Department of Health

Guidance on National Health Service (Performers List) Amendment Regulations 2008

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Executive summary

This document provides guidance and best practice advice to Primary Care Trusts on the National Health Service (Performers Lists) Amendment Regulations 2008. These regulations amend the National Health Service Performers Lists Regulations 2004 and introduce local performer lists for primary ophthalmic services.

The Regulations substantially mirror arrangements already in place for medicine and dentistry, and therefore the overall arrangements will be familiar to Primary Care Trusts.

Differences from the medical and dental arrangements include specific requirements in relation to Ophthalmic Medical Practitioners, who must be approved by the Ophthalmic Qualifications Committee before being included on an ophthalmic performers list (as is currently the case with the ophthalmic supplementary list). The regulations also allow student optometrists (pre-registration trainee) to apply to join a PCT list not less than three months before they anticipate being entered on the General Optical Council register. Students may not be entered onto the PCT list, but the intention is that their application is processed as far as possible so that, when they have qualified, there is a minimal waiting period before they are entered in the performers list. The Regulations include Transitional Provisions and guidance on the Transitional Provisions is provided in a separate guidance note.

The document provides general guidance on list management principles and the key concepts of efficiency, fraud and unsuitability, which are common with other NHS primary care services. It sets out processes for:

- Applications for inclusion in an ophthalmic performers list (including the right of students to apply not less than three months before they anticipate qualifying to minimise the time before a decision is made after they qualify) , including checks PCTs should make and grounds for refusal of admission whether mandatory or discretionary as well as processes for considering national disqualification;

- Processes for approval of Ophthalmic Medical Practitioners by the Ophthalmic Qualifications Committee, which is, required for inclusion in an ophthalmic performers lists (as it is currently for inclusion in an ophthalmic supplementary list);

- A requirement for Enhanced Criminal Records certificates for new applicants to go onto an ophthalmic performers list NB this does not apply to those already on an ophthalmic supplementary list and future directions will cover a catch-up exercise;

- Removal from the Performers List and Restrictions on Continued Inclusion, including grounds for Removing an Optometrist or ophthalmic medical practitioner from the Performers List whether on mandatory or discretionary grounds and processes for considering national disqualification;

- Suspension of a practitioner, including payments to suspended practitioners;
- Investigations, hearings, appeal rights and processes and duty to notify relevant bodies are described and guidance provided on best practice; and
- processes for applying for and reviewing national disqualifications are set out.

The guidance explains what is required by the regulations and is intended to help Primary Care Trusts operate in accordance with the regulations.

1. Introduction

Scope of this advice

General

1.1 This advice is primarily for Primary Care Trusts (PCTs) on managing their primary ophthalmic services performers lists, including admission of optometrists and ophthalmic medical practitioners (OMPs) to the lists, conditional admission of optometrists and OMPs to the lists, suspension, contingent removal of optometrists and OMPs from the lists, and optometrists and OMPs' disqualification for inclusion in any list.

1.2 It is not a substitute for the provisions in the NHS (Performers Lists) Regulations 2004 nor the NHS (Performers Lists) Amendment Regulations 2008 and should not be seen as such. Any decisions taken by PCTs must comply with the provisions in the Regulations. The decisions should also refer to the Regulations when that is appropriate.

1.3 The regulations and this advice apply to all optometrists and ophthalmic medical practitioners who are, or who apply to become, primary ophthalmic services performers. An optometrist/OMP must be listed on a Primary Care Trust Ophthalmic Performers List in order to conduct NHS sight tests under a General Ophthalmic Services contract. This applies whether a practitioner is a general ophthalmic services (GOS) contractor, an optometrist or OMP who has been engaged or employed by a contractor/provider to perform the services (whether directly or via some other body or agency), or a practitioner who is employed to perform the services by a PCT.

1.4 Each optometrist /OMP can only be on one PCT's list. However that listing allows him to perform as a primary ophthalmic services performer in any PCT area in England.

1.5 This advice describes procedures that apply in England only. Following the provisions of the law, references to "he" or "him" include "she" or "her", and so on. Any reference to notification of decisions means notification in writing and includes electronic notification.

2. Aim of the Arrangements

2.1 The NHS (Performers Lists) Regulations provide a framework within which PCTs can take action if an optometrist's/OMP's personal and/or professional conduct, competence or performance gives cause for concern.

2.2 Protection of patients should be the overriding consideration when considering whether an individual should be admitted to a list, suspended or removed from a list, whether restrictions should be placed on a performer's position on a list, or whether the performer should be excluded from all lists (disqualification).

3. The Quality Background

3.1 In the past there had been concerns about the way in which the NHS handled issues involving practitioners' suitability, efficiency and probity. Evidence from a number of very serious cases (most notably, but not exclusively, that of Harold Shipman) indicated that there were shortcomings in the way that quality issues were addressed in primary care, and in the processes available for dealing with them. In August 2000, the NHS Plan proposed that PCTs should be responsible (and accountable) for the formal processes.

3.2 Following passage of the primary legislation necessary to amend the 1977 NHS Act, regulations were made as part of a phased programme to bring all general ophthalmic services practitioners within a statutory PCT list management framework. This was done by means of amendments to the NHS (General Ophthalmic Services) Regulations 1986. The amendments were made by the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services Amendment and Consequential Amendment) Regulations 2005.

3.3 However the Health Act 2006 further amended the 1977 NHS Act in a way that permitted a single list of practitioners performing primary ophthalmic services to be established in each PCT. The NHS (Performers Lists) Amendment Regulations laid down that this would happen on 1 August 2008. Copies can be found on http://www.dh.gov.uk/

3.4 Some PCTs delegate responsibility for managing list management processes to support services organisations. Where this happens the support services organisation has management accountability to the PCT for its work. However legal responsibility and accountability for decisions to include, refuse to include, conditionally include, contingently remove, review conditions, remove and suspend practitioners' rests with PCTs. Such decisions should always be taken by PCTs.

Quality Improvement Initiatives

3.5 The National Patient Safety Agency (NPSA) is developing non-punitive and anonymous reporting and learning systems for patient-related adverse events, near misses and medical errors.

3.6 The National Clinical Assessment Authority (NCAA), in respect of doctors and dentists at present, is helping PCTs find ways of identifying poor performance early, before harm comes to patients, and is providing objective assessments of the nature and seriousness of problems and the steps that might be taken to address them.

3.7 PCTs are advised to contact and consult the NCAA as early as possible when action is being considered in any case involving clinical performance or competence by a doctor engaged in primary ophthalmic services just as they would for one engaged in primary medical services. They should also keep in regular touch with the NCAA whilst a case is progressing. The early intervention and continuing involvement of the NCAA is intended to help PCTs maintain momentum when dealing with performance or competence concerns and so reduce the numbers of practitioners who need to be suspended for these reasons. Most cases can be managed locally with the NCAA's help. See the Investigations section for more about involving the NCAA.

3.8 PCTs are already required to notify the NCAA of all decisions they take to refuse to admit or conditionally admit doctors to their lists, and to suspend, remove or contingently remove doctors from their lists and of optometrists in respect of supplementary lists. In individual performance or competence cases, except where immediate suspension is necessary to protect patients, any PCT that has not already involved the NCAA in attempting to resolve the case is advised to contact it before suspending a doctor or applying any of the sanctions available under the Performers Lists Regulations.

4. Equality and Fairness

4.1 There is no place for discrimination on grounds of gender, faith, race, disability, age or sexual orientation in the operation of any of the procedures dealt with in this document. No person should be treated less favourably than anyone else would be treated in the same or similar circumstances.

4.2 Every case should be dealt with according to individual circumstances. The utmost care should be taken to avoid any risk of imposing preferences or prejudices, or of targeting the performance of individual performers because they appear to the PCT, or to PCT staff, to fit a stereotype. This is particularly important in the content of decision-making based on grounds of “suitability” and “efficiency”.

4.3 Any decisions taken by PCTs need to be procedurally robust. They will want to ensure that their decisions are likely to be held to be lawful if they come under judicial scrutiny. PCTs that act inappropriately may well find their decisions overturned if a practitioner appeals to the Family Health Services Appeal Authority (FHSAA) and may be vulnerable to other legal challenge.

5. Involving the Local Optical Committee (LOC)

5.1 Local arrangements need to command the confidence of practitioners locally. Although the law does not compel PCTs to consult LOCs on these matters, it would be good practice to do so, though care must be taken to protect practitioners rights to confidentiality in relation to any particular case. PCTs are likely to find that involving LOCs will help to publicise the local procedures within the profession, and to develop them, in a way that maintains their confidence.

5.2 LOCs are likely to have views on how the local panels dealing with efficiency, suitability and fraud issues might be constituted and operated. They may be able to identify sources of professional advice that will have the confidence of clinicians. Where ill-health may be the cause of poor performance, the LOC's networks may be able to offer support to the optometrist (and Local Medical Committee's to OMPs), and to take responsibility for alerting the PCT if the optometrist (or OMP) is refusing help and putting patients at risk.

GENERAL

6. Local Regulation

6.1 The effect of the 1977 NHS Act and the NHS (Performers Lists) Amendment Regulations 2008 is to allow PCTs to regulate the performance of primary ophthalmic services. Formally, this means that PCTs have the power to prevent an optometrist or OMP from performing the services, or to place restrictions (conditions) on an optometrist or OMP with which he is obliged to comply.

6.2 Since an optometrist/OMP must be on a PCT Performers List to perform services for patients, a PCT will do this by:

- Refusing to admit the practitioner to its list
- Placing the practitioner on its list subject to conditions
- Removing the practitioner's name from its list
- Contingently removing the practitioner's name from its list (that is, permitting the optometrist's/OMP's name to stay on its list only if he agrees to follow, and then observes, the PCT's conditions)

6.3 A PCT can also suspend the optometrist's/OMP's name from its list and so prevent him from performing the services, if this is necessary to protect the public or is otherwise in the public interest, whilst:

- The PCT itself investigates whether the optometrist's/OMP's name should be removed or contingently removed from its list
- Investigations and/or proceedings by regulatory bodies or the police are under way
- Awaiting the outcome of an appeal the optometrist/OMP has made to the FHSAA against the PCT's decision to remove (or contingently remove) his name from its list

7. Grounds for action

7.1 PCTs may take decisions on three different grounds. These are set out in section 49F of the 1977 NHS Act. They are:

- Efficiency
- Fraud
- Suitability

7.2 Clearly these grounds can overlap, or decisions may be taken on the basis of more than one ground. Although this advice is not intended to restrict the circumstances in which any one or more of the grounds may be used, the following notes may help indicate when each might be appropriate. PCTs could also refer to the FHSAA's web-site, and the decisions published there. The site is at http://www.fhsaa.nhs.uk/fhsaa/index.html. But PCTs should note particularly that these decisions simply reflect the circumstances of particular cases that the FHSAA has dealt with on appeal. They should not therefore be taken automatically as precedents for the approach a PCT should take to the handling of an individual case, however ostensibly similar they may seem.

7.3 Whatever ground may be appropriate, when considering or making decisions about an optometrist's/OMP's inclusion or conditional inclusion in a list, or an optometrist's/OMP's suspension, removal or contingent removal from a list, PCTs should take account of good Human Resources practice and seek advice from Human Resources advisers whenever appropriate.

"Efficiency"

7.4 These grounds may be used when the inclusion of the optometrist/OMP on the PCT's list could be "prejudicial to the efficiency of the service" that is performed. Broadly speaking, these are issues of competence and quality of performance. They may relate to everyday work, inadequate capability, poor clinical performance, bad practice, repeated wasteful use of resources that local mechanisms have been unable to address, or actions or activities that have added significantly to the burdens of others in the NHS (including other health professionals).

7.5 An example of what could be classed as inadequate capability and poor clinical performance is included at Annex E. However, PCTs are recommended strongly to obtain appropriate clinical advice (including NCAA advice in the case of OMPs) in all such cases.

"Fraud"

7.6 "Fraud" is not defined in law but there is a common understanding as to its definition. It happens when someone has obtained or attempted to obtain resources to which

they are not entitled. Fraud may involve the misappropriation (or attempted misappropriation) of NHS resources for personal gain or the gain of others.

7.7 Providing that there are sufficient substantiated facts to satisfy a PCT that a person has secured (or attempted to secure) financial or other benefits for himself or others, and that person knew that he had no such entitlement, a criminal conviction is unnecessary.

7.8 The outcomes of fraud investigations can be far from clear-cut. PCTs should consider the possible implications of any findings, or of any professional disciplinary action, civil or criminal sanctions that might be imposed. The Department would always expect a practitioner to declare the outcome of any professional, civil or criminal sanctions to his PCT.

7.9 An outline of the work of the NHS Counter Fraud and Security Management Service (CFSMS) is provided at Annex F.

"Suitability"

7.10 "Suitability" as a ground for action could be relied on where:

- It is a consequence of a decision taken by others (for example, by a court, by a professional regulatory body, or the contents of a reference)
- There is a lack of tangible evidence of an optometrist's/OMP's ability to undertake the performer role (for example, satisfactory qualifications and experience, essential qualities)

7.11 The term is used with its everyday meaning and so provides PCTs with a broad area of discretion. Suitability and efficiency grounds may overlap (as indeed may fraud) and in many cases a PCT may find itself able to take action against an optometrist/OMP under either ground. It is unlikely that a PCT would be accused of acting wrongly by using efficiency grounds to remove an optometrist/OMP who had been convicted of serious violence, or by using unsuitability as a ground for removing an optometrist/OMP who had defrauded the NHS. PCTs should also consider if it might be appropriate to rely on both grounds in the alternative.

8. List Management and GOS Contract Disputes

8.1 The steps PCTs may take under the Performers Lists Regulations to regulate the performance of primary ophthalmic services are quite distinct from the arrangements they have for ensuring that GOS contractors comply with their contracts to provide services. The two systems should not be confused.

