

**DELIVERING QUALITY IN PRIMARY CARE**  
**PRIMARY CARE TRUST MANAGEMENT OF PRACTITIONERS LISTS**  
**GENERAL OPHTHALMIC SERVICE PRACTITIONERS**

## Index

<b>Introduction</b>	<b><a href="#">Section 1</a></b>	
NHS Plan		<a href="#">1.5</a>
Health and Social Care Act		<a href="#">1.6</a>
Regulations		<a href="#">1.8</a>
Shifting the Balance of Power		<a href="#">1.12</a>
PCT “New” Powers		<a href="#">1.13</a>
Quality		<a href="#">1.21</a>
Definitions		1.28
Key dates and actions		<a href="#">1.29</a>
Detail		<a href="#">1.30</a>
<b>Summary</b>	<b><a href="#">Section 2</a></b>	
The GOS Lists		<a href="#">2.1</a>
The Supplementary List		<a href="#">2.2</a>
Declarations of Financial Interests		<a href="#">2.3</a>
<b>The Introduction of Supplementary Lists</b>	<b><a href="#">Section 3</a></b>	
Introduction		<a href="#">3.1</a>
Admission		<a href="#">3.2</a>
Removal		<a href="#">3.3</a>
Suspension		<a href="#">3.4</a>
Amendment/Withdrawal		<a href="#">3.5</a>
Counter-signing		3.6
Signing arrangements – transitional provisions		3.7
Responsibilities of contractor and assistant		3.8
Newly qualified optometrists		3.9
<b>Changes Relating to the Ophthalmic List</b>	<b><a href="#">Section 4</a></b>	
Introduction		<a href="#">4.1</a>
Admission		<a href="#">4.2</a>
Removal		<a href="#">4.3</a>
Suspension		<a href="#">4.4</a>
Corporate Bodies		4.5
Temporary arrangements		4.6
Mobile Optical Services		4.7
<b>PCT Discretion and Procedures</b>	<b><a href="#">Section 5</a></b>	
Suspension Process		<a href="#">5.1</a>
Discretionary Decisions		5.2
Procedures		5.3
<b>The FHSAA and the Appeal Process</b>	<b>Section 6</b>	
<b>National Disqualification</b>	<b>Section 7</b>	
<b>Declaration of Convictions etc by Doctors On the Medical List</b>	<b>Section 8</b>	

<b>Sharing Information</b>	<b>Section 9</b>
<b>Reporting Gifts from Patients</b>	<b>Section 10</b>
<b>The “existing” FHSAA</b>	<b>Section 11</b>
<b>Other Important Issues</b>	<b>Section 12</b>
<b>Appeals against Criminal Convictions</b>	<b>12.1</b>
<b>Access by DCFS/CFOS to Declarations</b>	<b>12.2</b>
<b>Checking Declarations of Criminal Convictions</b>	<b>12.3</b>
<b>Payments to Optometrists/OMPs</b>	<b>12.4</b>
<b>Statistics</b>	<b>12.5</b>
<b>Direct Referral by optometrists</b>	<b>12.6</b>
<b>Annexes</b>	<b>-</b>
<b>Declarations of Professional Investigations</b>	<b><a href="#">Annex A</a></b>
<b>Offences to which Part 1 of the Sexual Offenders Act 1997</b>	
<b>Applies</b>	<b><a href="#">Annex B</a></b>
<b>Specimen Optometrists/OMP’s Declaration</b>	<b><a href="#">Annex C</a></b>
<b>Clinical Capability – Extract from NHS Trust Guidance</b>	<b><a href="#">Annex D</a></b>
<b>Mandatory Criteria for use in Decision-Making</b>	<b><a href="#">Annex E</a></b>
<b>Introduction to the NHS Counter Fraud Service</b>	<b><a href="#">Annex F</a></b>
<b>Supplementary List – Application Details</b>	<b><a href="#">Annex G</a></b>
<b>Declaration required from all Applicants to PCT lists</b>	<b><a href="#">Annex H</a></b>
<b>Ophthalmic List – Revised Application Details</b>	<b><a href="#">Annex I</a></b>
<b>Deferment Criteria</b>	<b><a href="#">Annex J</a></b>

## **1. INTRODUCTION**

- 1.1 This guidance describes the arrangements for Primary Care Trusts (PCTs) to manage lists of practitioners who provide, assist in the provision of or perform General Ophthalmic Services (GOS).
- 1.2 It applies in England only.
- 1.3 These arrangements will allow decisions about the overall acceptability of GOS to be taken locally by those responsible for the quality of primary care services.
- 1.4 Similar arrangements are being or have been made to the list arrangements for the other three NHS primary health care professions (doctors, pharmacists and dentists).

### **NHS Plan**

- 1.4 The NHS Plan (chapter 10 – Changes for Patients) sets out commitments to improve the quality of NHS services to provide better protection for patients.
- 1.5 For primary care services, changes include modernisation and extension of the practitioner list system to cover all practitioners involved in the provision of NHS primary care and to give powers to PCTs to remove, exclude or suspend practitioners from those lists.

### **The Health and Social Care Act 2001**

- 1.6 The amendments made to the National Health Service Act 1977 (the 1977 Act) by the Health and Social Care Act 2001 (H&SC Act) provide the legal framework for changes to the management of practitioner lists, which form the basis of both these amendments and those made in 2001. The provisions of the 1977 Act as amended by H&SC Act relevant to GOS are:
  - the abolition of the NHS Tribunal (section 16 H&SC Act);
  - changes to the regulation of the existing practitioner lists which introduce new powers of suspension, removal from and refusal to admit to these lists (sections 39(2), 43ZA and 49F to 49R);
  - the establishment of the Family Health Services Appeals Authority as a fully independent appeal body;
  - the introduction of supplementary lists for the contractor professions (section 43D).

### **Regulations**

- 1.8 These changes have been set out in regulations. This guidance explains these regulations, some of which have been in force for sometime and others, which came into force on 1 April 2005.
- 1.9 This note is not a substitute for reading the regulations. Examples used are illustrative and should not be treated as definitive.

- 1.10 In addition, this guidance concentrates on the arrangements delivered by the amendments introduced by the H&SC Act and consequent regulations. It does not cover previously established processes, such as requirements for inclusion and disciplinary processes, nor the terms of service with which those included in the ophthalmic list must comply, which remain unchanged.
- 1.11 These regulations also introduce direct referral by optometrists to ophthalmic hospitals following a sight test under General Ophthalmic Services arrangements.
- 1.12 In implementing these regulations, PCTs should have regard to maintaining continuity of service.

### **Shifting the Balance of Power**

- 1.13 From October 2002, responsibility for the Family Health Services passed to PCTs and they are responsible for managing practitioner lists.

