

**Primary Care Contracting
Eye Care Paper
PCC/EC/WB/FINALCONTRACT/22
0708**

FINALISATION OF CONTRACTS

Consequences of delays in issuing/finalising contracts

1. In principle a contract cannot come into force until it has been agreed by the parties. Therefore, a contract for the provision of general ophthalmic services cannot come into effect until it has been agreed by the PCT and the aspirant contractor.

The transitional arrangements

2. The transitional arrangements are however a rather separate case. The contract here is not based essentially on the agreement between the two parties, but rather is a statutory right (subject to certain exceptions) possessed by persons on the ophthalmic list.

3. The Transitional Provisions Regulations derive from section 43 of the Health Act 2006, which provides for circumstances in which "a Primary Care Trust must, if any such person so wishes enter into a general ophthalmic services contract with him". The important thing to note is that this is an absolute duty on the PCT and this is reflected in regulation 4 (entitlement to contract) of the POS Transitional Provisions Regulations 2008. This provides that any person (which includes companies) whose name is included in the ophthalmic list who notifies the Trust by 1 July 2008 that he wishes to enter into a contract is entitled to one.

4. Therefore any person (which includes companies) included in the ophthalmic list who notified the PCT of their desire to have one of the new contracts on or before 1 July 2008 is entitled to one, unless they fall within one of the exceptions in regulation 4(2).

The exceptions

5. The exceptions (which are grandfathers, those suspended, those subject to conditions, those subject to inquiry or investigation or whose name was included in the list in error) are all basic questions of fact (or in the last circumstance mixed law and fact). It is, of course, for the PCT to determine those facts. The Regulations do not provide that the PCT has to notify that person that the exception applies to them. However, if the PCT has used the standard forms produced by PCC (and vetted by DH), the person will have been informed of the PCT's view. There is no appeal procedure as such, not least because in these tight timescales there is no room for such a procedure,

but our Guidance stresses that people in this exception are still entitled to apply for a new contract. If they are turned down for a contract, they have the normal rights of appeal.

The rights

6. If persons included on the ophthalmic list, who notified the PCT by 1st July 2008, do not fall within the exceptions, then they have an entitlement to a contract. As it is an absolute right, laid down in both statute and regulations, the failure of the PCT to complete the proper paperwork cannot affect that right. Therefore, anyone included on the ophthalmic list, who has properly notified the PCT and does not fall within the exceptions, will be entitled, as of the 1 August 2008, to continue to conduct sight tests and to issue vouchers etc in accordance with the provisions of the POS Regulations and the GOS Contract Regulations. They will also be entitled to be paid for any sight tests performed, provided they are within the terms of the Contracts Regulations and POS Regulations and PCTs will be obliged to redeem any valid vouchers issued by them. The Contract will follow the terms in the Regs (i.e. the model contract should apply).

Difficulties

7. There are two potential difficulties. The first is any contractors who decide that they do not want to take up the new contract, despite having previously notified the PCT that they want one. The point is that although everyone on the ophthalmic list (subject to the exceptions and procedures set out earlier) has a right to a contract they are not, of course, obliged to take up that right. Therefore if a contractor has not signed and returned his contract to the PCT by 1st August the PCT should make enquiries as to whether the contractor does indeed want a contract. If there has merely been a delay in signing then the contract will still take effect on 1st August, regardless of when it is signed.

8. Secondly, any person on the ophthalmic list who has requested and not received a contract from the PCT should contact the PCT to enquire why. Provided that the PCT is not of the view that the contractor falls within any of the exceptions, the contract will still take effect on 1 August, regardless of when it is signed.

Unintended Contracts

9. It is possible that a former contractor whom the PCT believes to be ineligible for a new contract for some good reason (e.g. former front men in grandparenting arrangements, those suspended, those subject to conditions, those subject to enquiry or investigation or whose name was included in the list in error) may continue to behave as if they had been granted a new contract. In other words, they may continue to submit sight testing claims and to issue optical vouchers.

10. There is a danger that, if the PCT continued to pay such sight test claims, the PCT might by its actions affirm the existence of a contract which the PCT in fact has no intention of granting. PCTs should therefore ensure that all former contractors to whom the PCT does not intend to grant a contract have been told of this fact and that their

entry in the Open Exeter Ophthalmic Payments System is shown as ceased as at 31 July 2008. This should allow claims for sight tests undertaken before 1 August 2008 to be paid but should prevent payments being made for any sight tests given on or after 1 August 2008.