8.2 Nevertheless, concerns about individual optometrist's/OMP's performance of the services may sometimes raise questions about the way in which the services are provided. It is irrelevant whether the optometrist/OMP who performs a service also provides it as a contractor or provider or – if so – whether that optometrist/OMP practices alone or in partnership. PCTs may take parallel action to investigate issues of efficiency, probity and/or suitability issues in relation to the performer (under the Performers Lists Regulations), and any issues relating to the provision of the service by the contractor or provider (under the GOS Contracts Regulations 2008). When parallel investigations are necessary, care should be taken to keep the issues separate and to make the reasons for the investigations clear to the subjects of the investigations.

9. Annual Census Information

9.1 Statistical information about the decisions PCTs have taken under the Performers Lists Regulations is collected annually. PCTs should keep records of the decisions they take in the following categories:

- Mandatory and discretionary decisions to refuse to include practitioners in their list (separated into grounds of fraud, unsuitability, and efficiency. In cases where more than one ground has been relied on, the main ground should be used)
- Conditional inclusion decisions
- Deferred applications
- Removals (separated into grounds of fraud, unsuitability and efficiency, as above)
- Suspensions

9.2 Maintaining these records is quite distinct from the obligation PCTs have to notify the Secretary of State (a function performed by the National Health Service Litigation Authority (NHSLA)), the NCAA and others formally, whenever they take decisions under the Regulations about individual performers.

APPLICATIONS FOR INCLUSION ON A PERFORMERS LIST

10. Information an optometrist/OMP must provide – Regulations 4(1), 4(2) and 23(1)

General

10.1 Optometrists/OMPs who want to join a Performers List must apply in writing to a PCT in whose locality they intend to perform services. They need to include a range of information and copies of evidence about their qualifications, registration and experience. A list of the information needed can be found at Annex A.

Optometrists in Training

10.2 A student optometrist (pre-registration trainee) may apply to join a PCT list not less than three months before he anticipates being entered on the General Optical Council register. The student may not be entered onto the PCT list, but the intention is that their application is processed as far as possible so that, when they have qualified, there is a minimal waiting period before they are entered in the performers list.

10.3 On qualification, the optometrist must register with the General Optical Council for entry onto the Optician's Register before they can practise at all. Subject to the other checks etc having already been satisfactorily completed and this being done and confirmed to the PCT which the student had applied to, the optometrist could then quickly be added to the PCT's list and begin working as a performer.

11. Consents, Declarations and Undertakings – Regulations 4(3), 4(4) and 23(2) and 23(3)

11.1 Applicants must also include a series of consents, undertakings, declarations and a certificate. A list of these is also set out in Annex A.

11.2 The declarations are intended to ensure that an optometrist/OMP applying to join a list provides sufficient information about his past and career to allow the PCT to take an informed and defensible decision about whether to admit the optometrist/OMP to its list. For this reason, the Regulations permit a PCT that considers it has insufficient data on which to base a decision to seek any additional information it reasonably requires in order to reach one.

11.3 The undertakings commit an optometrist/OMP to notify the PCT within seven days of any material change to the information and declarations he has provided (for example relating to criminal or regulatory body investigations).

11.4 From 1 August 2008, an optometrist/OMP (general medical practitioners have been required to do this since 1 April 2004 and dentists since 1 April 2006)) must also undertake to register certain gifts (regulation 23(2)(c) and 23(2)(d). GOS contractors are now required to keep a register of all gifts they and their staff receive from patients or their relatives that have a value (or estimated value) of more than £100. The Performers Lists Regulations require performers to notify their contractor if they or their spouse receives such a gift so that it can be noted in the register. For this purpose "spouse" includes any person – whether or not of the opposite sex - with whom the performer has a relationship equivalent to that of husband and wife. Where a performer is employed by the PCT, the employment contract should specify what gifts should be reported to the PCT (and the employment arrangements may specify the current arrangements that apply to NHS staff).

12. Ophthalmic Medical Practitioners

12.1 The Regulations set out the prescribed qualifications and experience, which a medical practitioner must possess if he is to be recognised as an ophthalmic medical practitioner. Decisions on whether a medical practitioner meets these requirements are for the Ophthalmic Qualifications Committee and only medical practitioners with that Committee's approval are able to be recognised as ophthalmic medical practitioners. A medical practitioner must apply to the Committee for approval and have received and be able to produce a letter of approval from the Committee before applying to be entered onto a PCT Ophthalmic Performers List.

12.2 Medical practitioners who are dissatisfied with the decision on their application by the Ophthalmic Qualifications Committee may apply, within one month of the Determination being notified to the applicant (or a longer period if the Secretary of State has allowed), to the Secretary of State to appeal the decision. The appeal should state the facts and contentions on which the medical practitioner is relying in making their appeal. The Regulations set out the process to be followed in appointing an appeal committee and considering the appeal and notifying the appellant of the decision.

13. Assessment of Applications by PCTs

13.1 Each PCT is responsible for ensuring that any optometrist/OMP it admits to its Performers List has the necessary clinical skills and experience to perform primary ophthalmic services. Assessment of each application should take into account the information and declarations made by the optometrist/OMP, any additional information provided by the optometrist/OMP, and any other information that the PCT has in its possession that it considers relevant. It should be based on the following criteria:

- Whether the optometrist/OMP is suitably qualified
- Whether the optometrist/OMP is suitably experienced
- Whether the optometrist/OMP is an appropriate person to deliver health care and treatment to the PCT's patients
- Whether the optometrist/OMP is free from regulatory body sanctions, PCT suspensions or national disqualification

13.2 There are no age limits on entry to, or remaining on a primary ophthalmic services performers list.

13.3 All optometrists must be on the register of the General Optical Council (GOC).

13.4 All OMPs must be on the register of the General Medical Council (GMC) and have been approved by the Ophthalmic Qualifications Committee (see paragraph 12 above).

14. Checks that should be performed by PCTs

General

14.1 PCTs should check:

- that the optometrist/OMP is on the relevant register and has any necessary approvals
- Whether the optometrist/OMP is on another PCT list and, if so, that he has given notification that he intends to withdraw from that list (NB an optometrist/OMP can only be on one PCT performers list)
- That the information provided by the optometrist/OMP is correct
- Details of the optometrist's/OMP's employment/partnership history
- References

14.2 Good HR principles and practice should be followed. For example, an occupational health check should be sought where necessary.

Checking References

14.3 References should be from referees who are willing to provide references in respect of two recent posts (which may include any current post or a current/recent partner in practice) as an optometrist/OMP that lasted at least three months without a significant break. As these are clinical positions the norm would be for the references to be clinical references. However, there will be cases where the applicant cannot meet this requirement. For example, newly qualified practitioners or those who may have worked single handedly for long periods. Where the Primary Care Trust is satisfied that an optometrist/OMP cannot meet the normal conditions it may accept other references in judging the application. For example, a newly qualified practitioner may get a reference from one of his tutors and a single-handed practitioner moving to another area may provide a reference from the PCT that he is listed with.

14.4 If a Primary Care Trust decides to ask the referee to complete a pro-forma, as opposed to a freestyle reference, it is recommended that they first discuss the content with the Local Optical Committee to establish that the pro-forma is fit for purpose.

14.5 Many Primary Care Trusts will have developed best practice Human Resource processes in connection with the admission of an optometrist/OMP to the ophthalmic list/performers list. These might include, for example, occupational health checks, immunisation status checks, child protection checks etc. Nothing in this advice should be seen as preventing a Primary Care Trust implementing similar good practice in relation to the performers list. However, any results from such checks can only be relevant if they are within the ambit of the grounds for refusal outlined above.

14.6 If initial references are not satisfactory, it is for individual PCTs to agree whether further references should be sought. However, in an individual case, it would not be good practice for PCTs to pursue references indefinitely on the off chance that one will eventually be satisfactory.

CFSMS Checks

14.7 PCTs are obliged to contact the NHS Counter Fraud and Security Management Service Division (CFSMS) of the National Health Service Business Service Authority to check for details of any past or outstanding fraud investigation

NHSLA Checks

14.8 PCTs are also obliged to make checks of the NHSLA for any current or past refusals to admit, conditional admissions, suspensions, removals, contingent removals or disqualifications. The procedure for approaching the NHSLA is set out in Annex H.

Criminal Record Bureau (CRB) Checks

14.9 From 1 August 2008 any optometrist/OMP applying to join a Performers List must provide an enhanced criminal records certificate. A certificate is required for all new applicants for the list. For those who are automatically being transferred to a performers list from the existing ophthalmic and ophthalmic supplementary lists there is no action at this time. Directions and guidance will be issued in future in respect of these individuals. PCTs have to be registered by the CRB in order to be entitled to countersign the optometrist's/OMP's application for a certificate (which they need to do in order to receive a copy of the enhanced certificate). In order to register the PCT will be required to keep to a strict Code of Practice. The Code of Practice is available from the CRB or via its web-site at www.crb.gov.uk

14.10 The cost of registration is currently £300. This also covers registration of the lead counter-signatory of the applications. If a further counter-signatory is to be included within the registered body, a further fee (currently £5) has to be paid.

14.11 The cost of an application for an enhanced certificate is currently £36 and the application is made by the PCT. This cost should be borne by the PCT, not by the optometrist/OMP.

14.12 As at present, PCTs may also ask an individual optometrist/OMP who is already on its performers list to supply an enhanced certificate if they have reasonable cause (regulation 9(4)).

General Optical Council (GOC) Checks

14.13 PCTs should always check that optometrists/OMPs who apply for admission to the performers list are fully registered optometric or medical practitioners included in the Optical or Medical Register. They must also check the optometrist's/OMP's registration number in the Optical or Medical Register. This can be done through the GOC website at www.optical.org or the GMC website at www.gmc-uk.org. The applicant is asked to provide the date of his first registration but PCTs are not expected to check that, unless they think it is suspicious or otherwise requires verification.

14.14 Applications for admission include consent for the GOC/GMC to release information about the optometrist/OMP, such as decisions of the GOC/GMC's fitness to practise committees. It is open to a PCT to enquire of both an optometrist/OMP and the GOC/GMC about medical history that may be relevant. Note however that the GOC/GMC will not normally release information on the reasons for decisions that it takes on health grounds.

Significant Breaks in Career History

14.15 It is expected that PCTs will consider any significant breaks in career history and whether any retraining may be necessary. Maternity/paternity leave and study leave are not included. If a PCT has concerns it needs to address further enquiries to the optometrist/OMP or any former employer.

15. Grounds for Refusal to admit an optometrist/OMP to the Performers List – Regulation 6

15.1 Certain grounds for refusing an optometrist/OMP admission to the Performers List are mandatory. Others are discretionary. A list of the grounds can be found at Annex C.

Mandatory Refusal – Regulation 6(2) and 24(2)

15.2 There is no right of appeal against mandatory refusal to admit an optometrist/OMP to a Performers List, but the decision can be challenged through judicial review.

Discretionary Refusal – Regulation 6(1) and 24(1)

15.3 In other cases PCTs may use their discretion to refuse admission to optometrists/OMPs who apply to join their lists. Decisions can be made on grounds of suitability, efficiency or fraud. Such decisions must take into account the information and declarations provided by the optometrist/OMP with his application and any other relevant factors of which the PCT is aware.

15.4 In reaching decisions, PCTs must take the following factors into account:

- The nature of any incident declared by the optometrist/OMP in the application, in terms of risk to the PCT's patients
- The nature and effects of any such incident in terms of the provision of primary
- ophthalmic services
- Whether the OMP has ever failed to comply with a request by a PCT for an
- assessment by the NCAA
- Whether the optometrist/OMP has previously failed to supply information, make a declaration or to comply with any undertaking required by the former General Ophthalmic Services Regulations, or other relevant regulations
- Information obtained from the NHSLA about decisions taken by other PCTs
- In fraud cases, the relevance of any investigation into any incident to the provision of primary ophthalmic services and the likely risk to public finances

Does a National Disqualification seem Justified?

15.5 If a PCT has decided to refuse to include an optometrist/OMP in its list – whether on mandatory or discretionary grounds – it may, if it considers the circumstances sufficiently serious, apply to the FHSAA for a national disqualification to be imposed on that optometrist/OMP. The effect of a national disqualification is to exclude the optometrist/OMP from all PCT lists. See the section on National Disqualification for more about this.

16. Consideration of Alternatives: Deferring a decision to include an optometrist/OMP – Regulation 7

16.1 PCTs can choose to defer taking a decision when there is an outstanding matter involving an optometrist/OMP that – if the outcome was adverse – would be likely to lead the PCT to remove the optometrist/OMP from its performers list if it had originally included him on it.

16.2 The word "likely" is crucial. PCT determinations to defer decisions on applications need to be evidence-based and factually robust. A PCT may only defer taking a decision until the outcome of the event or events that led them to defer that decision.

16.3 There is no right of appeal to the FHSAA against deferment. However, an optometrist/OMP whose application has been deferred can withdraw his application at any time. The optometrist/OMP can also reapply at any time. In the event of re-application, the PCT would be required to consider the application afresh.

Conditional Inclusion – Regulation 8

16.4 PCTs may consider that an optometrist/OMP can be included in their performers' lists subject to certain conditions. The aim of the conditions must be:

- To prevent any possible prejudice by the optometrist's/OMP's inclusion to the efficiency of primary ophthalmic services (the "efficiency" test)
- To prevent any attempt by an optometrist/OMP to secure for himself or another person any financial or other benefit to which they are not entitled (the "fraud" test)

16.5 If an optometrist/OMP fails to comply with any condition or conditions imposed by the PCT, the PCT may remove that optometrist/OMP from its performers list.