### **PCTs' new powers**

- 1.14 Before its abolition, the NHS Tribunal considered whether the continued inclusion of a practitioner would be prejudicial to the efficiency of the service that he provides. The PCT is now able to consider that factor and also whether previous instances of fraud justify action and whether the practitioner is unsuitable for inclusion in the relevant list.
- 1.15 The underlying primary powers for these conditions of efficiency, fraud and unsuitability are to be found in sections 49F (disqualification of practitioners) and 43D (supplementary lists) of the 1977 Act.
- 1.16 PCTs must consider these three issues when deciding whether an optometrist/Ophthalmic Medical Practitioner (OMP)/corporate optician should be admitted to one of its lists.
- 1.17 Provisions also allow an optometrist/OMP/corporate optician to be entered onto a list, but subject to conditions set by the PCT (a conditional inclusion), or for the optometrist/OMP/corporate optician's continued presence on a list to be similarly subject to conditions (a contingent removal).
- 1.18 PCTs will also take into account in determining suitability whether the optometrist/OMP was a director of a body corporate, which has been refused admittance to, or removed or suspended from any PCT list or equivalent list outside England and may take into account, in relation to a corporate optician, like facts about its directors.
- 1.19 A PCT decision will only be effective in relation to its own list. Where a national disqualification is felt necessary this decision will have to be taken by the independent FHSAA. This body will also hear appeals against PCT decisions to remove or exclude, but not to suspend.
- 1.20 The 2005 Regulations (General Ophthalmic Services and Supplementary List Regulations) also clarify requirements for listing of corporate opticians and introduce new arrangements for countersigning of claim forms and direct referral by optometrists.

1.21 The 2005 Regulations also allow mobile optical practices to provide General Ophthalmic Services at individuals' own homes and require PCTs to consider specifically the appropriateness of providers to provide mobile services (whether they also operate from fixed premises or are mobile optical practices) and introduce new requirements to regulate this service.

## **Quality**

1.22 These changes in list management form part of the overall quality assurance system. This involves new, robust systems for quality assurance and quality improvement, and changes in culture and working practices.

1.23 The new arrangements for management of primary care contractor lists must be viewed and operated in this wider quality context. In many instances, early and appropriate use of complementary and supportive initiatives will avoid having to resort to removal of a practitioner from the list – which should usually be seen as a last resort.

## **Detail**

1.24 The remainder of this guidance describes each of the requirements in more detail.

1.25 It does so in modular form to allow individual sections to be inserted or updated as the system develops. Each section is intended to be as self-contained as possible so that it may be read in isolation. This means that there is necessarily some duplication between sections.

1.26 For those who require more detail about the administration of these lists section 5 discusses related procedures and the exercise of discretion in more depth. Section 5 applies to both the Ophthalmic and the Supplementary Lists.

1.27 Following the law, as in the Regulations, references to “he” or “him” includes “she” or “her”, as do references in this guidance. In addition, in relation to corporate opticians, “he” etc is to be taken as including “it”.

1.28 The term "corporate optician" is used in this Guidance (as it is in the Regulations) to indicate a body corporate, which is enrolled in the list kept by the General Optical Council (GOC) of corporate bodies carrying on business as ophthalmic opticians. Where the term “body corporate” is used (as it is in the Regulations), it has the wider meaning of any limited company.

## **Definitions**

1.29 The following definitions explain the basic terms used in the regulations:

*Ophthalmic list* – a list of contractors maintained by each PCT.

*Supplementary List* – a list of assistants that is introduced on the basis of the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services Amendment and Consequential Amendment) Regulations 2005 (“the 2005 Regulations”).

*Contractor* – an individual or corporate body included in a PCT’s ophthalmic list who meets all the requirements for inclusion in the ophthalmic list, which includes the General Ophthalmic Services (GOS) Terms of Service, including provision of premises and equipment, the keeping of records and responsibility for acts and omissions of employees, deputies. Only optometrists, ophthalmic medical practitioners and corporate bodies registered with the GOC as being in business as optometrists may be listed with PCTs as contractors. Typically, these will be practice owners, whether individual sole owner, optometrist who are partners in the business and companies, or other corporate bodies listed with the GOC.

*Assistant* – an individual optometrist or ophthalmic medical practitioner who undertakes GOS sight tests for a contractor.

*Corporate optician* - a new term meaning a business that is on the list maintained by the GOC of corporate bodies carrying on business as ophthalmic opticians.

*Mobile Services* - means general ophthalmic services which a contractor has arranged with the Primary Care Trust to provide other than at any practise premises in the locality. Such services may be provided at:

- (a) a day centre, as defined in the Regulations, which restricts the categories of people who can be so treated;
- (b) a residential centre, as defined in the Regulations, which restricts the categories of people who can be so treated; or
- (c) the patient's home, where the patient is unable to leave it unaccompanied because of physical or mental illness or disability.

### **1.30 Key Dates**

#### **31 March 2005**

The qualifying date for optometrists/ophthalmic medical practitioners who can take part in the “grandfathering arrangements” (described below) such as entering into a legal agreement of the type laid down in the regulations with the provider in respect of compliance with the Terms of Service (Schedule 1 of the 1986 General Ophthalmic Services Regulations).

#### **1 April 2005**

Regulations come into force

An optometrist/ophthalmic medical practitioner who was on the ophthalmic list at 31 March 2005 may enter into a legal agreement of the type laid down in the regulations with the provider in respect of compliance with the Terms of Service. In these circumstances, the individual is able to remain on the ophthalmic list. Verbal agreements should be made and notified to PCTs within days of coming into force to benefit from transitional protection. PCTs must be satisfied that such arrangements exist and would expect to see a satisfactory written agreement as soon as possible and certainly no later than 31 July 2005.

Until 31 July 2005 in addition to the requirements of paragraph 9(2) of Schedule 1 to the Ophthalmic Regulations a claim by a contractor under paragraph 9(1) (a

GOS1) may be signed by an ophthalmic medical practitioner or ophthalmic optician -

(a) whose name is included in a supplementary list or ophthalmic list; and

(b) who is employed by that contractor.

The employee must indicate on the claim form the PCT in whose supplementary or ophthalmic list his name is included and identify the contractor on whose behalf he is signing.

For GOS3 forms, any practitioner on either an ophthalmic or a supplementary list may sign.

### **16 May 2005**

Optometrists or ophthalmic medical practitioners who were not included in an ophthalmic list (but were assisting in the provision of GOS at 31 March 2005 must apply for inclusion in a Supplementary List by this date. Providing they have done so they may continue to provide GOS until the earlier of 31 July 2005 or a decision on an application by the PCT.

Current mobile service providers should ensure that they have made applications to each PCT in whose area they wish to provide services by 16 May 2005 to be able to continue working in that area until the PCT makes its decision on their suitability.

