 20 and 21 also require the contractor to comply with regulation 3 of the Local Involvement Networks (Duty of Services-Providers to Allow Entry) Regulations 2008 in

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so far as it applies to the contractor. This replaces the right of members of Patient's Forums to enter and inspect the practice premises.

The contractor is also required to allow any person who has a legal right to enter and inspect the practice premises to do so.

Complaints

Complaints procedure

Paragraphs 22-27 set out in detail the requirements for: NHS complaints procedures for services contracted for; the making of NHS complaints under these procedures; the period for making NHS complaints; further requirements for NHS complaints procedures; co-operation with investigations; and provision of information about complaints under these procedures.

Dispute resolution

Paragraphs 28-32 set out in detail requirements in relation to disputes whether involving NHS contracts or non-NHS contracts.

Applications for a contract

Schedule 3 sets out requirements in relation to applications for a contract. These apply to applications for contracts whether for mandatory or additional services.

For the transitional period contractors on the ophthalmic list, apart from those included by virtue of a “grandfathering” agreement do not need to apply for a contract, but, as a continuing duty from the General Ophthalmic Services Regulations (Schedule 1, Terms of Service, 6(A), 7(2) and 8(4) of the GOS Regs) which is carried forward into these regulations must, as well as notifying the PCT that they wish to have a contract, also supply any information in this Schedule which it has not already provided to the PCT or which has changed.

If the necessary information has been provided and there have not been any changes then a simple confirmation is all that is required.

If they have not done so, corporate opticians need also to provide PCTs with the names of their company secretary, chief executive and directors and (if this has not been done already) to complete a declaration as to criminal convictions etc in respect of them.

Also, PCTs should be aware that in many cases there will be partnerships where there is more than one partner who appears on the ophthalmic list. Obviously, only one contract is required with a partnership.

Variation of contracts

Paragraphs 33-47 set out requirements relating to variation and termination of contracts. The Regulations provide different requirements depending on who the contract is with i.e. contracts with individuals, partnerships, corporate bodies etc.

As a general rule, no amendment or variation can have effect unless it is in writing and signed by or on behalf of the PCT and the contractor.

Exceptions to this are where it is necessary to vary the contract in order to comply with the NHS Act, any Regulations made under that Act or any direction given by the Secretary of State pursuant to the Act. In such cases the PCT must notify the contractor in writing of the variation and the date from which it takes effect. Where it is reasonably practicable to do so the notice given should not be less than 14 days.

Similarly, the PCT must vary the contract if it has been given notice by the contractor that he intends to change to work in a partnership and then the variation may only be to the extent necessary to reflect the change in status of the contractor from an individual to a partnership.

Late payment notices

Under section 40, the Regulations allow a contractor to issue a “late payment notice” to the PCT if the PCT has failed to make payments due to the contractor in accordance with the contract. Section 43 sets out processes, by which in such circumstances the contractor may terminate the contract.

Sections 41-47 set out requirements and procedures in relation to termination of contracts. Contracts may only be terminated as set out in this part of the Regulations and in paragraph 20(3), which applies when a new director, chief executive or secretary is appointed to a business who does not meet the requirements of Regulation 4 and whom the company does not remove.

The twenty eight day period referred to is intended to allow the issue to be resolved. PCTs should also note that removing the individual in question pending a decision is acceptable without the need for termination. This allows for the possibility that information may be provided which satisfies the PCT outside the twenty eight day period and removes the necessity for dismissal where there may be some doubt.

Sections 48-50 cover contract sanctions, dispute resolution procedures and termination and dispute resolution.

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Insurance: negligent performance and public liability

The Regulations set out the insurance against liability that contractors are required to hold.

Gifts

The Regulations set out requirements to hold a register of gifts from patients above a specific value.

Compliance with legislation and guidance

The Regulations make it a clear duty to comply with all relevant legislation and to have regard to all relevant guidance issued by the PCT, the relevant Strategic Health Authority or the Secretary of State.

Signing of documents

The Regulations set out requirements in relation to signing of documents.

Additional Services

Contents of the contract

The Regulations set out

- those parts of the required content of a contract which do not apply in the case of providers of additional services and
- additional content which additional services contracts must contain.

Recording of details

In addition to complying with the requirements of paragraph 1 of Schedule 1, the contractor shall record on the sight test form the reason given by the patient, or on his behalf, for—

- (a) not being able to leave home unaccompanied; or
- (b) if the reason the patient is entitled to the provision of mobile services is other than that in (a), that reason.