16.6 It should be noted particularly that an optometrist/OMP can not be conditionally included in a performers list if he does not satisfy the "suitability" test fully. The effect of the law is that a performer is either suitable or unsuitable. There are no degrees of suitability. So a PCT must refuse to admit an optometrist/OMP to its performers list if it decides that he does not meet the suitability criteria in full.

16.7 Conditional inclusion will also not be appropriate where an application has been deficient. A PCT may not – for example – admit an optometrist/OMP to its performers list on the condition that he provides evidence in support of his application within "x" or "y" months. Regardless of any case of urgency made out by the applicant or, on his behalf by a prospective employing contractor, if an application is deficient, the PCT must seek the further information required and consider it before making a decision whether or not to admit. If the PCT concludes that the optometrist/OMP has failed to

comply with any condition it has imposed, it can decide to vary the conditions, impose new conditions, or remove the optometrist/OMP from its list.

16.8 PCTs are entitled to review the conditions they impose when they consider it would be appropriate. Indeed they may, if they wish, set out a date on which they intend to review the conditions as part of an original decision. That might be appropriate if, for example, the original conditions relate to mentoring or working under supervision. On review a PCT may retain, vary or remove the conditions (or may conclude that removal from its list would be justified).

16.9 PCTs are obliged to review conditions if the performer asks in writing for a review as long as the request is made:

- No earlier than three months after the date on which the PCT imposed the conditions; or
- No earlier than six months after the date of any previous review

REMOVAL FROM THE PERFORMERS LIST AND RESTRICTIONS ON CONTINUED INCLUSION

17. General

17.1 Concern about an optometrist's/OMP's conduct or performance may come to light in a number of ways. For example as a result of:

- Concerns expressed by employers, other health professionals, health care managers and/or non-clinical staff
- Complaints about care from patients or from relatives of patients
- Information from licensing and regulatory bodies
- Information from the police

17.2 Lasting damage can be caused to an optometrist's/OMP's reputation and future career by unfounded and malicious allegations. Any and all allegations, including those made by patients or relatives of patients, or concerns expressed by colleagues, must be investigated properly to establish the facts.

18. Grounds for Removing an optometrist/OMP from a Performers list

18.1 Certain grounds for removing an optometrist/OMP from the Performers List are mandatory. Others are discretionary. A list of the grounds can be found at Annex C.

Mandatory Removal from a Performers List – Regulations 10(1), 10(2) and 26(1)

18.2 The Regulations set out the circumstances in which a mandatory removal must take place. PCTs have no discretion. They are obliged to act in these cases. There is no right of appeal against a mandatory removal from a Performers List, but the decision can be challenged by judicial review.

Discretionary Removal from a Performers List – Regulations 10(3) – 10(7)

18.3 PCTs have discretionary powers to remove optometrists/OMPs from their Performers Lists when this is necessary. The duty to protect patients must be the overriding factor in deciding what action is necessary.

18.4 Where the issues appear to be capable of resolution by remedial and/or supportive action – before patients are put at risk – formal removal action may not be appropriate. In such cases involving OMPs PCTs should consider involving the NCAA at the earliest possible stage.

18.5 Where there are serious concerns about a practitioner, a PCT will need to consider as a matter of urgency whether it needs to place temporary restrictions on their ability to perform the services. This may be by means of:

- Imposition of conditions (contingent removal) if the practitioner agrees to such restrictions
- Temporary exclusion from practice (suspension from the list) to protect patients or in the public interest

18.6 Nothing in the Regulations prevents a PCT from referring an optometrist to the GOC or to the police or an OMP to the GMC or to the police where the circumstances warrant it.

18.7 Discretionary removal must be decided on grounds of suitability, efficiency or fraud.

Discretionary Removal on Efficiency Grounds – Regulation 11(5) and 11(6)

18.8 If a PCT is considering removing an optometrist/OMP from its list on efficiency grounds, it should take into account any information it has received relating to criminal, professional regulatory or other investigations, proceedings and penalties; and any information held by the NHSLA about any past or current investigations involving or relating to the optometrist/OMP.

18.9 In reaching its decision, the PCT should go on to take into account the following (the list is not exhaustive):

- The nature of any incident that is considered to be prejudicial to the efficiency of the services performed by the optometrist/OMP
- Whether the OMP has ever failed to comply with a request from the PCT to co-operate with a NCAA assessment
- The nature of the incident or incidents in terms of risk to patients
- Whether the optometrist/OMP has failed – whether now or in the past - to make a declaration, supply information or comply with any undertaking required by the former General Ophthalmic Services Regulations, or other relevant regulations

Discretionary Removal on Fraud Grounds – Regulation 11(3) and 11(4)

18.10 A PCT that is considering removing an optometrist/OMP on fraud grounds will also need to take into account any information it has received relating to criminal, professional regulatory or other investigations, proceedings and penalties; and any information held by the NHSLA about any past or current investigations involving or relating to the optometrist/OMP.

18.11 In reaching its decision it should go on to take into account:

- The nature of the incident, deception or fraud, and
- The relevance of the incident to the provision of primary ophthalmic services and the actual or likely risk to public finances

Discretionary Removal on Suitability Grounds – Regulation 11(1) and 11(2)

18.12 If a PCT is considering removing an optometrist/OMP because it believes him to be unsuitable, it will also need to take into account any information it has received relating to criminal, professional or other investigations, proceedings and penalties; and any information held by the NHSLA about any past or current investigations involving or relating to the optometrist/OMP.

18.13 In reaching a decision the PCT should take the following into account:

- Whether there are any criminal offences to be considered
- Any penalty imposed as a result of any criminal conviction, or the outcome of any GOC, GMC or other investigation

- The relevance of any criminal offence or any GOC, GMC or other investigation and the likely risk to patients
- Any sexual offences
- Whether any criminal offence was a sexual offence to which Part 1 of the Sexual Offences Act 2003 applies, or would have applied had the offence been committed in England or Wales

Does a National Disqualification seem Justified?

18.14 If a PCT has decided to remove an optometrist/OMP from its list – whether on mandatory or discretionary grounds – it may, if it considers the circumstances sufficiently serious, apply to the FHSAA for a national disqualification to be imposed on that optometrist/OMP. Note that the GOC and GMC always take a serious view of dishonesty on the part of an optometrist or OMP. The effect of a national disqualification is to exclude the optometrist/OMP from all PCT lists. See the section on National Disqualification for more about this.

Contingent Removal from a List – Regulation 12

18.15 Contingent removal enables a PCT to take action to protect patients without removing an optometrist/OMP from its list. Conditions are imposed on the optometrist's/OMP's continued inclusion on the list to:

- Prevent any prejudice to the efficiency of the services (in an "efficiency" case), or
- To prevent any attempt by an optometrist/OMP to secure for himself or another person any financial or other benefit to which they are not entitled (in a "fraud" case).

18.16 In efficiency cases the conditions imposed might address poor performance or clinical shortcomings by requiring additional training or supervision in a particular area of practice. Where there has been previous fraud or dishonesty, the conditions might limit the optometrist/OMP's direct access to public funds or require the making of additional checks on claims. These examples are not of course exhaustive.

18.17 If the optometrist/OMP fails to agree to comply with the conditions, the PCT may remove the optometrist/OMP from its Performers List.

18.18 If the PCT concludes that the optometrist/OMP has failed to comply with any condition it has imposed, it can decide to vary the conditions, impose new conditions, or remove the optometrist/OMP from its list.

18.19 PCTs are entitled to review the conditions they impose when they consider it would be appropriate. Indeed they may, if they wish, set out a date on which they intend to review the conditions as part of an original decision. That might be appropriate if, for example, the original conditions relate to mentoring or working under supervision. On review a PCT may retain, vary or remove the conditions (or may conclude that removal from its list would be justified).

18.20 PCTs are obliged to review conditions if the performer asks in writing for a review as long as the request is made:

- No earlier than three months after the date on which the PCT imposed the conditions; or
- No earlier than six months after the date of any previous review

18.21 Contingent removal cannot be imposed in a “suitability” case. The effect of the law is that an optometrist/OMP is either suitable or unsuitable. There are no degrees of suitability. So a PCT must remove an optometrist/OMP from its performer list if it decides that he fails to meet the suitability criteria in full.

SUSPENSION

19. General

19.1 Suspension is a neutral act, not a disciplinary sanction, and the PCT must be satisfied that it is necessary to suspend the performer for the protection of members of the public or otherwise in the public interest. Suspension is intended to protect the interests of patients, staff and the performer who is suspended. It should therefore be a rare event. Misuse of the suspension power can result in injustice, in damage to the optometrist's/OMP's reputation, career and personal life, and in waste of NHS resources. Therefore it should only be imposed once the PCT has considered whether there is a case to be answered and whether it has reasonable and proper cause to suspend. This is likely to be where there is:

- Compelling evidence of culpability, of seriously sub-standard performance or lack of competence; or
- Sufficient evidence to warrant suspension pending detailed further investigation; or
- An allegation or allegations that are sufficiently serious to justify suspension whilst an investigation is undertaken.

19.2 A performer who is suspended from a list is still treated as being included in that list in relation to any application he may make for inclusion in another list. As before, while suspended, he cannot perform any aspect of any primary ophthalmic service for any patient.

19.3 For these reasons, alternatives to suspension in the interests of the optometrist/OMP and of patients should be considered carefully before any decision is taken to suspend him. For example the PCT could ask the optometrist/OMP to withdraw voluntarily from performing part of his normal duties, and/or find him suitable alternative NHS work away from direct patient contact, whilst investigations continue.

Duration of Suspension

19.4 Suspensions should last no longer than is necessary. Suspension by the PCT can last no longer than six months except where:

- The suspension is the result of regulatory body or criminal investigations or proceedings and the PCT is awaiting the outcome of those investigations or proceedings
- A PCT has decided to remove or contingently remove an optometrist/OMP from its list, it may impose a suspension until the optometrist/OMP has decided whether to appeal against the decision to remove (or contingently remove him) or, if he does appeal, until the
- outcome of that appeal – whichever is the later.

19.5 In all other circumstances a suspension can extend beyond six months only with the prior approval of the FHSAA. If the PCT does not apply to the FHSAA for an extension, before the six month period expires, the suspension lapses. When it

considers an application for extension, the FHSAA will look for evidence that the PCT is taking all possible steps to conclude its inquiries. If the FHSAA agrees to extend the period of suspension, it will do so for a finite period.

19.6 This means that it is essential for PCTs to commit the resources necessary to deal with the cause of the suspension and to take substantive action to remove/contingently remove the optometrist/OMP from the Performers List, or to permit him to return to work without conditions, as quickly as possible.

20. Criteria for Suspension

20.1 The Regulations permit PCTs to suspend performers if this is necessary to protect patients or if it is otherwise in the public interest. It is important that a PCT that has suspended an optometrist/OMP is able to substantiate its decision against these criteria.

20.2 Although the following examples are not exclusive, suspension to protect patients may be thought necessary if there is evidence of sub-standard clinical practice or personal behaviour, or if there are investigations or proceedings involving serious offences such as those involving sex or violence. A public interest justification for suspension might be said to exist if:

- Allowing the optometrist/OMP continued access to staff, patients or records might prejudice a major fraud investigation significantly, whether the investigation is being undertaken by CFSMS or the police.
- Allowing the optometrist/OMP to continue to perform the services would be likely to cause serious disruption to the efficient delivery of local health care or services to patients

21. Period of Suspension

21.1 As noted in paragraphs 18.4-18.5, PCTs may suspend only:

- Whilst they decide whether or not to exercise their powers to remove/contingently remove optometrist/OMPs from their lists. A PCT must specify the period of the suspension and that period may not exceed six months
- Whilst awaiting the outcome of professional regulatory body or court investigations/proceedings. In these circumstances a suspension may remain in force until the outcome is decided. Once an outcome has been reached, a PCT may impose a further period of suspension, but the further period can be no longer than six months, and the suspended optometrist/OMP must be told the length of the additional suspension.
- When they have decided to remove/contingently remove optometrist/OMPs names from their Performers Lists, but before such decisions have taken effect legally. This means during the period in which the optometrist/OMP can decide to make an appeal against the removal/contingent removal, or – if an appeal is made – until the FHSAA has dealt with the appeal. Such a suspension will be effective between the date on which an optometrist/OMP is given notice of suspension and the expiry of the appeal period or the date of the FHSAA's determination of the appeal.

22. General Procedure for Suspending a Performer

22.1 When suspension is seen to be necessary, PCTs are obliged to:

- Give the optometrist/OMP notice of the allegation, details of the action it proposes to take, and why. This notice must be given in writing.
- Give the optometrist/OMP an opportunity to put his case to the PCT at a hearing. A minimum of twenty-four hours notice should be given. This notice may be included in the written notice of the action the PCT proposes to take. For this reason a suspension cannot take effect immediately
- If the optometrist/OMP attends the hearing, give the optometrist/OMP notice of its decision immediately after the hearing. If the PCT has concluded that it is necessary to suspend him, it should do so immediately and the notice should include the facts it has relied on, its reasons, and information about his right to seek review of the decision
- If the optometrist/OMP does not want a hearing, does not want or fails to attend a hearing, reach its decision in his absence and give the optometrist/OMP immediate notice of its decision. If the PCT has concluded that it is necessary to suspend him, it should do so immediately and the notice should include the facts it has relied on, its reasons, and information about his right to seek review of the decision

22.2 PCTs should follow the same procedure if they find it necessary to – and have the powers to – extend periods of suspension. However they are advised to plan to give the optometrist/OMP longer notice (at least seven days is recommended).

22.3 The above procedure is intended to allow PCTs to act quickly and effectively to protect patients and the public interest. However twenty-four hours notice of hearing restricts the time available for those involved to prepare their positions fully. If temporary measures can be put in place to protect patients and address public interest concerns, PCTs should consider whether additional notice of a hearing can be given.