Mobile optical service providers who have not submitted applications by 16 May 2005 will not be able to provide such services from that date until they have been approved by the PCT as appropriate providers.

### **31 July 2005**

PCTs should aim to complete any necessary transfers from the ophthalmic to the supplementary list by this date.

Corporate opticians on an ophthalmic list at 1 April 2005 must provide PCTs with any additional information required by these regulations.

The arrangements for signing claim forms change. For GOS1s a change is introduced to allow the contractor to authorise others to sign on their behalf, including non-practitioner employees. Claim forms will need to be signed by the practitioner who carried out the sight test and by the contractor, or his authorised signatory, where the contractor did not carry out the sight test. PCTs must have compiled their list of authorised signatories by this date.

*General Ophthalmic Services  
Department of Health  
March 2005*



## **2. The Ophthalmic List**

### **2.1**

2.1.1 In order to be included in an ophthalmic list ("a contractor") the applicant must be one of the following --

1. An ophthalmic optician (optometrist) who is included in the GOC register as such.
2. A registered medical practitioner who is included in the General Medical Council (GMC) register and is approved by the Ophthalmic Qualifications Committee (OMP).
3. A corporate body that is included in the GOC list of corporate bodies as carrying out business as ophthalmic opticians.

Should anyone whose name is included in the list cease to be one of those things (or turnout never to have been one) then the PCT is obliged to remove them from its ophthalmic list at once [regulation 9 (1)].

In addition to meeting those requirements, anyone included in the list must comply with the Terms of Service laid down in Schedule 1 of the General Ophthalmic Services Regulations (**but see para 4.6 for Temporary Arrangements**). In particular these require that the contractor -

- (a) provides requisite, proper and sufficient consulting and waiting room accommodation for the provision of GOS;
- (b) provides suitable equipment for the provision of GOS;
- (c) keeps a proper record in respect of each GOS patient, which is retained for a period of seven years, and produces them when required to do so. This requires control and storage of those records.

2.1.2 Some questions have arisen about what is meant by "provides". This clearly involves having a degree of legal right in respect of the accommodation/equipment so that it can be made available for GOS. The most obvious example of such legal right is, of course, ownership, but this is not essential to meet the requirements of the regulations. For example commercial premises are usually leased and equipment may too and making available leased premises and equipment would certainly meet the requirements. This is to be distinguished from the position of an assistant, who will be permitted, indeed usually required, to use his employer's equipment and premises in the course of his work, but has no other legal rights in respect.

2.1.3 The new expanded application process requires:-

- more details about an optometrist/OMP's previous professional career;
- details of any criminal record;
- details of any involvement in NHS fraud investigations;
- details of past investigations by licensing, regulatory or other bodies into the practitioner's professional conduct (this could be professional conduct in a field other than optical where the practitioner was registered with an appropriate professional body) where there has been an adverse finding against the practitioner;

- declarations concerning any involvement as a director of a body corporate;
- consents to information sharing between PCTs and with professional bodies;

2.1.4 Optometrists/OMPs/corporate opticians must be on the ophthalmic list of each PCT in whose area they intend to provide General Ophthalmic Services. Individual practitioners on ophthalmic lists may also assist anywhere in the country on the basis of being on the original PCTs ophthalmic list.

2.1.5 PCTs will be able to refuse admission to either the ophthalmic or supplementary lists on discretionary grounds where this appears justified on efficiency, fraud or unsuitability grounds. They can consider any information available to them but will have to consider certain specified issues (see Annex E). They can also defer consideration of applications in certain circumstances or make admission to the list conditional on adherence to specific conditions set by the PCT.

2.1.6 Most decisions will be discretionary, based, amongst other things, upon an optometrist's/OMP's/corporate optician's declarations of previous criminal convictions, "findings against" the practitioner by regulatory, licensing or other bodies, content of references, fraud investigations etc. More information about the use of discretion is contained in section 5.

2.1.7 In some cases, PCTs have no choice but to refuse a request for admission to a list. Examples include any optometrist/OMP with a murder conviction in the UK, or a criminal conviction in the UK after 13 December 2001 that leads to a sentence of imprisonment of more than six months or where the optometrist/OMP is nationally disqualified by the FHSAA. Similarly a practitioner must be an optometrist/OMP, so if he is not on the relevant register of the appropriate regulatory body he is not eligible to apply for inclusion until he is included in (or restored to) the register.

2.1.8 PCTs can remove an optometrist/OMP or corporate optician from the list in similar circumstances to those that relate to refusal to admit. This includes the power to make retention on the list subject to conditions (a contingent removal).

2.1.9 PCTs have a discretionary power to suspend an optometrist/OMP or corporate optician where they consider it is necessary to protect members of the public or it is otherwise in the public interest. Suspension can be pending a third party investigation (e.g. an optometrist/OMP charged with assaulting a child could be suspended from the ophthalmic list pending the CPS decision and any resultant court case) or whilst the PCT itself investigates serious concerns about the optometrist/OMP or corporate optician.

2.1.10 Optometrists/OMPs/corporate opticians on the existing ophthalmic list were required to make a retrospective declaration covering issues such as any previous criminal conviction, binding over, caution or "findings against" by regulatory, licensing bodies or other bodies concerning professional conduct by 31 March 2002. The optometrist/OMP's/corporate optician's fitness to continue to work in GOS will need to be re-assessed on the basis of these declarations. PCTs should have completed this completed by 30 June 2002.

2.1.11 The 2005 Regulations place anew duty on an optometrist/OMP/corporate optician on the ophthalmic list to make further declarations detailing any offences for which he is charged, any new investigations into professional conduct by

regulatory, licensing or other bodies, or investigation by the Counter Fraud and Security Management Services within 7 days of its coming to his attention. Similar requirements apply in respect of the directors of corporate bodies. It will be important to ensure optometrist/OMPs are aware of this new requirement.

2.1.12 Discretionary decisions by the PCT to refuse admission, to include conditionally, to remove or to remove contingently an optometrist/OMP or corporate optician is appealable to the FHSAA. Mandatory removals, mandatory refusals, suspensions and decisions to defer applications have no right of appeal.

2.1.13 Certain PCT decisions, for example the imposition of conditions, are subject to review if an optometrist/OMP or corporate optician asks for one in writing. This right to a review is subject to time constraints. Decisions made on review are subject to appeal to the FHSAA where the original decision was appealable.

2.1.14 When considering an application to the ophthalmic list, PCTs are required to check references. For clinical practitioners these would normally be clinical references. However, where they accept that this is not possible PCTs may accept other references, which they are satisfied with.

## **2.2 The (GOS) Supplementary List**

2.2.1 This list will apply only to optometrists/OMPs working, at least in part, in GOS who are not properly included in an ophthalmic list. It will cover those assisting in the provision of GOS. Usually this would mean somebody employed by a contractor (whether as an employee or self-employed) to perform the clinical tasks involved in GOS. A corporate optician cannot be included in a supplementary list.