Eligibility for additional services is set out in the Primary Ophthalmic Services Regulations 2008. The contractor must be satisfied that the reasons provided are consistent with the eligibility requirements.

Provision of information

Contractors providing additional services are required to compile a Patient Information Leaflet with the content set out in Schedule 4 to the Regulations and review that leaflet annually. The leaflet is to be made available to patients and prospective patients.

Inspection of premises where additional services are being provided

Inspection requirements set out in the Regulations for optical practices apply to the locations where mobile services are being provided.

Facilities and equipment

Contractors are required to provide such facilities and equipment to enable it properly to perform mobile services i.e. sight tests carried out under section 26 of the Opticians Act and the relevant regulations under this Act at specified locations other than practice premises. This will mean that the equipment should allow the completion of a sight test with comparable clinical standards to those which would be expected in a fixed practice.

The Regulations also allow for inspection of facilities and equipment during an inspection or at any reasonable time subject to reasonable notice being given.

Notice of provision of additional services

The Regulations set out specific requirements for notification of provision of the service. These requirements apply to all providers of mobile services who have contracts with the PCT. Contractors may provide additional services only in accordance with the Regulations which include notification requirements.

The contractor may only provide additional services if an eligible person (set out in the Primary Ophthalmic Services Regulations 2008) has requested the contractor to provide those services to him, or, where the eligible person is incapable of making such a request, a relative of his, a primary carer of that eligible person or a duly authorised person has made such a request; and has complied with the notification requirements.

Contractors are required to notify the PCT of its intention to provide additional services—

- (a) where they are to be provided to three or more eligible persons at a day centre or residential centre, at least 3 weeks and not more than 8 weeks in advance of that provision; or
- (b) in any other case, not more than 8 weeks, but not less than 48 hours (except that no part of a Saturday, Sunday or bank holiday shall count towards that period of 48 hours) before that provision, identifying the persons to whom the services are to be provided and specifying the date and approximate time when it will provide them.

If the contractor wishes to change any of the matters of which it has notified the PCT, it shall notify the PCT at least 48 hours (except that no part of a Saturday, Sunday or bank holiday shall count towards that period) before—

- (a) if it wishes to provide additional services to further or different persons, that provision;
- (b) if it wishes to change the date or time of the provision of those services, both—
 - (i) the previously notified date of that provision, and
 - (ii) if the notification is to change the date, the date so notified.

Where a contractor wishes to change a notified date the PCT must be satisfied that the original notification was genuine and the change unexpected. If the PCT is not satisfied and believes that there was no intention to carry out the sight tests on the originally notified date then they should refuse to accept the change and so notify the contractor.

If the contractor is unable to attend the place at which it has notified the PCT that he would be attending, it may instead, on that day and at that approximate time, provide additional services at another location (“the substitution”), provided that the PCT notifies the contractor that the PCT agrees to the substitution.

In such a case the contractor may attend and provide additional services at the originally notified place at such time as the PCT shall agree.

In a case where circumstances have arisen whereby it was not possible to notify in accordance with regulations, the contractor may provide additional services to up to 3 other eligible persons at the previously notified time and place.

Improper inducements and advice

The offer of inducements, excepting discounts or special offers available to patients, to use the additional services provided by the contractor are prohibited. Offers made directly to patients are not affected by this.

In particular, contractors must not offer any inducement, directly or indirectly, to the proprietor, manager or staff of a residential home or day centre to secure business for the contractor at that home or day centre. Whilst offers to patients are legitimate, in the same way as they would be if they attended a high street practice, offers to third parties who may seek to compel or influence patients are not.

To be a prohibited inducement, an offer to a third party needs to be intended to secure business for the contractor at the home or day centre.

If a company makes an offer to a care home which is unconnected with the securing of business then that might be legitimate even if subsequently the contractor does secure business at the home or day centre. However, the PCT will have to determine this in relation to the facts of particular cases and be satisfied there is genuinely no connection between making the offer and seeking the business.

Patients are entitled to choose their own contractor from amongst those who have a contract to provide additional services in the area. Hence any agreements between care home chains and GOS contractors for that contractor to provide services to the chain must be subject to the patients' rights.

Advice, including advertising, to patients about services available under the contract that is misleading, for example about eligibility, is also prohibited under this regulation. Further guidance on mobile services can be found in the guidance on the Primary Ophthalmic Services Regulations.

Patient Information Leaflet

Schedule 4 sets out requirements for the content of the Patient Information Leaflet required to be compiled by contractors providing additional (mobile) services.