22.4 PCT Boards will want to be aware of all decisions taken to suspend an optometrist/OMP from the PCT's Performers List. The Department considers that it would be good practice if:

- Suspension decisions are reported to Boards at the earliest opportunity
- At each of its meetings the Board receives an update on each suspension, and actively considers whether the suspension remains appropriate
- The name and contact details of the person who is responsible for updating the Board are made known to the suspended optometrist/OMP

23. Reviewing and Removing Suspensions

23.1 The Regulations permit a PCT to review a decision it has taken at any time and – in certain circumstances – they also permit the affected performer to seek a review. Where a PCT has imposed a suspension as a matter of urgency, for example, the PCT might choose to limit the period of suspension if the optometrist/OMP agrees to a review hearing on an agreed date, before the end of that period. A decision can be taken at the hearing on whether to extend or to remove the suspension.

23.2 If the PCT decides to review its decision, it must give the suspended optometrist/OMP notice, and the opportunity to make written representations and to put his case at a hearing if he wishes.

23.3 When a suspended performer asks for a review, the PCT must review the suspension if the request for review is made after:

- Three months from the initial decision to suspend; or
- Six months from the decision on any previous review

23.4 On review, a PCT can:

- Maintain the suspension
- Revise the period of suspension
- Remove the suspension

23.5 Where the suspension is a result of regulatory body or criminal investigations or proceedings, and the outcome is exoneration of the optometrist/OMP, the PCT must remove the suspension. If the outcome is a finding against the optometrist/OMP, the PCT will need to consider whether it has grounds for removing or contingently removing the optometrist/OMP from its Performers List. This may necessitate a further suspension (up to a maximum of six months, extendable if the FHSAA agrees before the end of that period) pending the PCT's decision.

24. Payments to Suspended Optometrists/OMPs

23.6 In GOS suspension payments may be made and such payments are governed by a Determination by the Secretary of State.

WITHDRAWAL FROM A LIST

25. Performers who Work Elsewhere

25.1 An optometrist/OMP who is on a PCT's Performers List may perform primary ophthalmic services in any PCT in England. A performer is under no obligation to withdraw from one PCT's list simply because they move their home address or because the focus of their work switches elsewhere.

25.2 If a performer is working elsewhere or changes his address, he is required by Regulations (see Annex A) to notify the PCT in accordance with the undertaking he gave when he joined the list. A PCT may remove the performer's name from its list if he fails to show that he has performed any primary ophthalmic service in the PCT's area during a twelve-month period (unless this is as a result of his health). Before it does that, the PCT would be advised to take reasonable steps to contact the performer to confirm the position. If it decides to remove the performer from its list on these grounds, it should notify the NHSLA and others with an interest in the normal way. See the section on Notifications for more about this.

25.3 There are benefits to performers in being on the Ophthalmic Performers List of the PCT in whose area they do most work and whilst not required this is expected to be the norm. This facilitates contact with the local ophthalmic community and possible involvement in local service development activity. However, PCTs are encouraged to offer the same support they would provide to performers on their own list to any other performers they know to be working in their areas.

25.4 It would be good practice if PCTs were to review their Performers Lists periodically in order to maintain contact, to confirm that the entries are up to date, and to ensure that individual members continue to perform services in the area. PCTs have the ability to remove from their list any performer who has not performed primary ophthalmic services in the PCT area in the preceding 12 months.

25.5 PCTs should note that simply because an optometrist/OMP does not reply to correspondence, it does not mean that the address has changed or that the optometrist/OMP has ceased to perform services in the area. There may be a good reason for failure respond, for example as a result of absence abroad or through incapacity. Failure to reply to correspondence is not in itself a reason for a PCT to remove an optometrist/OMP from its list, although it may ultimately be a contributory factor in coming to a decision to remove through failure to provide services in the area. Therefore PCTs are advised to act at all times with sensitivity and discretion, to take all reasonable steps to identify the cause of a failure to reply, and to deal with the matter accordingly. This may involve contacting the optometrist's/OMP's last known contractor or employer if it is thought that he may have moved away, and discussing the situation with the Local Optical Committee, though they must be careful not to breach the performers confidentiality by discussing his case with third parties (which includes the LOC) without his consent.

26. Performers' Right to Withdraw from a List

26.1 Except in the circumstances described below, a performer can withdraw from a PCT's list at any time. Having given notice of an intention to withdraw, he can also rescind the notice at any time before the PCT formally removes his name from its list. The date of removal should be three months from the date of the notice from the performer, or an earlier date if the PCT agrees.

26.2 However a performer must withdraw from a PCT's list if he is admitted to the Performers List of some other PCT. If this happens, the PCT should remove the performer's name from its list immediately. This is treated as a voluntary withdrawal from the PCT's list on the part of the performer, and so implies no fault nor is there any duty to notify in these circumstances)

27. Restriction on Withdrawal from a List

27.1 A performer may not normally withdraw from a list if:

- The PCT is considering whether it should remove the optometrist/OMP from its Performers List on grounds of suitability, efficiency or fraud
- The performer is suspended from the list
- The PCT has taken a decision to remove or contingently remove the performer from its list and that decision has yet to take effect (for example, pending a possible appeal, or pending the outcome of an appeal)

27.2 The only circumstance in which such a performer may withdraw is with the prior consent of the Secretary of State for Health. This prevents a performer evading a determination by the PCT (which would be a matter of record) by voluntarily withdrawing from its list.

INVESTIGATIONS

28. General

28.1 All PCTs should have in place standard procedures for dealing with concerns about an optometrist's/OMP's conduct, performance and competence. The procedures should be flexible and allow for informal resolution of less serious problems.

28.2 Good practice would involve:

- Appointing a named executive member of the PCT's Board (and a deputy to act on occasions when that member is unavailable or unable to act)
- The named Board member to have formal responsibility for taking decisions to suspend, remove or contingently remove a performer from the PCT's list
- Having a named officer as case-worker and manager of investigations (the "Investigating officer"). The Investigating Officer should not normally be the executive Board member, who should only undertake investigations personally in exceptional circumstances

29. The Investigating Officer

29.1 Ideally the Investigating Officer will be drawn from a small group of staff with suitable experience and training. Such staff might undertake duties in a number of PCTs. This may help officers to gain experience. Moreover use of an Investigating Officer from another PCT may be helpful when the issues that have caused the investigation originated in that PCT. As a result the Investigating Officer would be familiar with particular local issues.

29.2 The purpose of the investigation will be to consider whether there are grounds for action against an optometrist/OMP under the Performers Lists Regulations. Such investigations must not be confused with fraud investigations. There are strict rules about fraud investigations that require CFSMS to be informed, and a properly accredited person must conduct any investigations. However the findings of a fraud investigation can be used by the Investigating Officer as a basis for further inquiries, or as the basis for recommendations as to the action a PCT might want to take under the Performers Lists Regulations.

29.3 The Investigating Officer:

- Should be responsible for conducting any investigations (other than the fraud investigations mentioned in paragraph 28.2 above and Annex F) into allegations or concerns about a performer, establishing the facts on which any hearing may be based (including facts that might lead a PCT to review or remove a suspension, conditional inclusion or contingent removal)
    - Should not be the person who takes the decision to suspend, conditionally include, remove or contingently remove the performer, and should not be able to vary any decision taken under the Performers Lists Regulations
    - Should not be a member of any panel that considers a performer's representations
    - Should involve suitably qualified and experienced clinicians where a clinical judgement is needed is needed as part of the investigation
    - Should ensure that arrangements are in place throughout the investigation for maintaining confidentiality
    - Needs to make sure that relevant written statements have been obtained prior to any decision to hold an oral hearing

29.4 The course and nature of an investigation will be a matter for the Investigating Officer, guided by the named executive member of the PCT's Board. The executive member of the Board would normally conduct discussions with the optometrist/OMP, or with others (including the NCAA). An investigation in which the facts are already clearly established (such as an adverse GOC/GMC or criminal conviction) may well be brief. Other investigations into an optometrist's/OMP's suitability, efficiency or perpetration/involvement in fraud may be complex and time-consuming. The strict rules about fraud inquiries mean that – where fraud is suspected – the case may need to be referred to CFSMS.

29.5 The first job of the Investigating Officer will therefore be to identify the issues:

- The nature of the problem, concern or allegation
- The likely seriousness of the issue(s) on the basis of the available information
- The likelihood of resolving the problem, concern or allegation without need for formal action under the Performers Lists Regulations

29.6 Whether a problem is likely to be amenable to resolution without formal procedures should always be decided in consultation with the nominated executive Board member. A preliminary discussion with the NCAA in the case of an OMP, particularly where performance and/or competence issues are involved, may help crystallise the Investigating Officer's first thoughts. However the NCAA does ask that the PCT's Chief Executive or Medical Director make the first approach to it.

30. The Role of the NCAA

General

30.1 Poor performance may be the result of health, difficulties in the working environment, and behaviour or poor competence, whether in combination or isolation. In respect of doctors, including OMPs, the processes that the NCAA use are directed at addressing each or all of these. Performers are required to give an undertaking to co-operate with NCAA assessments before they are admitted to a Performers List, and NCAA's ways of working assume that there is a commitment by all concerned to participate constructively.

30.2 The NCAA provides a range of help that is focussed on supporting and facilitating the action that PCTs may need to take to deal with performance concerns. For example, it can provide:

- Immediate, 24-hour telephone advice
- Advice and detailed support for local case management
- Advice and support for local clinical performance assessment
- Advice and detailed NCAA performance assessment
- Support for implementation of recommendations that result from assessments

30.3 If a PCT is investigating whether it should suspend, conditionally include, remove or contingently remove an OMP performer from its list, an initial approach to the NCAA (as noted in paragraphs 3.7 and 3.8) is likely to be productive, particularly in cases involving performance and/or competence issues. As well as helping to crystallise the issues, NCAA involvement may well avoid the need for formal action under the Regulations.

30.4 If formal action does prove necessary, the continued involvement of the NCAA during periods of suspension, conditional inclusion or contingent removal may help the doctor to overcome the difficulties that led to the action. This may diminish the risk of escalation.

30.5 However, if it is at all likely that NCAA will be involved, it is far preferable for the involvement to begin at the earliest possible stage because it is more difficult to assess a doctor who is not working than one who is.

30.6 The NCAA publishes guidance on its working methods and on how to refer cases for assessment. This can be seen at www.ncaa.nhs.uk/services

Involving the NCAA during an Investigation

30.7 Because the NCAA's first involvement in any case will be exploratory, its involvement will give PCTs the opportunity to discuss the problems with an impartial outsider and to look at the issues with a fresh perspective. This may lead a PCT to appreciate that

it can overcome difficulties in ways other than formal action. This may involve consideration of whether problems have more to do with system failure or the environment in which the doctor is working than a doctor's performance or competence, or whether there may be wider problems that need the input of agencies other than the NCAA.

30.8 Once the problem has been discussed with the NCAA, the Investigating Officer, in consultation with the Board member, will need to consider whether it can be resolved by means of an informal approach, or whether a formal investigation is still necessary. The NCAA can be involved throughout the process whether or not an informal approach is taken. Its involvement may include a formal clinical performance assessment where the doctor, the PCT and the NCAA agree that it could be helpful in identifying underlying causes of problems and remedial steps that might be taken. Whether or not the issues in an individual case mean that it proceeds to formal action under the Regulations, information from a local investigation may be made available to inform the NCAA's work and vice versa.

Failure by a Performer to Co-operate with the NCAA

30.9 Because doctors give undertakings to co-operate with NCAA assessments when they apply to join Performers Lists, failure to co-operate with a referral to the NCAA can be regarded as evidence of unwillingness on the part of the doctor to work with the PCT to deal with performance or competence problems.

30.10 It naturally restricts the options available if a doctor chooses not to co-operate with a referral.

30.11 Non-co-operation is likely to be a material fact in considering (with other facts) whether to suspend, remove or contingently remove the performer at the conclusion of an investigation.

HEARINGS

31. The Panel

31.1 If an optometrist/OMP is notified that the PCT is proposing his conditional inclusion, removal, contingent removal or suspension, and seeks to make his case at an oral hearing, the PCT must convene a panel to consider his representations. Membership of the panel is decided by the PCT.

31.2 The panel will be most effective if it has the authority to confirm or to change the proposed decision. That is most likely to be achieved if it is chaired by the responsible Board member or (where necessary) the authorised deputy. An alternative would be to convene a panel that makes representations to the responsible Board member (see paragraph 27.2), but that is likely to be a less efficient way of operating.

31.3 As well as having the responsible Board member as Chair, the members might include:

- A PCT non-executive Board member
- A suitably qualified clinician from the establishment or the Professional Executive Committee of the PCT (or a neighbouring PCT).

31.4 To avoid conflicts of interest no one involved in the investigation can be a panel member.

31.5 31.4 A possible alternative to the non-executive Board member might be a representative from the Patients' Forum. This would add a patient dimension to the proceedings. The Investigating officer should not be a panel member.

31.6 31.5 It is open to the PCT to involve the LOC/LMC in determining the constitution of panels if it wishes. However, it would be unusual for a representative from the LOC to sit on a panel, since a more usual role for the LOC/LMC would be to provide assistance to the optometrist/OMP who is making the representations and it would not be appropriate to allow the LMC/LOC to fulfil both roles.

31.7 It would be good practice to vary the composition of panels but not to change the membership completely if a panel is to deal with the same case on a second or subsequent occasion. Occasions on which this might be appropriate would include consideration of a removal decision where the performer had earlier been suspended, or a review of an earlier decision.

32. The Panel's Proceedings

32.1 Panel proceedings are for the PCT to determine. However, any proceedings should be formal and transparent. The following paragraphs suggest good practice.