2.2.2 When fully implemented pharmacists and dentists (in force in 2003) will be subject to broadly similar provisions to the GOS supplementary list rules, described here. Supplementary lists for GPs were subsumed in the medical performers list from April 2004.

2.2.3 Primary Care Trusts will have the same powers over admission, suspension and removal from the supplementary list as are described in this Guidance in relation to the ophthalmic list.

2.2.4 An assistant can only be on the GOS supplementary list of one Primary Care Trust in England at any one time. He cannot be on a GOS supplementary list whilst also being on an ophthalmic list. In addition, when applying to the Primary Care Trust, the assistant must provide reasonable assurances that he will assist in providing GOS services in the area of the Primary Care Trust.

2.2.5 Once having joined the Primary Care Trust supplementary list, if an assistant does not work in the PCT's area for a period of six months, he may be removed from the list.

2.2.7 From 1 April 2005, subject to transitional rules until 31 July 2005, an optometrist/OMP cannot be employed or engaged to work in GOS unless he is on an ophthalmic list or a supplementary list.

2.2.8 These changes are contained in the National Health Service (General Ophthalmic Services Supplementary List) and the (General Ophthalmic Services) Amendment Regulations 2005. These can be viewed at [www.hmso.gov.uk/si](http://www.hmso.gov.uk/si)

**2.3 Declarations of Financial Interests [to be added later once Regulations made]**

### 3. The Introduction of Supplementary Lists

#### Introduction

- 3.1.1 Primary Care Trusts should start to build their supplementary list with effect from 1 April 2005. All assistants, who are engaged in the delivery of GOS will need to be on a supplementary list. In a number of cases, this may mean transferring practitioners wrongly included in the ophthalmic list from the ophthalmic list to the supplementary list. No optometrist/OMP, after 1 April 2005, will be able to work in GOS in England unless he is on an English Primary Care Trust's ophthalmic list or supplementary list. **(But see paragraphs 3.1.2 – 3.1.4 on the transitional arrangements between 1 April 2005 and 31 July 2005.)** After 1 April 2005 the new Regulations that prevent one optometrist/OMP engaging another as an assistant unless he is on a supplementary or ophthalmic list or falls within the transitional provisions.
- 3.1.2 Any optometrist or ophthalmic medical practitioner, who is not included in an ophthalmic list but was assisting in the provision of GOS at 31 July 2005, may continue to do so until the earlier of either 31 July 2005 or a decision on their application by a PCT, provided they apply for inclusion in a supplementary list by 16 May 2005. If a practitioner does not apply for inclusion by that date they may not continue to assist in the provision in GOS. They may apply for inclusion in a list at a later date but, in such cases, they must await the PCT's decision on that application before they may do any GOS work.
- 3.1.3 Any optometrist or ophthalmic medical practitioner who was not assisting in the provision of GOS at 31 March 2005 may do so, provided they have applied for inclusion in a Supplementary List by 16 May 2005 do so, from the date of that application until the earlier of 31 July 2005 or a decision on that application by the PCT.
- 3.1.4 No optometrist or OMP currently on an ophthalmic list on 31 March 2005 *may* fall between lists at any time. This means that if they are incorrectly on the ophthalmic list they are transferred directly to the supplementary list and not held between lists at any time. If a PCT is not able to make such a transfer (other than because of concerns about the practitioner) the practitioner should remain on the ophthalmic list until such time as the transfer can be made. Practitioners should at no time be prevented from working by the mechanics of constructing the supplementary list.
- 3.1.5 If a PCT judges that a practitioner has been wrongly included on the ophthalmic list but is entitled to be included in the supplementary list, they should transfer that individual to the latter. Practitioners must be transferred automatically and not asked to reapply. PCTs should aim to complete transfers of practitioners to the supplementary list who they judge should not be on the ophthalmic list by 31 July 2005.
- 3.1.6 In respect of the GOS supplementary list, being on the list of one Primary Care Trust in England will be sufficient to allow an assistant to work in any

Primary Care Trust in England. In other words an assistant on the supplementary list in Leeds would not have to join the list of other Yorkshire Primary Care Trusts to locum throughout the county or, for that matter, anywhere else in the country. This greatly reduces the administrative burden on Primary Care Trusts, and on optometrists/OMPs, but does create an expectation that Primary Care Trusts will share information where necessary. They will also need to consider the potential presentational difficulties where they reach different decisions on broadly similar facts relating to the same optometrist/OMP.

- 3.1.7 Being on the supplementary list is a pre-requisite of working in GOS as an assistant. In admitting an assistant to the supplementary list the Primary Care Trust will consider clinical suitability; they must be satisfied that the assistant is suitable and that his inclusion would not prejudice the efficiency of general ophthalmic services. However, anyone subsequently employing or engaging an assistant who is on this list is responsible for also satisfying themselves that the assistant has the necessary clinical skills and experience to undertake the tasks they are recruited to perform.
- 3.1.8 The content of the supplementary list must include the optometrist/OMP's full name, GOC registration number, the date the optometrist's/OMP's name was entered onto the list and, provided that the optometrist/OMP consents to its inclusion, his date of birth, or, if he does not so consent, the date of his first full registration as an optometrist/OMP. The supplementary list and the ophthalmic list must be published and be available to the public to consult. The list should allow annotation with a "C" or an "S" to show whether a practitioner is a contractor on the ophthalmic list or an assistant on the supplementary list.
- 3.1.9 As part of the supplementary list the assistant's GOC registration as an optometrist [**in the case of OMPs it will be the GMC Register**] number should be directly associated with the relevant Department of Health organisational code (PCT organisational code) applying to the NHS organisation legally responsible for the list. The organisational code should be the suffix (xxx-yyy where "x" is the GOC number and "y" is the organisational code) and should be prefixed SOL for Supplementary Ophthalmic List. Therefore, list numbers would look like SOL/01-12345/PCT organisational code.

### **3.2 Admission to the Supplementary List**

- 3.2.1 An optometrist/OMP wishing to work in any capacity in GOS will, if he is not eligible to be on the ophthalmic list, have to apply in writing to a Primary Care Trust for admission to its supplementary list.
- 3.2.2 Just as if he were applying to the existing ophthalmic list, to be eligible for entry to the supplementary ophthalmic list, an assistant must be suitably qualified and free from national suspensions or disqualifications etc.
- 3.2.3 The application for admission to the supplementary list has to include the matters listed in [Annex G](#). This is largely self-explanatory. However, Primary Care Trusts are asked to be aware that it could be seen as unreasonable to ask an optometrist/OMP to list every appointment (job) he has undertaken when detailing his career history. An entry such as "optometrist/OMP in

general practice from April 1998 to date” with the location and sufficient detail to allow the PCT to check if they wished would usually be acceptable. In addition, an optometrist/OMP who had been in a permanent position would not have to show breaks caused by leave of absence for matters such as maternity or study leave. The entry could simply be, for example, "General Ophthalmic Practitioner at [location] from April 1980 to March 1997".