32.2 Panels ought to have written procedures, which will provide a framework for the decision-making process and help to justify the manner in which decisions are reached.

32.3 Panels should not meet in public.

32.4 The procedures should permit the Chair and the parties to hearings (which includes the optometrist/OMP) to agree a list of the people who may attend the meeting. The Chair should have the right to adjudicate in cases of dispute. The list should include any observers. The procedures should also deal specifically with the attendance of observers. Observers can play no part in the proceedings. To forbid all observers might constrain PCTs that wanted, for example, to train their staff or monitor the quality of the proceedings. The aim should be to limit the numbers attending any hearing to what would be fair and practical. Both the performer and the PCT ought to have the opportunity to object to any observers. Moreover when observers are permitted, they should be permitted even-handedly. If the performer wants to have observers present he should be given a similar dispensation, and a performer's right to have an observer present ought not to be limited to occasions when the PCT decides to nominate an observer, or vice-versa.

32.5 Witnesses who have made statements that may be used during the hearing may be asked to attend. However any decision to call witnesses should rest solely with the Chair, and they ought only to be asked to attend when the Chair is satisfied that their attendance will add materially to the decision-making process. Witnesses are not under any legal obligation to attend and, generally speaking, their written statements should be sufficient. If a witness is asked to attend it will be to give direct evidence. They may be questioned by the panel, but not by the Investigating Officer or by the performer. The Chair should have an absolute right of adjudication if there is any question about admissibility. If, exceptionally, a witness wishes to be accompanied, their companion will be unable to play any part in the proceedings.

32.6 The panel is also free to consider written and oral submissions from third parties where these appear relevant. The principles in paragraph 32.5 will apply.

32.7 The Investigating Officer will normally put the case for suspension, conditional inclusion, removal or contingent removal. The optometrist/OMP should then be given the opportunity of making his own representations. A companion of his choice may accompany the optometrist/OMP (who may be a representative of the LOC, LMC or a defence organisation). Some optometrists/OMPs may prefer to have a legally qualified person present to advise them on questions of procedure, on the validity of any allegations or actions proposed during the hearing, or to take notes for the purpose of any right of appeal that is available.

32.8 Except in circumstances when a panel has to be convened at short notice to consider a suspension, it would be good practice for:

- The panel to meet within twenty-eight days of receiving the performer's

- representations
- The full details of the PCT's proposed action (including any written evidence) and
- its grounds to be sent to the performer no less than seven days before the date set for the hearing
- Any late documents to be sent to the performer as soon as possible, with an offer to put back the hearing, if the performer wishes, to maintain the seven-day principle
- An alternative date, within seven days of the original date set where possible, to be offered to the performer if the PCT itself needs to postpone the hearing. Such postponements ought to be necessary only in exceptional circumstances and for good reason. The PCT Chief Executive should be told of any proposal for such a postponement and will want to ensure that it is necessary and that any delay is kept to a minimum
- The panel to have a reserve power to deal with any matter in a performer's absence if it is satisfied that it had made adequate arrangements to ensure the optometrist/OMP knew of the arrangements for the hearing and had failed to attend without good reason

32.9 If a performer's ill health prevents a hearing from taking place, the PCT ought to consider at what point he is referred to the occupational health service. After a reasonable period, depending on the nature of the incapacity, it should consider holding a hearing in the performer's absence unless there are compelling reasons for further postponement.

33. Clinical Input

33.1 Relevant clinical input should be provided and presented to the panel if the investigation deals with clinical issues. The input should come from someone with relevant experience of the clinical issues involved, such as an optometrist/OMP (with no link to the performer who is under investigation), a medical director, member of the Professional Executive Committee, or from an organisation such as the NCAA.

33.2 Performance problems of optometrists in training should always be treated as training issues.

APPEALS

34. The Right of Appeal

34.1 Appeals may be made against the following decisions

- Discretionary refusal to include a performer on a list
- Conditional inclusion of an optometrist's/OMP's name on a list
- Contingent removal of an optometrist's/OMP's name from a list
- Discretionary removal of a performer from a list
- Review and revision of conditions associated with conditional inclusion and contingent removal

34.2 The appeal rights are consistent with the NHS's obligations under the Human Rights Act and as such they are to a fully independent appeal body, the Family Health Services Appeal Authority (FHSAA)

34.3 An optometrist/OMP who receives notification of a PCTs decision may appeal to the FHSAA. He has 28 days from the date the PCT notified him of its decision. The appeal must be in writing and must be sent to the FHSAA. Unless the optometrist/OMP withdraws the appeal the FHSAA will determine the appeal in accordance with its rules and any directions it may issue about the way in which the appeal will be dealt with. These rules are binding on the parties to the appeal.

34.4 There is no right of appeal against:-

- Mandatory removal from a list
- Mandatory refusal to admit an optometrist/OMP to a list
- Suspension from a list
- A decision to defer consideration of an application

34.5 Nevertheless these acts can be challenged at judicial review.

35. Appeals Handling by PCTs

35.1 When dealing with any matter that is the responsibility of the FHSAA, it is important that PCTs and their legal advisers operate in accordance with:

- The Family Health Services Appeal Authority (Procedure) Rules 2001 (SI 2001/3750). These Rules have to be observed by all the parties to a case before the FHSAA, as well as by the FHSAA itself. The Rules make clear the way in which appeals will be dealt with by the FHSAA, so there is no detailed commentary on them here. PCTs are advised to keep a copy of the Rules available for reference: www.opsi.gov.uk/si/si2001/20013750.htm and the amendment to those Rules at: http://www.opsi.gov.uk/si/si2002/20021921.htm
- Any directions issued by members of the FHSAA as a result of, or in connection with an individual case.

35.2 The Rules and procedures of the FHSAA have been devised to be fair to all parties, and with a view to dealing with matters efficiently and within a reasonable period of time. It is in everyone's interests that the appeal process is handled efficiently and with appropriate speed. An optometrist/OMP involved in an appeal has a justifiable expectation that the process will not be unduly delayed.

35.3 The effort and priority needed is not just something for the FHSAA to consider. The FHSAA relies on prompt responses from PCTs. When the FHSAA writes to ask for a reply to an appeal they will allow a PCT twenty-one days to respond. If the deadline is not met it slows down the overall process and places the PCT in breach of the FHSAA's statutory rules (with consequent risk to the PCT). PCTs should therefore afford high priority to work on appeals.

35.4 Appeals to the FHSAA are re-determinations of the original decision. This means that the FHSAA may make any decision that the PCT could originally have made.

35.5 PCTs must implement decisions of the FHSAA. In most cases the decision will be implemented simply on the basis that it is a decision of the FHSAA. However, a conditional inclusion or contingent removal decision always consists of conditions imposed by the PCT. Therefore, where the FHSAA decides that conditions are to be applied on a performer's inclusion or continuing inclusion in a list, the PCT must impose those decisions.

35.6 In such cases the PCT will ask the optometrist/OMP if he is prepared to be bound by the FHSAA's decision. The optometrist/OMP should be allowed 28 days to respond. The PCT can agree a longer period if it considers it reasonable. The intention is that it should use this power sympathetically. If the optometrist/OMP does not respond within the period set, the PCT can refuse to admit the optometrist/OMP to its list, or (in a contingent removal case) remove him from its list.

35.7 If the optometrist/OMP confirms that he is prepared to be bound by the FHSAA's decision:

- In a conditional inclusion case, he should be admitted to the Performers List subject to the conditions
- In a contingent removal case, he should remain on the Performers List subject to the conditions. In such cases reviews will fall to the PCT not the FHSAA.

36. Right of Appeal to the High Court

36.1 An optometrist/OMP may exercise a further right of appeal to the High Court against a decision of the FHSAA. Such appeals are made under the provisions of the Tribunals & Inquiries Act. They must be based on a point of law.

NOTIFICATIONS

37. The Duty to Notify

37.1 It is vital for PCTs to share information between themselves, with the NCAA, with other NHS bodies, statutory regulatory bodies and with any other organisations that employ or contract with an optometrist/OMP (or might employ or contract with him) if they take action under the Performers List Regulations. Patient safety has to be the overriding concern.

37.2 Performers have no basis on which to try to prevent the sharing of such information by using the provisions of the 1998 Data Protection Act. The Performers Lists Regulations specify the circumstances in which information can (and in many cases must) be shared. Their effect is that a performer cannot use Schedule 2 of the 1998 Data Protection Act as a means of withholding consent. The performer's other rights under the Data Protection Act (such as access to information) are unaffected by this.

37.3 The Regulations require PCTs to share such information whenever they take decisions to refuse admission, conditionally include, remove, contingently remove or suspend an optometrist/OMP. They must also do so when they review one of those decisions. The Regulations require PCTs to send their notifications within seven days of the date on which the decision was taken.

38. Who needs to be informed?

38.1 The Regulations require PCTs to inform the following:

- The Secretary of State for Health - NHSLA performs this function on his behalf(see paragraph 37.3 below)
- The Scottish Executive
- National Assembly for Wales
- The Department of Health, Social Services and Public Safety for Northern Ireland
- The GOC, GMC or any other appropriate regulatory body
- In a fraud case – the NHS CFSMS
- The NCAA

38.2 The contact details for these bodies are located in Annex G. It would be good practice also to inform the local LMC/LOC.

38.3 The notification intended for the Secretary of State for Health must always be sent to the NHSLA. Separate directions have been made on behalf of the Secretary of State requiring PCTs to do this. Over time, the NHSLA will build a database providing details of optometrists/OMPs who have been removed, refused access, conditionally included, contingently removed, suspended etc. They will provide information about specific health care professionals to NHS Bodies who might, for example, have doubts about the validity of an optometrist's/OMP's application. It will not be a definitive source of information but will provide a useful fallback as the role develops and more information becomes available.

38.4 When sending information to the NHSLA on behalf of the Secretary of State, PCTs are advised also to enclose a copy of the notification of the decision that they have sent to the optometrist/OMP.

39. What Information should be shared?

Stage 1: Initial Information Sharing

39.1 The initial information to be shared should be restricted to the following:

- Identifying details of the optometrist/OMP (name, DOB, NI Number or similar)
- Professional registration number
- Date and copy of the decision
- Contact name within the PCT for further details
- The substance of the decision (this will normally be met by including the words “removed from the Performers List on [date] following a criminal conviction for [………].” or similar)

Stage 2: Providing further information

39.2 If one of the people or bodies mentioned in paragraph 37.1 seeks further information, the PCT must provide it as long as it relates to the evidence it considered in arriving at its decision. It can include the representations made by the optometrist/OMP. PCTs have discretion about the information they provide, but it would be sensible to protect identities by anonymising third party information whenever appropriate.

39.3 The provisions that allow PCTs to share such information extend only to matters that the PCT considered when making its decision. They do not permit information sharing of issues that may be associated but which the PCT did not consider at the time. Remember that the Regulations require PCTs to send the performer a copy of the information it has passed on at Stage 1, and of any further correspondence relating to it.

Notifications to the GOC/GMC

39.4 The GOC and GMC operate statutory fitness to practice procedures to investigate the conduct, fitness and health of optometrists and doctors. They may revoke or suspend an optometrist or doctor's registration or impose conditions on his continued practise. The GOC or GMC should be supplied with information whenever it would be appropriate to help them to consider whether professional fitness to practice proceedings should be instigated.

39.5 Optometrists may have action taken against them by the GOC and doctors by the GMC for if they are not fit to practise, for example:-

- If their professional performance is seriously deficient
- If they have health problems but continue to practice whilst unfit when they have been found guilty of serious professional misconduct
- If they have been convicted of a criminal offence in the UK
- For fraud
- For practising whilst not registered with the GOC or GMC.
- This list is not exhaustive. In determining whether it is appropriate to supply the GMC with the specified information relating to an OMP, it may be helpful to discuss the matter initially on an informal and anonymised basis with the GMC's Conduct Department. Further information is available on the GOC or GMC web-sites:
- http://www.gmc-uk.org/probdocs/probdocs.htm
- http://www.optical.org/

Disclosing Information to others

39.6 The list at paragraph 37.1 refers to notifying "Any other organisation that, to the knowledge of the PCT, employs or uses the services of the optometrist/OMP in a professional capacity". This includes bodies such as locum agencies and out of hours co-operatives.

Sharing information about National Disqualifications

39.7 Where the PCT which made the application for a national disqualification has been notified by the FHSAA that it has imposed a national disqualification on an optometrist/OMP, the information should be passed on immediately to the people and bodies listed at paragraph 37.1.

Keeping information up to date

39.8 When a PCT has shared information with a third party, it is responsible for keeping the information it has supplied up to date. For example, if a suspension is lifted, or any conditions that were imposed on a performer's inclusion in the list have been lifted, this is a relevant change that must be passed on as soon as it has occurred. PCTs may wish to keep a list of each person or body it has advised of a decision made under the Performers Lists Regulations, so that they can be advised of any change in circumstances.

Performers List Notifications and Alert Letters

39.9 The notification procedures set out in the Performers Lists Regulations do not replace the Alert Letter system. Separate advice from the Department of Health describes how the Alert Letter system applies to primary care practitioners.

39.10 Use of Alert Letters may well be the only way in which PCTs with which the optometrist/OMP is unconnected, or other NHS organisations, will become aware that:

- An individual clinician may pose a risk to the safety of patients and/or staff
- An individual's performance may have been such as to seriously compromise the effective functioning of a clinical team or service
- An individual to whom these apply may be working or attempting to seek work elsewhere

39.11 The Alert Letter system should be used to supplement the notification arrangements in the Performers Lists Regulations whenever necessary.

NATIONAL DISQUALIFICATIONS

40. Definition

40.1 The effect of a national disqualification is to prevent an optometrist/OMP being included in the Performers List of any PCT in England. Decisions of an individual PCT can only have effect in the area for which that PCT is responsible. As a result there is a risk that an optometrist/OMP who has been removed from the list of one PCT may go on to offer his services to other PCTs in turn in the hope that he will find one prepared to accept his services as a performer.

40.2 This additional sanction is necessary in the most serious cases, only when an optometrist/OMP has been refused admission to a PCT list or has been removed by a PCT from its own list, or it is imposed by the FHSAA.

41. Applications for National Disqualification

41.1 A national disqualification can only be sought by a PCT when it has refused to include an optometrist/OMP in its list, or removed an optometrist/OMP from its list. National disqualification cannot be sought where the PCT has imposed a conditional inclusion or contingent removal.

41.2 The FHSAA can itself decide that it will impose a national disqualification when it is considering an appeal from a performer against his removal. It may do this if it determines to reject the performer's appeal and considers that the facts that gave rise to the PCT's original decision are so serious that they warrant disqualification.

41.3 A national disqualification decision of the FHSAA is binding on all PCTs. Its effect is to render the optometrist/OMP ineligible for admission to any list. As a result, any PCT that receives an application to join its list from a disqualified optometrist/OMP is obliged to reject the application.

41.4 A PCT can ask the FHSAA for a national disqualification within 3 months of removing the optometrist/OMP from a list or within three months of refusing to admit the optometrist/OMP to a list. PCTs should recognise the benefits of a national disqualification both for protecting the interests of patients and for saving NHS resources. Unless the grounds for a removal or refusal to admit decision were essentially local, it would be normal to give serious consideration to such an application. It would seem unlikely that there will be grounds for refusal to admit (other than procedural matters such as failure to provide enough information or to provide the name of a referee) to the PCT's list that would not justify applying for a national disqualification. The FHSAA (Procedure) Rules 2001 govern this procedure.

42. Review of a National Disqualification

42.1 Once subject to a national disqualification an optometrist/OMP can ask the FHSAA to review the disqualification, but such requests cannot be made:

- Within two years of the original FHSAA decision; or
- Within one year of a previous FHSAA review.

42.2 On review the FHSAA may confirm or revoke the national disqualification.

42.3 The FHSAA can vary the review periods only in the following circumstances:

- When imposing a national disqualification, if the FHSAA says that it considers that the criminal or professional conduct of the optometrist/OMP is such that there is no realistic prospect of a further review being successful if held within the two-year period specified in section 159(8)(a) of the NHS Act. In that case the reference to "two years" in that provision is a reference to five years
- At a previous review of a national disqualification by the FHSAA the optometrist/OMP was unsuccessful and the FHSAA says that that there is no realistic prospect of a further review being successful if held within a period of three years beginning with the date of its decision on that review. In that case the reference to "one year" in section 159(8)(b) of the NHS Act is a reference to three years
- When the FHSAA says that because a criminal conviction that it had considered in reaching its earlier decision has been quashed or the penalty reduced on appeal, and there is a need for an immediate review as a result. In that case the reference to "two years" or "one year" in section 159(8) of the NHS Act 2006 is a reference to the period that has already passed
- When the FHSAA says that because a decision of a licensing, regulatory or other body has been quashed or the penalty reduced on appeal, there is a need for an immediate review. In that case the reference to "two years" or "one year" in section 159(8) of the NHS Act 2006 is a reference to the period that has already passed.

Annex A: Applications for Inclusion in a Primary Ophthalmic Services Performers List - Information, Undertakings, Declaration, Certificates & Consents

Information

The practitioner must provide:

- His full name
- His sex
- His date of birth
- His private address and telephone number
- His optometric or medical qualifications and where they were obtained, with evidence concerning his qualifications and experience
- A declaration either that he is a:
    - fully registered optometrist; or
    - a registered medical practitioner who has been approved by the Ophthalmic Qualifications Committee as having the qualifications to be an Ophthalmic Medical Practitioner.
- His professional registration number and date of first registration
- Details of professional experience with supporting particulars of that experience
- Whether he is a contractor
- Whether he is a contractor for more than one scheme and, if so, which schemes and which of those schemes is the relevant scheme . Relevant scheme" and "scheme" are both defined terms in the regulations. "Relevant scheme" means the scheme in respect of which the ophthalmic practitioner is applying to be included in an ophthalmic performers list; and "Scheme" is defined in the regulations and means an arrangement to provide primary ophthalmic services under a general ophthalmic services contract.
- Chronological details of his professional experience (including the starting and finishing dates of each appointment together with an explanation of any gaps between appointments) with any additional supporting particulars, and an explanation of why he was dismissed from any post
- Names and addresses of two referees, who are willing to provide clinical references relating to two recent posts (which may include any current post) as a performer which lasted at

least three months without a significant break, and, where this is not possible, a full explanation and the names and addresses of alternative referees
- Whether he has any outstanding application, including a deferred application, to be included in a list or an equivalent list, and if so, particulars of that application
- Details of any list or equivalent list from which he has been removed or contingently removed, or to which he has been refused admission or in which he has been conditionally included, with an explanation as to why
- If he is the director of any body corporate that is included in any list or equivalent list, or which has an outstanding application (including a deferred application) for inclusion in any list or equivalent list, the name and registered office of that body and details of the Primary Care Trust or equivalent body concerned; and
- Where he is, or was in the preceding six months, or was at the time of the originating events, a director of a body corporate, details of any list or equivalent list to which that body has been refused admission, in which it has been conditionally included, from which it has been removed or contingently removed or from which it is currently suspended, with an explanation as to why and details of the Primary Care Trust or equivalent body concerned.

Undertakings

To provide a declaration required by the Regulations to the PCT in writing, within seven days of the occurrence, if he:

- Is convicted of any criminal offence in the United Kingdom
- Is bound over following a criminal conviction in the United Kingdom
- Accepts a police caution in the United Kingdom
- Has accepted and agreed to pay either a procurator fiscal fine under section 302 of the
- Criminal Procedure (Scotland) Act 1995 or a penalty under section 115A of the Social
- Security Administration Act 1992
- Has, in summary proceedings in Scotland in respect of an offence, been the subject of an order discharging him absolutely (without proceeding to conviction)
- Is convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales
- Is charged in the United Kingdom with a criminal offence, or is charged elsewhere with an offence which, if committed in England and Wales, would constitute a criminal offence
- Is informed by any licensing, regulatory or other body of the outcome of any investigation into his professional conduct, and there is a finding against him
- Becomes the subject of any investigation into his professional conduct by any licensing, regulatory or other body
- Becomes subject to an investigation into his professional conduct in respect of any current or previous employment, or is informed of the outcome of any such investigation, where it is adverse

- Becomes to his knowledge the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud, or is informed of the outcome of such an investigation, where it is adverse
- Becomes the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to his removal from any list or equivalent list
- Is removed, contingently removed or suspended from, refused admission to, or conditionally included in, any list or equivalent list,

- To give details of the above, including approximate dates, and where any investigation or proceedings were or are to be brought, the nature of that investigation or those proceedings, and any outcome
- To do likewise if he is, was in the preceding six months, or was at the time of the originating events a director of a body corporate, if any of the above events apply to that body corporate
- To notify the Primary Care Trust within seven days of any material changes to the information provided in the application until the application is finally determined or, if his name is included in the performers list, at any time when his name is included in that list
- To notify the Primary Care Trust if he is included, or applies to be included, in any other list held by a Primary Care Trust or equivalent body
- In the case of an OMP to co-operate with an assessment by the NCAA, when requested to do so by the Primary Care Trust
- To participate in the appraisal system provided by a Primary Care Trust (does not apply to Armed Forces GPs) in the case of a medical practitioner
- Not to perform any primary ophthalmic services in the area of another Primary Care Trust or equivalent body from whose ophthalmic performers list he has been removed, except where that removal was at his request or because he has not performed the services in the PCT’s area during the preceding twelve months, without the consent, in writing, of that PCT
- To record in the contractor’s register any gifts with an estimated value of more than £100 that are made to him, his spouse or any person with whom he is living in a relationship that has the characteristics of the relationship between husband and wife, that have been made by a patient or relative of a patient, or any person who provides or wishes to provide services in connection with the contract

Declaration

The application must be accompanied by a declaration as to whether the applicant (or any body corporate of which he has been during the last six months, or at the time of the originating events, a member):

- Has any criminal convictions in the United Kingdom
- Has been bound over following a criminal conviction in the United Kingdom
- Has accepted a police caution in the United Kingdom

- Has accepted and agreed to pay either a procurator fiscal fine under section 302 of the Criminal Procedure (Scotland) Act 1995 or a penalty under section 115A of the Social Security Administration Act 1992
- Has, in summary proceedings in Scotland in respect of an offence, been the subject of an order discharging him absolutely (without proceeding to conviction)
- Has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales
- Is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Primary Care Trust
- Has been subject to any investigation into his professional conduct by any licensing, regulatory or other body, where the outcome was adverse
- Is currently subject to any investigation into his professional conduct by any licensing, regulatory or other body
- Is to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud
- Is the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to his removal from any of that Trust's or body's lists or equivalent lists;
- Is, or has been where the outcome was adverse, the subject of any investigation into his professional conduct in respect of any current or previous employment
- Has been removed from, contingently removed from, refused admission to, or conditionally included in any list or equivalent list kept by a Primary Care Trust or equivalent body, or is currently suspended from such a list and if so, why and the name of that Trust or equivalent body
- Is, or has ever been, subject to a national disqualification, and, if so, he shall give details, including approximate dates, of where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

Certificates

- An enhanced criminal record certificate, under section 115 of the Police Act 1997, in relation to himself for which Criminal Records Bureau guidance require original documents be provided to establish identity.
- Evidence concerning his qualifications and experience.

Consents

Consent to a request being made by the PCT to any employer or former employer, licensing, regulatory or other body in the United Kingdom or elsewhere for disclosure of information relating to:

- A current investigation; or
- An investigation, where the outcome was adverse by that employer or body, into the performer or a body corporate of which the performer is or was a director.

Annex B: Sexual Offenders Act 2003 - Offences to which Part 1 of The Sexual Offenders Act 2003 Applies

This is not intended to be an accurate or authoritative copy of the relevant text from the Act. It is for guidance only and PCTs are advised to obtain a copy of the relevant legislation for their own use.

i. Section 1: rape

ii. Section 2: assault by penetration

iii. Section 2: sexual assault

iv. Section 4: causing a person to engage in sexual activity without consent

v. Section 5: rape of a child under 13

vi. Section 6: assault of a child under 13 by penetration

vii. Section 7: sexual assault of a child under 13

viii. Section 8: causing or inciting a child under 13 to engage in sexual activity

ix. Section 9: sexual activity with a child

x. Section 10 causing or inciting a child to engage in sexual act liberty

xi. Section 11: engaging in sexual activity in the presence of a child

xii. Section 12: causing a child to watch a sexual act

xiii. Section 14: arranging or facilitating commission of a child sex offence

xiv. Section 15: meeting a child following sexual grooming etc

xv. Section 16: abuse of position of trust: sexual activity with a child

xvi. section 17: abuse of position of trust: causing or inciting a child to engage in sexual activity

xvii. Section 18: abuse of position of trust: sexual activity in the presence of a child

xviii. Section 19: abuse of position of trust: causing a child to watch a sexual act

xix. Section 25: sexual activity with a child family member

xx. Section 26: inciting a child family member to engage in sexual activity

xxi. Section 30: sexual activity with a person with a mental disorder impeding choice

xxii. Section 31: causing or inciting a person with a mental disorder impeding choice to engage in sexual activity

xxiii. Section 32: engaging in sexual activity in the presence of a person with a mental disorder impeding choice

xxiv. Section 33: causing a person with a mental disorder impeding choice to watch a sexual act

xxv. Section 34: inducement, threat or deception to procure sexual activity with a person with a mental disorder

xxvi. Section 35: causing a person with a mental disorder to engage in agreed to engage in sexual activity by inducement, threat or deception

xxvii. Section 36: engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder

xxviii. Section 37: causing a person with a mental disorder to watch a sexual act by inducement, threat or deception

xxix. Section 38: care workers: sexual activity with a person with a mental disorder

xxx. Section 39: care workers: causing or inciting sexual activity

xxxi. Section 40: care workers: sexual activity in the presence of a person with a mental disorder

xxxii. Section 41: care workers: causing a person with a mental disorder to watch a sexual act

xxxiii. Section 1 of the Protection of Children Act 1978: indecent photographs of person under 16

xxxiv. Section 160 of the Criminal Justice Act 1988: possession of indecent photographs of a child

xxxv. Section 47: paying for sexual services of a child

xxxvi. Section 48: causing or inciting child prostitution or pornography

xxxv. Section 49: controlling a child prostitute or a child involved in pornography

xxxvi. Section 50: arranging or facilitating child prostitution or pornography

xxxvii. Section 52: exploitation of prostitution

xxxviii. Section 53: controlling prostitution for gain

xxxix. Section 33A of the Sexual Offences Act 1956: keeping a brothel used for prostitution

xl. Section 57: trafficking into the UK for sexual exploitation

xli. Section 58: trafficking within the UK for sexual exploitation

xlii. Section 59: trafficking out of the UK for sexual exploitation

xliii. Section 61: administering a substance with intent

xliv. Section 62: committing an offence with intent to commit a sexual offence

xlv. Section 63: trespass with intent to commit a sexual offence

xlvi. Section 64: sex with an adult relative: penetration

xlvii. Section 65: sex with an adult relative: consenting to penetration

xlviii. Section 66: exposure

xlix. Section 67: voyeurism

l. Section 69: intercourse with an animal

li. Section 70: Sexual penetration of a corpse

lii. Section 71: sexual activity in a public lavatory

Annex C: Discretionary Decision-Making Under The NHS (Performers Lists) Regulations - Criteria That Must Be Considered

Applications for Inclusion

1. When considering applications for inclusion the PCT must consider the following criteria before making any discretionary decisions to refuse to admit or conditionally include an optometrist/OMP in its lists:

- The nature of any offence, investigation or incident
- The length of time since such offence or incident was committed and since any conviction or investigation
- Whether there are other offences, incidents or investigations to be considered
- Any action or penalty imposed by any licensing, regulatory or other body (which includes any NHS organisation), the police or the courts as a result of any such offence, incident or investigation
- The relevance of any offence, investigation or incident to the provision by him of general ophthalmic services and any likely risk to his patients or to public finances
- Whether any offence was a sexual offence to which Part I of the Sexual Offences Act 2003 applies (see Annex B)
- Whether he has been refused admission to or conditionally included in, removed, contingently removed, or is currently suspended from any of a PCT's lists or from equivalent list (in Wales, Scotland or NI), and if so, the facts relating to the matter which led to such action and the reasons given by the PCT or equivalent body for such action
- Whether he was at the time, has in the preceding six months been, or was at the time of the originating events a director of a body corporate which was refused admittance to, conditionally included, removed or contingently removed from other PCT lists or equivalent lists (in Wales, Scotland or NI), and if so, the facts relating to the matter which led to such action and the reasons given by the PCT or equivalent body for such action
- Whether he is at the time, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which is currently suspended from such a list, and if so, the facts relating to the matter which led to the suspension and the reasons given by the PCT or equivalent body for the suspension.