- 3.2.4 In cases where practitioners have been incorrectly placed on the ophthalmic list they should be automatically transferred to the supplementary list. There will be no requirement for such a practitioner to apply for inclusion in the supplementary list, unless it is the supplementary list of another PCT i.e. a PCT other than the one where he is on the ophthalmic list. Before making the transfer the PCT should first notify the practitioner and invite any representations he may wish to make.
- 3.2.5 All applications that are pending at the time the new regulations come into force i.e. 1<sup>st</sup> April 2005 should be considered for inclusion in the ophthalmic or supplementary lists as appropriate. There is no requirement for reapplication.
- 3.2.6 PCTs should have set up the supplementary list by 31 July 2005. They should also aim to complete any necessary transfers of practitioners currently wrongly included on the ophthalmic list by that date. Any list will also be subject to an ongoing process of revision, correction and updating and there are no overall targets to be met in this respect.
- 3.2.7 Primary Care Trusts are required to check details provided in applications as far as is practical. In examining the details provided by the assistant about his professional career it would not normally be practical (or expected) that all the details be checked, but they should be checkable should the PCT wish to do so. However, Primary Care Trusts are asked to consider any significant breaks in an applicants career history. Further enquiries need to be made of the optometrist/OMP where the Primary Care Trust has concerns.
- 3.2.8 The assistant must also supply with the application a declaration as detailed in [Annex C](#). concerning such matters as criminal convictions, GOC investigations and National Health Service Counter Fraud and Security Management Service (NHS CFSMS) investigations. These are the same declarations that are required for admission to the ophthalmic list.
- 3.2.9 An assistant applying to the supplementary list must also provide a number of undertakings (these, with slight modifications because of the different nature of the assistant's role, are the same as an applicant to the ophthalmic list must provide). These are:-
  - i. not to assist in the provision of GOS in the area of another Primary Care Trust from whose ophthalmic, supplementary or services list he has been removed, except where that removal was at the request of the practitioner or because he had not worked in the area for six months, without the written consent of that Primary Care Trust;
  - ii. to notify the Primary Care Trust within 7 days of any material changes to the information provided in the application until the application has been finally determined;
  - iii. 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 Scotland, Northern Ireland or Wales);

- iv. to provide declarations required by regulation 9 of the 2005 Regulations concerning such matters as new criminal convictions, new professional investigations by licensing, regulatory or other bodies and new NHS CFSMS investigations);
- v. consent to a request being made by the Primary Care Trust to any employer or former employer, licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse, by them into the assistant or a body corporate referred to in regulation 9(3) of the 2005 Regulations.

3.2.10 A Primary Care Trust **must** refuse to include an assistant on the supplementary list (remember that he must be an optometrist or OMP, currently on the GOC register, in order to apply) if:-

- i. he has not provided General Ophthalmic Services in its area in the last six months, and has not provided satisfactory evidence that he intends to provide services in its area. Such refusal only arises if the assistant fails *both* tests;
- ii. he is on the GOS supplementary or ophthalmic list of any other Primary Care Trust in England, unless he has given notice in writing that he wishes to withdraw from that list ;
- iii. if it is not satisfied that he has the knowledge of English which, in his own interest and those of his patients, is necessary for the provision of General Ophthalmic Services in its area ;
- iv. where he has been convicted in the United Kingdom of murder;
- v. where, on or after 1 April 2005 he has been convicted in the United Kingdom of a criminal offence and sentenced to a term of imprisonment of over six months;
- vi. where he has been nationally disqualified (as defined in regulation 2 of the 2005 Regulations) and;
- vii. where he has not updated his application following an earlier deferment of the application in accordance with regulation 7 of the 2005 Regulations;
- viii. where he does not notify the Primary Care Trust under regulation 8 of the 2005 Regulations that he wishes to be included in the list subject to specified conditions (set by the FHSAA).

3.2.11 The Primary Care Trust must always be able to demonstrate the factual basis of its decision. In particular in refusing to admit an assistant under (iv)-(vi) above there is a clear expectation that the Primary Care Trust will have tangible evidence of the conviction/disqualification from an appropriate body or via a confirmatory declaration from the assistant. There is no right of appeal against mandatory refusal to admit, but the decision can be challenged through the courts.

3.2.12 Otherwise a Primary Care Trust **may** refuse to include an assistant in its supplementary list if:-

- i. having considered, and checked where practical, the declaration required by regulation 4(4) and 4(5) of the 2005 Regulations and any



- other information in their possession in relation to the application, it considers he is unsuitable to be included in the list;
- ii. having checked the information provided by the optometrist/OMP in regulation 4(2), Primary Care Trust considers he is unsuitable to be included in the list;
  - iii. having contacted referees, the Primary Care Trust is not satisfied with the references given in accordance with regulation 4(2)(i) of the 2005 Regulations
  - iv. having checked with the National Health Service CFSMS for any facts they consider relevant to past or current fraud investigations involving the optometrist/OMP, and having considered these and any fraud case relating to the optometrist/OMP the Primary Care Trust considers these justify such refusal;
  - v. having checked with NHSLA for any facts that the Authority considers relevant relating to past or current investigations or proceedings involving or related to the optometrist/OMP and, having considered these and any other facts in its possession involving or relating to him, it considers these justify such refusal;
  - vi. there are any grounds for the Primary Care Trust to consider that admitting the assistant to the list would be prejudicial to the efficiency of the service that he would undertake;
  - vii. where the OMP's registration in the GMC Register or the optometrist's in the GOC register is subject to conditions

3.2.13 Before reaching a decision on the issues in paragraphs (i)-(v) above the Primary Care Trust must consider those matters outlined at [Annex E](#).

3.2.14 Assistants who have not worked in the area during the last six months will satisfy the criteria for admission to the supplementary list if they show that they intend to provide services in the area. It is for the Primary Care Trust to determine what constitutes satisfactory evidence of an intention to provide services in its area. Evidence of intention to work might include something in writing from an ophthalmic practice or from a corporate body:-

- offering the optometrist/OMP work as an assistant; or
- citing a willingness to offer the optometrist/OMP work in the future as an assistant;

3.2.15 Offers of employment might well be conditional on the optometrist/OMP being entered on the Primary Care Trust supplementary list by the Primary Care Trust. Indeed, where the optometrist/OMP's application was accompanied by an actual offer of work the Primary Care Trust ought to be prepared to treat the application expeditiously so that the offer does not fall.