Removal or Contingent Removal

Efficiency

2. When considering the removal or contingent removal of an optometrist/OMP on discretionary efficiency grounds the PCT must, in respect of the information it is relying on, consider:

- The nature of any incident of conduct which was prejudicial to the efficiency of the general ophthalmic services provided by the optometrist/OMP
- The length of time since the last such incident (if any) occurred, and since any investigation into that incident was concluded
- Any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such incident
- The nature of the incident and whether there is a likely risk to patients
- Whether, in the case of an OMP, the doctor has ever failed to comply with a request by the PCT to undertake an assessment by the NCAA
- Whether the optometrist/OMP has previously failed to make a declaration or comply with an undertaking required by these Regulations
- Whether the optometrist/OMP has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from other PCT lists or equivalent lists (in Wales, Scotland and NI), and if so, the facts relating to the matter which led to such action and the reasons given by the PCT or equivalent body for such action
- Whether he was at the time, has in the preceding six months been, or was at the time of the originating events a director of a body corporate which was refused admittance to, conditionally included, removed or contingently removed from other PCT lists or equivalent lists (in Wales, Scotland and NI), and if so, the facts relating to the matter which led to such action and the reasons given by the PCT or equivalent body for such action
- Whether he is at the time, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which is currently suspended from such a list, and if so, the facts relating to the matter which led to the suspension and the reasons given by the PCT or equivalent body for the suspension.

Fraud

3. When considering the removal or contingent removal of an optometrist/OMP on discretionary fraud grounds the PCT must, in respect of the information it is relying on, consider:

- The nature of the incidents of fraud
- The length of time since the last incident of fraud (if any) occurred, and since any investigation into that incident of fraud was concluded
- Whether there are other incidents of fraud or other criminal offences to be considered

- Any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such incident
- The relevance of any investigation into the incident of fraud to the provision by him of general ophthalmic services and the likely risk to patients or to public finances
- Whether the optometrist/OMP has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from other PCT lists or equivalent lists (in Wales, Scotland and NI), and if so, the facts relating to the matter which led to such action and the reasons given by the PCT or equivalent body for such action
- Whether he was at the time, has in the preceding six months been, or was at the time of the originating events a director of a body corporate which was refused admittance to, conditionally included, removed or contingently removed from other PCT lists or equivalent lists (in Wales, Scotland and NI), and if so, the facts relating to the matter which led to such action and the reasons given by the PCT or equivalent body for such action
- Whether he is at the time, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which is currently suspended from such a list, and if so, the facts relating to the matter which led to the suspension and the reasons given by the PCT or equivalent body for the suspension.

Suitability

4. When considering the removal or contingent removal of an optometrist/OMP on discretionary unsuitability grounds the PCT must, in respect of the information it is relying on, consider:

- The nature of any criminal offence, investigation or incident
- The length of time since any offence, incident, conviction or investigation
- Whether there are other criminal offences to be considered
- The penalty imposed on any criminal conviction or the outcome of any investigation
- The relevance of any criminal offence, or investigation into professional conduct, on the provision by the optometrist/OMP of general ophthalmic services and the likely risk to patients
- Whether any criminal offence was a sexual offence to which Part I of the Sexual Offences Act 2003 (see Annex B) applies
- Whether the optometrist/OMP has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from other PCT lists or equivalent lists (in Wales, Scotland and NI), and if so, the facts relating to the matter which led to such action and the reasons given by the PCT or equivalent body for such action
- Whether he was at the time, has in the preceding six months been, or was at the time of the originating events a director of a body corporate which was refused admittance to, conditionally included, removed or contingently removed from other PCT lists or equivalent lists (in Wales, Scotland and NI), and if so, the facts relating to the matter which led to such action and the reasons given by the PCT or equivalent body for such action

- Whether he is at the time, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which is currently suspended from such a list, and if so, the facts relating to the matter which led to the suspension and the reasons given by the PCT or equivalent body for the suspension.

Annex D: Circumstances Where an Application to Join a List Can Be Deferred

- Where there are legal proceedings anywhere in the world that would be criminal proceedings if brought in the United Kingdom, and that if successful would be likely to lead to the removal of the optometrist/OMP from the PCT list if he had been included
- Where there are legal proceedings anywhere in the world against a body corporate of which the optometrist/OMP is, has in the preceding six months been, or was at the time of the originating events a director, that would be criminal proceedings if brought in the United Kingdom, and that if successful would be likely to lead to the removal of the optometrist/OMP from the PCT list if he had been included
- Where there is an investigation anywhere in the world by the optometrist's/OMP's licensing or regulatory body or any other investigation (including one by another PCT or equivalent body) relating to him in his professional capacity that if adverse would be likely to lead to the removal of the optometrist/OMP from the PCT list if he were to be included
- Where the optometrist/OMP is suspended from any of the lists or equivalent lists
- Where a body corporate of which the optometrist/OMP is, has in the preceding six months been, or was at the time of the originating events a director , is suspended from any of the lists or equivalent lists
- Where the FHSAA is considering an appeal by the optometrist/OMP against a decision of a PCT to refuse to approve, nominate or admit an optometrist/OMP to its list, or to conditionally include in or to contingently remove from, or to remove from any list kept by a PCT and if that appeal is unsuccessful the PCT would be likely to remove the optometrist/OMP from the PCT list if he had been included
- Where the FHSAA is considering an appeal by a body corporate of which the optometrist/OMP is, has in the preceding six months been, or was at the time of the originating events a director, against a decision of a PCT to refuse to approve, nominate or admit the body corporate to its list, or to conditionally include in or to contingently remove from, or to remove from any list kept by a PCT and if that appeal is unsuccessful the PCT would be likely to remove the optometrist/OMP from the PCT list if he had been included
- Where the optometrist/OMP is being investigated by the CFSMS in relation to any fraud case, where the result if adverse would be likely to lead to the removal of the optometrist/OMP from the PCT list if he had been included
- Where a body corporate, of which the optometrist/OMP is, has in the preceding six months been, or was at the time of the originating events a director, is being investigated by the CFSMS, in relation to any fraud case, where the result if adverse would be likely to lead to the removal of the optometrist/OMP from the PCT list if he were to be included
- Where the FHSAA is considering an application from a PCT for a national disqualification of the optometrist/OMP

- Where the FHSAA is considering an application from a PCT for a national disqualification of a body corporate of which the optometrist/OMP is, has in the preceding six months been, or was at the time of the originating events a director.

Annex E: Dealing with Performance – Fitness to Practice: Clinical Capability to Deliver Adequate Standards of Care

1. In the great majority of cases, the causes of adverse events stretch far beyond the actions of the individuals immediately involved. They are a combination of active failures – 'unsafe acts' by individuals – and systems or organisational failures.
2. If a PCT or employer considers a failure to deliver an adequate standard of care, or standard of management, is through lack of knowledge or ability, the case is categorised as "clinical capability".
3. Examples of issues which would come under the clinical capability heading are:
   - Out of date clinical practice
   - Inappropriate clinical practice arising from a lack of knowledge or skills that puts patients at risk
   - Incompetent clinical practice
   - Inability to communicate effectively
   - Inappropriate delegation of clinical responsibility
   - Inadequate supervision of delegated clinical tasks
   - Ineffective team working skills.
4. The key to dealing with issues of capability is that, wherever possible, PCTs/employers should be looking to satisfactorily resolve the issue, through assessment and support. The PCT/employer should be looking to identify any problems early enough to prevent serious harm to patients. Where the performer is prepared to work with the PCT/employer to resolve the problem and where they can be returned to a satisfactory level of performance, through for example, retraining, instigating disciplinary procedures would not usually be appropriate. In the case of OMPs, the introduction of the NCAA greatly facilitates this process.

Annex F: Introduction to the NHS Counter Fraud and Security Management Service

1. The Counter Fraud and Security Management Service (CFSMS) is a division of the NHS Business Services Authority. It has responsibility for all policy and operational matters relating to the prevention, detection and investigation of fraud and corruption and the management of security in the NHS. The NHS CFSMS has 10 directorates: Risk Measurement, Policy, Operations, Personnel and Training, Quality, Corporate Affairs, Security Management, Executive Office, Information Systems, and Finance.

The NHS CFSMS

2. In addition to investigating allegations of fraud, the NHS CFSMS has responsibility for all policy and operational work on fraud and corruption and management of security in the NHS, within the framework of the 10 directorates. It has a central coordinating and directing role, revising policy and processes to develop an anti-fraud and pro-security culture and prevent fraud and security incidents, providing information to target counter fraud and security management action, continuously identifying the nature and scale of the problem of fraud, corruption and security breaches, and setting and monitoring the standards of counter fraud and security management work.

The NHS CFSMS Operations Directorate

3. The Operations Directorate consists of nine regional teams, specialist pharmaceutical and dental fraud teams and an operational support team. These teams undertake special projects and investigate the highest value cases of fraud. The Operations Directorate works to detect and investigate fraud and corruption, seeking to apply sanctions where fraud is found and to supply information where fraud is proven to PCTs and NHS trusts so that losses can be effectively recovered. It also provides advice and support to Local Counter Fraud Specialists (LCFSs).

Local Counter Fraud Specialists

4. Secretary of State Directions require every PCT, NHS trust, strategic health authority and special health authority to appoint a Local Counter Fraud Specialist (LCFS) and set

out the division of responsibilities between health bodies and the NHS CFSMS. LCFSs have a vital role to play in acting as the first line of defence against fraud and corruption.

5. Every counter fraud specialist, whether an LCFS or a member of the NHS CFSMS Operations Directorate, is required to undertake specialist professional training accredited by the Institute of Criminal Justice Studies at the University of Portsmouth.

The NHS CFSMS Security Management Directorate

3. The Security Management Directorate consists of teams with responsibility for developing policy to protect NHS property and assets and to protect staff and patients from violence, a Systems Development Team and a Legal Protection Unit that works with health bodies and the Crown Prosecution Service to increase the number of prosecutions and provide legal advice. The Security Management Directorate is also responsible for ensuring that Local Security Management Specialists are aware of the risks presented by terrorism and can respond as appropriate to this and other major incidents. It has a service level agreement with the Department of Health's Emergency Preparedness Division for this strand of work.

4. Within the Security Management Directorate, Area Security Management Specialists, located in regions across England, provide a link between Local Security Management Specialists and the Security Management Directorate, ensuring that operational work informs and drives the revision of national policy, systems and procedures.

Local Security Management Specialists

5. Every PCT, NHS trust, strategic health authority and special health authority, under Secretary of State Directions, is required to appoint a Local Security Management Specialist (LSMS). LSMSs are the first point of contact for security issues in their health bodies, acting as an expert resource in matters of security management.

6. All LSMSs are required to undertake specialist professional training, accredited by the University of Portsmouth.

7. The remainder of this document will focus on the NHS CFSMS's work to counter fraud in the NHS.

What is fraud?

8. In respect of the PCT's decision to refuse admission to or remove someone from the ophthalmic performers list, the PCT has to consider whether there has been fraudulent behaviour, established to the civil burden of proof. This may include criminal offences, but is not limited to cases where a specific offence has been identified or proven.

9. The civil burden of proof means that the evidence more likely than not establishes a particular point. This differs from the burden of proof beyond reasonable doubt which must be met by the prosecution's evidence in a criminal prosecution.

10. For practical purposes, fraud may be defined as wrongfully obtaining property belonging to another. There are many kinds of fraud, including conspiracy to defraud, but generally it involves false representation to gain an unfair advantage or reward, including obtaining a financial advantage, and could include the deliberate omission of information as well as the provision of false information. It includes the falsification of documents and the certification as true of information known to be wrong.

11. Fraud does not necessarily involve large sums of money. Representations are fraudulent if the representor knows or believes them to be false or is reckless as to whether they are true or false when made, although mere non-belief in the truth is indicative of fraud.

12. Fraud and corruption against the NHS may be perpetrated by staff, professionals, suppliers or patients, but in the context of lists PCTs are going to be concerned with performers – though remember that any fraud eg fraud against the performer's contractor employer or against any third party is just as much fraud and just as much a ground for removal from/non-inclusion in lists.

13. Fraud and corruption committed by staff includes:
    - staff submitting false timesheets in order to claim for hours not worked
    - payroll staff creating fictitious staff members and paying the salaries into their own bank accounts.