3.2.16 An optometrist/OMP may not be able to provide information about prospective employment, but may have a genuine and clear intention to work in the Primary Care Trust area. Optometrists/OMPs returning from maternity leave, overseas work or long-term sick leave might be in this position. In such cases the Primary Care Trust is recommended to be flexible and pragmatic. The Primary Care Trust may, for example, consider that satisfactory evidence that the optometrist/OMP intends to work in its area can be a written commitment from him coupled with some other factor which links

him to the area, such as a home in the Primary Care Trust area or evidence that he has been, or is, working locally in a NHS Trust. In relation to the initial establishment of the list, evidence of what work the practitioner has been doing in the area will be critical, but thereafter will be less helpful.

- 3.2.17 Before placing someone on the supplementary list, Primary Care Trusts must, in particular, make full checks on an optometrist/OMP's qualifications and that they are currently on the register of the relevant regulatory body.
- 3.2.18 Whenever a Primary Care Trust refuses to include, conditionally includes, removes, contingently removes or suspends an optometrist/OMP from any of its lists it shall forward basic details about that decision to the NHSLA. Over time this will provide a useful source of information to Primary Care Trusts wishing to verify an optometrist/OMP's statement about incidents involving list status in the past.

The PCT must check with the NHSLA for any facts that the Authority considers relevant relating to past or current investigations or proceedings involving or related to the optometrist/OMP.

- 3.2.19 In addition the Primary Care Trust must check with the NHS CFSMS for any past or ongoing fraud investigations relating to the assistant or in connection with a corporate body to which he has declared a link. It should be noted that the statutory power for CFSMS to disclose information about past or current investigations is permissive not mandatory. In particular, for current investigations, CFSMS staff are not compelled to disclose even the simple fact that there is an investigation if it would be premature to do so and might risk compromising or jeopardising the success of any potential criminal action by effectively forewarning the individual under suspicion. However, in such cases, the NHS CFSMS will notify the Primary Care Trust of any adverse outcome of an investigation.
- 3.2.20 Optometrists/OMPs from overseas are required to conform to Immigration and Employment rules (although these will not apply to practitioners who come from the EEA). Primary Care Trusts are already checking the status of overseas optometrists/OMPs who apply to join the ophthalmic list and similar checks will be required before an assistant can be placed on the supplementary list.
- 3.2.21 If the PCT is not satisfied that the applicant has the knowledge of English, which, in his own interests or those of his patients, is necessary in assisting in providing General Ophthalmic Services in its area they must refuse to include the applicant. The same requirements apply in relation to the ophthalmic list.
- 3.2.22 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 practitioner moving to another area may provide a reference from the PCT that he is listed with.

- 3.2.23 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.
- 3.2.24 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. 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 supplementary list. However, any results from such checks can only be relevant if they are within the ambit of the grounds for refusal outlined above.
- 3.2.25 As an alternative to admitting or refusing to admit an assistant to its supplementary list the Primary Care Trust can decide to make admission to the list subject to conditions (but see para 3.2.27 below). These conditions must be devised to minimise any risks associated with fraud or efficiency matters that the Primary Care Trust has identified. For example where there is a history of fraud or dishonesty the conditions might minimise the assistant's direct access to public funds. In efficiency cases they might address poor performance or other clinical issues by requiring certain additional training or supervision in a particular area.
- 3.2.26 Additionally where a Primary Care Trust has particular concerns about a clinical issue it may wish to consider including the optometrist/OMP on the supplementary list on condition that the optometrist/OMP agrees to participate in any local GOS performance procedures. In these cases the optometrist/OMP would have to assure the Primary Care Trust that he would take steps to comply with any local recommendations. Just as importantly the Primary Care Trust would need to agree with those involved in these procedures that it would be in a position to support the optometrist/OMP in any reasonable actions, which might be proposed. Both sides should also recognise that this might include a further assessment after the optometrist/OMP had been given a reasonable time to address any identified shortcomings.
- 3.2.27 The conditions cannot relate to issues of suitability. Therefore conditions such as:-
- i. that the optometrist/OMP avoids future convictions related to alcohol abuse;
  - ii. that because of a history of convictions for sexual offences that the optometrist/OMP should only see certain patients if accompanied;
- are unlikely to be appropriate.
- 3.2.28 Additionally conditional inclusion is not a substitute for a deficient application process. A condition that a non-principal should be admitted to the list subject to providing evidence in support of his application within 6 months would not be appropriate. Rather no decision should be made on an

application until the necessary information is available to the PCT.

3.2.29 A Primary Care Trust is able to review the conditions it applies to an assistant when it considers such action appropriate. In addition the Primary Care Trust must review those conditions if the assistant requests a review in writing subject to:-

- i. the request being made no earlier than three months after the assistant was entered onto the list subject to the conditions;
- ii. the request being made no earlier than six months after the decision on any previous review.

3.2.30 On any such review the Primary Care Trust can:-

- i. maintain the existing conditions;
- ii. remove some or all of the existing conditions;
- iii. impose fresh conditions.

3.2.31 A Primary Care Trust may remove an assistant, subject to the normal criteria/procedures, at any time where there is evidence that he has breached a condition imposed on admission or at any subsequent review.

3.2.32 Before deciding to admit an optometrist/OMP to the supplementary list subject to conditions (a conditional inclusion) it would be good practice for the Primary Care Trust to give him notice of its intention, why it proposes a particular condition(s) and afford the optometrist/OMP an opportunity to discuss the issues with the Primary Care Trust orally or in writing as he might wish. All attempts need to be made to do this in a way that does not unduly delay the process of handling an application to join the list.

3.2.33 An assistant, who is subject to a conditional inclusion and appeals against that decision, but who indicates, in writing, that he is prepared to accept those conditions pending the outcome of the appeal can be entered onto the list subject to those conditions. If, following the appeal the assistant did not undertake to be bound by any conditions decided upon by the FHSAA on appeal the Primary Care Trust will be able to remove him from the list without any further appeal right.

3.2.34 The Primary Care Trust must notify applicants of the result of their applications in writing and, if this involves a conditional inclusion or a refusal to admit to the list, the reasons for the decision, including the facts relied upon, and advise the optometrist/OMP of any right to a review or any right of appeal (including details of how to exercise those rights).

3.2.35 The right of appeal to the FHSAA is against any Primary Care Trust decision to refuse to admit to the supplementary list on discretionary grounds (where the Primary Care Trust may, not must, refuse admission), any conditions applied to the optometrist/OMP's entry to the list or to any decision made by the Primary Care Trust about such conditions on review. Appeals must be made in writing to the FHSAA within 28 days of the Primary Care Trust's decision. Appeal processes are covered in detail in [Section 6](#) of this guidance.