    Fraud and corruption committed by health care professionals includes:
    - claiming to have treated patients who have not received treatment
    - charging private fees to patients while also claiming the cost of providing the treatment from the NHS.

Fraud and corruption committed by suppliers includes:

- submitting false or inflated invoices for payment of goods or services
- forming a cartel to set a higher price for goods or services to be provided to the NHS.

Fraud and corruption committed by patients includes:

- falsely claiming exemption from prescription charges
- falsely claiming exemption from NHS dental charges.

14. If you suspect fraud may have taken place or is about to take place you should contact CFSMS via the NHS Fraud and Corruption Reporting Line on 0800 028 40 60, or your local counter fraud specialist (LCFS)

Countering fraud in the NHS

15. The NHS CFSMS undertakes action in seven generic areas to counter fraud in the NHS:

Creating an anti-fraud culture

16. Ensuring that all those who work for and use the NHS are aware that fraud is unacceptable and will not be tolerated, and that action is being taken to counter the problem. Additionally, the creation of an anti-fraud culture will ensure that all NHS staff and patients are aware of their roles and responsibilities as regards countering NHS fraud.

Deterrence

17. An anti-fraud culture, where acts of fraud are seen as unacceptable, combined with individuals' doubts as to whether an act of fraud can succeed, can serve as a powerful deterrent. A deterrent effect can be created when there are strong prevention, detection, investigation, sanction and redress processes in place, with effective publicity and communication developed around them.

Prevention

18. Effective prevention systems are put in place to ensure that when fraud is attempted, it will fail. Preventing fraud in the NHS means ensuring that sound policy and procedural measures are in place in all areas of NHS spending.

Detection

19. Despite strong preventative systems, there will always be a minority of dishonest people who will be intent on attempting fraud and finding new ways to circumvent preventative systems. It is therefore important to be able to promptly detect instances of fraud that have occurred.

Investigation

20. Allegations of fraud will be professionally investigated by the NHS CFSMS Operations Directorate, to establish whether fraud has occurred and uncover evidence where it exists.

Sanctions

21. The application of all appropriate sanctions – criminal, civil and disciplinary – is sought where an investigation uncovers evidence that fraud has occurred.

Redress

22. The NHS CFSMS will seek financial redress in cases where there are losses to fraud. These resources will then be returned to the NHS for the purpose they were intended for: patient care.

Procedures for PCTs undertaking checks with the NHS CFSMS

23. When a PCT receives an application from a practitioner to join one of its lists, it is required to check with the NHS CFSMS whether the applicant is subject to an investigation in relation to fraud or has a record of fraud. PCTs may also wish to undertake checks with the NHS CFSMS on a sample of practitioners if there is any doubt or suspicion about their past activity.

24. If the PCT wishes to undertake a check on a practitioner, it should provide the NHS CFSMS with basic information about the practitioner, including:

    - full name
    - address and telephone number, plus previous address if new to an area
    - identifying details (e.g. date of birth, NI number or similar)
    - profession
    - professional registration number
    - if they are or have been a member of a body corporate, the name and registered office of any such body
    - a contact within the PCT who can supply further details and to whom the reply should be sent.

    This information should be requested by email, so that there is a clear audit trail for disclosure of information. In exceptional cases, urgent information may be requested by telephone but should still be requested by e-mail.

Information to be provided by the NHS CFSMS to PCTs

25. The NHS CFSMS will provide information relating to any NHS fraud investigation carried out since it was established in 1998. It will not be able to provide information about fraud in the NHS prior to this date.

26. If a health body enquires about a particular individual, the details will be checked on the national database. If no match is found, a response to this effect will be made by letter attached within an e-mail, directly to the health body concerned. If a potential match is found, it will be referred to the relevant regional team to liaise with the health body and confirm that they have the correct person. Please remember that the NHS CFSMS can only provide information on the details provided. It is the PCT's responsibility to ensure that any information supplied relates to the person they have enquired about, and that such information is only used for the purposes for which it was requested.

27. It should be noted that the statutory power for the NHS CFSMS to disclose information about past or current investigations is permissive, and not mandatory. In particular, for current investigations, the NHS CFSMS is not required to disclose even the fact that there is an investigation if it would be premature to do so, and could risk compromising or jeopardising the success of any potential criminal action by forewarning the

practitioner under suspicion. However, in such cases, the NHS CFSMS should notify the PCT of any adverse outcome of an investigation.

28. Not all fraud investigations will result in an outcome which should be disclosed to the PCT as evidence of a history of fraud. For example, where there was no evidence to substantiate a case, a mistake was made, or there was insufficient evidence for any action to be taken, the NHS CFSMS will advise the PCT that there is no evidence of a proven fraud.

29. The NHS CFSMS may contact the PCT during the course of an investigation if the operational fraud manager has concerns over clinical or financial propriety, in order that contingent inclusion or suspension can be considered. Such a case may arise if a practitioner has been charged with criminal or disciplinary offences that relate to the way they have managed the financial affairs of the practice. It may, in this scenario, be sensible to allow the practitioner's contract to continue, but prevent them from dealing with practice affairs, until the matter has been concluded.

30. If NHS CFSMS records indicate that disciplinary action has resulted in an adverse outcome, it will advise the PCT to contact the body which made the decision for further details – for example, the relevant human resources department or the professional regulatory body.

31. The NHS CFSMS will need to decide what information it wishes to provide in relation to the categories listed in the regulations on which the PCT will base its decision. Standard forms will be used to request and supply this information.

32. The NHS CFSMS Operations Directorate will normally provide PCTs with any information in relation to the practitioner within five working days. However, in exceptional cases, urgent PCT requests may be facilitated. Emails should be clearly marked as urgent and the Operations Directorate will endeavour to respond within three working days. If the PCT has not received a response within these timescales, it should follow up with a telephone call to the NHS Fraud and Corruption Reporting Line on 0800 028 40 60 or the operational fraud manager on 01744 648741.

Contact details

Operations Directorate regional teams

South West Regional Team

2nd Floor

1 The Piazza

Harbour Road

Portishead

Bristol

BS20 7EL

Tel: 0117 918 4000

Northern and Yorkshire Regional Team

3rd Floor

Sandyford House

Jesmond

Newcastle Upon Tyne

NE2 1DB

Tel: 0191 204 6330

London Regional Team

1st Floor

Weston House

High Holborn

London

WC1V 7EX

Tel: 020 7895 4688

Eastern Regional Team

Level 11

Terminus House

Terminus Street
Harlow
Essex
CM20 1XE
Tel: 01279 828230

East Midlands Regional Team
Ransom Wood Business Park
Southwell Road West
Rainworth
Mansfield
Nottinghamshire
NG21 0ER
Tel: 01623 788900

North West Regional Team
3rd Floor
Lakeside
Alexandra Park
Prescot Road
St Helens
Merseyside
WA10 9TK
Tel: 01744 648740

West Midlands Regional Team
8th Floor
Coventry Point
Market Way
Coventry
CV1 1EA
Tel: 02476 245572

South East Regional Team

8th Floor

Tolworth Tower

Ewell Road

Surbiton

Surrey

KT6 7EL

Tel: 020 8213 5119

Wales Regional Team

Mamhilad House

Mamhilad Park Estate

Pontypool

Gwent

NP4 0PY

Tel: 01495 334100

Operations Directorate specialist teams

Pharmaceutical Fraud Team

3rd Floor

Sandyford House

Jesmond

Newcastle Upon Tyne

NE2 1DB

Tel: 0191 204 6340

Dental Fraud Team

1st Floor

Weston House

High Holborn

London

WC1V 7EX

Tel: 020 7895 4690

Operational Support Team

1st Floor

Weston House

246 High Holborn

London

WC1V 7EX

Tel: 020 7895 4746

Annex G: Notification - Contact Details in Devolved Administrations

Scotland

Mr J Davidson

Scottish Government Health Directorates

St Andrews House

Regent Road

Edinburgh EH1 3DG

email john.davidson@scotland.gsi.gov.uk

Wales

Notifications Clerk

CPCHSPD GMS & GOS Branch

National Assembly for Wales

Cathays Park

Cardiff CF1 3NQ

Tel: 02920826967

Email gmscontract@wales.gsi.gov.uk

Northern Ireland

John McCord

General Medical Services

Primary Care Directorate

Department of Health, Social Services and Public Safety

Room D3, Castle Buildings

Upper Newtownards Road

BELFAST

BT4 3SQ

Tel. 028 90765604 (89604)

Fax. 028 90765624 (89624)

E-Mail. mailto:mjohn.mccord@dhsspsni.gov.uk

NHS Counter Fraud & Security Management Service

For the NHS CFSMS, contact details are in Annex F.

Family Health Services Appeal Authority (Special Health Authority)

Contact details at the FHSAA(SHA) (for the Secretary of State for Health) are in Annex H.

Annex H: The Family Health Services Appeal Authority (FHSAA) & The National Health Service Litigation Authority (NHSLA):

Who does what?

1. The Family Health Services Appeal Authority (FHSAA) and the National Health Service Litigation Authority (NHSLA): are two linked but separate organisations. It is important to recognise the distinction between them and why it is necessary to make it. A summary of the reason for the distinction and the functions of each body is set out below.

The FHSAA

2. This is an independent tribunal non-departmental public body that was established by section 49S of and Schedule 9A to the 1977 NHS Act (as amended by section 27 of the 2001 Health & Social Care Act). It is established as an independent tribunal because the matters it deals with generally bear on civil rights.

3. These matters are currently: Under the NHS (Performers Lists) Regulations 2004 and its predecessor regulations (and the equivalent regulations for pharmacists)

- Appeals from practitioners against PCT discretionary decisions to refuse to admit them to a list
- Appeals from performers against PCT decisions to impose conditions on their admission to a list;
- Appeals from performers against PCT discretionary decisions to remove them from a list
- Appeals from performers against PCT decisions to contingently remove them from a list
- Applications from PCTs that performers removed from a list should be disqualified
- nationally from all PCT lists
- Representations that PMS doctors seeking to exercise their preferential right of return to

- GMS should be prevented from so doing (until April 2004)
- Requests from PCTs to extend certain periods of suspension beyond six months
- Requests for review of earlier decisions taken by the new FHSAA or by the former NHS
- Tribunal.

Under the NHS (General Medical Services Contracts) Regulations 2004, the NHS (Personal Medical Services Agreements) Regulations 2004, the Dental Contract Regulations 2005 and the General Ophthalmic Services Contracts Regulations 2008.

- Appeals against a PCT's refusal to enter a contract on mandatory grounds (when the general conditions relating to all contracts are not satisfied
- Appeal against a PCT's termination of a contract on mandatory grounds (when the
- contractor no longer satisfies the general conditions relating to all contracts)

4. Because it is an independent tribunal non-departmental public body, the President and Members of the FHSAA are appointed by the Lord Chancellor. The President is currently Paul Kelly Esq. The President and Members work to Rules issued by the Lord Chancellor (the Family Health Services Appeal Authority (Procedure) Rules 2001, as amended).
5. Tribunals may not employ staff. Therefore administrative and support functions for the FHSAA are undertaken on its behalf by staff of the NHSLA:

The NHSLA

6. This is a special health authority originally established in 1995 to conduct adjudication functions in primary care on behalf of the Secretary of State for Health. Because it is a special health authority, it has a Board appointed by the Secretary of State and it is accountable to him for its work. As a result it may not be regarded as a wholly independent body in civil rights terms.

Functions in support of the FHSAA

7. When the FHSAA was established as an independent tribunal, the Secretary of State gave the predecessor of the NHSLA the following additional functions:
    - The duty to provide administrative and other support for the President and Members of the FHSAA

- The duty to receive on the Secretary of State's behalf all the notifications from PCTs about decisions they have taken under the NHS (Performers Lists) Regulations (and their
- equivalents)
- Maintaining a national database of such decisions on his behalf

8. The Chief Executive of the NHSLA is Stephen Walker CBE

Contacting the FHSAA and NHSLA

9. The address for correspondence of both bodies is:

30 Victoria Avenue

Harrogate

North Yorkshire

HG1 5PR

The telephone number is 01423-535415

The e-mail address is fhsau@nhsla.com

10. Appeals and applications made under the Performers Lists Regulations should be addressed to The President of the Family Health Services Appeal Authority. Notifications of PCT decisions should be sent to The Chief Executive of the National Health Service Litigation Authority
11. The importance of notifying the NHSLA whenever a decision is taken by a PCT under the Performers Lists Regulations is that the information contributes to the database of decisions that the NHSLA maintains. A PCT must contact the NHSLA before it admits a performer to its list as part of the process for assuring itself that the optometrist/OMP meets the criteria for inclusion. However the NHSLA database is only as comprehensive as the information that PCTs contribute to it.

For this reason, PCTs need to:

- Keep the NHSLA informed of all relevant decisions by sending it a copy of the formal notification to any performers who they refuse to admit to a list, contingently include in a list, suspend from a list, remove or contingently remove from a list. They should do likewise when they have reviewed any earlier decision on such matters
- Ensure that a process for notifying the NHSLA is built in to their procedures

Enquiries about PCT decisions taken under the Performers Lists Regulations

12. For security reasons, enquiries to the NHSLA about any past primary care action against a performer will only be accepted by post. Enquiries should be made on the PCT's letterhead paper.

    The enquiry should always include:

    - The full name, profession and registration number (where applicable) of the performer
    - concerned. If, exceptionally, there is no registration number available, the current and any
    - previous known address should be included
    - A precise description of the information that is sought
    - The reason why the information is sought

13. If PCTs want to fax or e-mail their requests in advance, this will facilitate speedy preparation of replies. See paragraph 10 above for the address, telephone and e-mail details.