- 3.2.36 Whenever they refuse to admit an optometrist/OMP to their list on grounds of efficiency, fraud or unsuitability the Primary Care Trust must consider approaching the FHSAA for a national disqualification.
- 3.2.37 The Primary Care Trust may defer making a decision on an optometrist/OMP's application to join the supplementary list, but only in certain prescribed circumstances (see Annex J). The purpose of this provision is to avoid a Primary Care Trust having to make a decision to admit or to refuse admission where there is a matter outstanding against the optometrist/OMP which, if the outcome is adverse, would be **likely** to lead the Primary Care Trust to remove him from its list if it had admitted him in the first place.
- 3.2.38 The caveat "likely" is important. Before deferring an application the Primary Care Trust must form the opinion that if matters go against for the optometrist/OMP it is probable that if they had admitted him to their list they would choose to remove him from that list.
- 3.2.39 Regulation 7, specifies the only circumstances where a deferment can be applied (these are set out in Annex J).
- 3.2.40 The Primary Care Trust must notify the optometrist/OMP that it is deferring the application and once the outstanding matter is resolved, they must process the application. However, before processing the application they should ask the optometrist/OMP if he wishes to continue with the application and, if so, to confirm that the details in the application remain correct, updating the details as necessary.
- 3.2.41 The optometrist/OMP must be allowed 28 days to respond. Where the Primary Care Trust considers it to be reasonable they can agree a longer period. This provision is included so an application is not left in a state of limbo and Primary Care Trusts should be helpful if asked to allow a longer period. They should consider that, for example, a court case, which cleared an individual of all allegations against him, might still leave him unsure about continuing to live or work in the area. It is proper to allow the optometrist/OMP time for reflection if asked. If he does not respond within that period the Primary Care Trust can refuse to admit him, as they will not be aware whether or not the application is still current.
- 3.2.42 Where the application continues it needs to be processed expeditiously, given the delay, which the deferment will have caused. Delay by the Primary Care Trust at this stage is not acceptable.
- 3.2.43 There is no right of appeal against a deferment.
- 3.2.44 However, an optometrist/OMP subject to a deferment can at any time withdraw his application without restriction. He can also re-apply at any time. On a re-application the Primary Care Trust must consider the question of deferment, if the reason for it (or a new one) is still outstanding, afresh.
- 3.2.45 [Section 5](#) of this advice discusses how Primary Care Trusts should apply the discretion they are given in relation to these decisions and examine in more depth the related procedures and information sharing.

### 3.3 Removal from the Supplementary List

3.3.1 A Primary Care Trust **must** remove an assistant from its supplementary list where he:-

- i. has been convicted in the United Kingdom of murder;
- ii. has been convicted in the United Kingdom on or after 1 April 2005 of a criminal offence and has been sentenced to a term of imprisonment of more than six months;
- iii. has been nationally disqualified (as defined in regulation 2(1) of the 2005 Regulations) which includes a disqualification – the terms of which include the supplementary list - by the FHSAA in England under section 49N, and similar provisions in Scotland or Northern Ireland corresponding to section 49N; [49N also applies to Wales]
- iv. has died;
- v. is no longer an optometrist/OMP (that is no longer a registered optometrist/OMP);
- vi. in the case of an ophthalmic medical practitioner, is the subject of —
  - a direction given by the Professional Conduct Committee of the General Medical Council under section 36(1)(i) or (ii) of the Medical Act 1983 (professional misconduct and criminal offences),
  - an order or direction made by that Committee under section 38(1) of that Act (order for immediate suspension), or
  - from the coming into force of article 13 of the Medical Act 1983 (Amendment) Order 2002, a direction by a Fitness to Practise Panel of the General Medical Council for erasure or immediate suspension under section 35D(2)(a) or (b), (5)(a) or (b), (10)(a) or (b), or (12)(a) or (b) (functions of a Fitness to Practise Panel), or section 38(1) (power to order immediate suspension etc) of that Act;in the case of an optometrist, is the subject of a suspension order under section 17 of the Opticians Act.
- vii. is included in the ophthalmic list of any Primary Care Trust, or the supplementary list of another Primary Care Trust;
- viii. when notified by the FHSAA that it has,
  - considered an appeal by the assistant against a contingent removal by the Primary Care Trust and has decided to remove him instead;
  - considered an appeal by an assistant against a conditional inclusion, where the assistant has been conditionally included in the list until an appeal has been decided, and has decided not to include him.

In removing an assistant under these provisions there is a clear expectation that the Primary Care Trust will have tangible evidence of the conviction/disqualification/FHSAA decision etc. from an appropriate body or via a confirmatory declaration from the assistant as appropriate. There may be no right of appeal against mandatory removals, but the decision can be challenged through the courts.

- 3.3.2 The removal is effective from the date of the Primary Care Trust's determination or, where paragraph 3.3.1 (iii), (vi) & (ix) applies, the date on which the decision, direction or order takes effect, if that date is later than the date of the Primary Care Trust's decision.
- 3.3.3 A Primary Care Trust **may** remove an assistant from its supplementary list in the following circumstances:-
- i. the assistant's continued presence on the list would be prejudicial to the efficiency of the services which those included in the list assist in providing; (an efficiency case as per NHS Act 1977 section 49F(2));
  - ii. the assistant concerned (whether on his own or together with another) is involved in a fraud case in relation to a health scheme (NHS Act 1977 sections 49F(3) and 49H);
  - iii. the assistant is unsuitable to be included in the list (an unsuitability case as per NHS Act 1977 section 49F(4));
  - iv. if it decides the assistant is in breach of a condition imposed on him on inclusion on the list under regulation 8 of the 2005 Regulations;
  - v. if it decides the assistant has failed to comply with a condition imposed on a contingent removal under regulation 12 of the 2005 Regulations (see 3.3.6 below);
  - vi. where the assistant cannot demonstrate that he has assisted in the provision of General Ophthalmic Services within the area of the Primary Care Trust during the preceding six months.

In all cases outlined in paragraphs (i)-(iii) the Primary Care Trust must consider the relevant matters outlined in [Annex E \(2-4\)](#).

- 3.3.4 Where paragraph 3.3.3 (vi) applies the Primary Care Trust ought to take particular care to examine the reasons why the assistant has not worked in its area of late. If this involves matters such as prolonged sickness or maternity leave then if the PCT believes that the assistant will resume work in its area removal is unlikely to be the right course of action. Additionally any period specified in regulation 10(7) of the 2005 Regulations must be ignored.
- 3.3.5 In relation to the requirement to provide GOS locally, there is no legal requirement on a Primary Care Trust to check every assistant every year or to keep ongoing employment records. However, it is in no-one's interest to have the list populated with assistants who no longer have any realistic connection with the delivery of GOS in the area. When looking at tidying up its supplementary list using the criteria in 3.3.3 (vi) the Primary Care Trust will be able to look at local records. Where doubt still remains, they will need to consider approaching the assistant.
- 3.3.6 The 1977 Act also provides for **contingent removal** from the supplementary list as an alternative to removing an assistant from the Primary Care Trust list. The primary power is in sections 43D(6) & 49G of the NHS Act 1977. The simple concept is that conditions are placed on the assistant's retention on the supplementary list. If these conditions are subsequently breached the assistant can be removed from the list. They represent a way of improving patient protection without taking the ultimate step of removing the assistant. The conditions put in place must be designed to minimise any risks associated with any fraud or efficiency matters that the Primary Care Trust

has already identified in connection with the individual optometrist/OMP. For example, where there is a history of fraud or dishonesty the conditions might minimise the assistant's direct access to public funds or require additional checks on any direct or indirect claims. In efficiency cases it might address poor performance and other clinical issues by requiring certain additional training or supervision in a particular area.

3.3.7 The conditions cannot relate to issues of suitability. Therefore conditions such as:-

- i. that the assistant avoids future convictions related to alcohol abuse;
- ii. that because of a history of convictions for sexual offences the assistant should only see certain patients if accompanied,

are unlikely to be appropriate.

3.3.8 The Primary Care Trust is able to review the conditions it applies to an assistant when it considers such action appropriate. In addition, the Primary Care Trust must review those conditions, if the assistant requests a review in writing subject to:-

- i. the request being made no earlier than three months after the decision of the Primary Care Trust to impose conditions;
- ii. the request being made no earlier than six months after the decision on any previous review.

3.3.9 On any such review the Primary Care Trust can:-

- i. maintain the existing conditions;
- ii. remove some or all of the existing conditions;
- iii. impose fresh conditions.

3.3.10 A Primary Care Trust may remove an assistant, subject to the normal procedures, at any time where there is evidence that there has been a breach of a condition imposed as part of a contingent removal or as a result of a subsequent review.

3.3.11 A Primary Care Trust cannot, however, review conditions applying to a contingent removal decided upon by the FHSAA at an appeal. These must be reviewed by the FHSAA, although the Primary Care Trust may seek such a review in the same way as the optometrist/OMP. The time limits appropriate to reviews requested by the Primary Care Trust or the optometrist/OMP to conditions imposed by the FHSAA are:-

- i. the request being no earlier than three months after the decision of the FHSAA to impose conditions;
- ii. the request been no earlier than six months after the decision on any previous review;
- iii. where the assistant and the Primary Care Trust jointly apply for the conditions to be changed, varied or revoked no earlier than one month after the previous FHSAA decision.

3.3.12 Before making a contingent removal or a discretionary decision under paragraph 3.3.3 or 3.3.10 to remove the assistant from its supplementary list,



the Primary Care Trust must give the optometrist/OMP 28 days notice of its intention and state why it proposes a particular course of action. It must afford the assistant an opportunity of making representations to the Primary Care Trust orally or in writing as he might wish.

- 3.3.13 A decision to remove from the list on discretionary grounds (that is where the Primary Care Trust may, not must, remove) to make retention subject to conditions or any decisions about conditions made on review, should only be implemented:-
- i. where there is no appeal – after the 28 day period for appealing has ended;
  - ii. where there is an appeal – where the FHSAA finally disposes of the appeal.

Guidance on suspension is at para 3.4 of these notes.

3.3.14 Where the Primary Care Trust determines that it will remove an assistant's name from its supplementary list, or make its retention subject to conditions, it must give notice in writing of its determination to the assistant, together with the reasons for it, including any facts it relies on, and inform him of any right of review or any right of appeal (including details of how to exercise those rights).

3.3.15 The right of appeal to the FHSAA is against any Primary Care Trust decision to remove from the supplementary list on discretionary grounds (where the Primary Care Trust may, not must, remove), any conditions applied to the assistant's retention on the list or to any decision made by the Primary Care Trust about such conditions on review. Appeals must be made in writing to the FHSAA within 28 days of the Primary Care Trust's decision. Appeal processes are covered in detail in [Section 5](#) of this advice.

3.3.16 Whenever it removes an assistant from their list on grounds of efficiency, fraud or unsuitability the Primary Care Trust is advised to consider approaching the FHSAA for a national disqualification – see Section 7 of this advice.

3.3.17 Section 6 of this advice discusses how Primary Care Trusts should apply the discretion they are given in relation to these decisions and looks in more depth at the related procedures and information sharing.

3.3.18 When somebody has been removed from a PCT's list, other than at their own request or because of not working in GOS for 6 months or more, they may not work in that area even if listed with another PCT unless the PCT for that area gives its written consent.

### **3.4 Suspension from the Supplementary List**

3.4.1 It is imperative that suspensions are not misused, as this can result in serious individual injustice, damaging an individual's career and personal life, as well as being a waste of public money. It is, therefore, in the interests of all concerned to ensure alternatives to suspensions are carefully considered. In this context it is important in these cases that the Primary Care Trust can substantiate its decision that the suspension was necessary in order to protect patients from the potential actions of the assistant or that there was a

genuine public interest justification. If there is no risk to patients and no public interest justification there can be no suspension.

- 3.4.2 A Primary Care Trust can suspend an assistant from the supplementary list when it is necessary to do so for the protection of members of the public or is otherwise in the public interest. **All suspensions must meet one of these criteria.**
- 3.4.3 Additionally, even where the condition in 3.4.2 is met, a suspension is only possible in the following circumstances:-
- i. whilst the PCT considers whether or not to remove or contingently remove the assistant;
  - ii. whilst it awaits the decision of a court or body which regulates the optometrist/OMP's profession anywhere in the world affecting the assistant;
  - iii. where it has decided to remove the assistant, but before that decision can legally take effect;
  - iv. whilst an appeal against a decision to remove the assistant is being considered.
- 3.4.4 A risk to the public might, for instance, be said to exist if there is evidence of dangerous ophthalmic practice or assault on patients. A public interest justification might be said to exist if:-
- allowing the assistant continued access to staff, patients or records might significantly prejudice a major fraud investigation either by the NHS CFSMS or the police;
  - there is evidence of fraud
  - allowing the assistant to continue to work in that area would seriously compromise/disrupt the efficient delivery of local health care.
- 3.4.5 The effect of a suspension is that although the assistant's name remains included in the supplementary list, he is treated as though he has been removed. The effect is, therefore, that he cannot provide any aspect of GOS to any patient.
- 3.4.6 A suspension under 3.4.3 (i) cannot exceed six months. The Primary Care Trust is obliged to tell the assistant the extent of the suspension and where that is less than six months the Primary Care Trust can extend the period, but not in such a way that the overall period exceeds six months.
- 3.4.7 A suspension under 3.4.3(ii) is not restricted to six months, but any period of suspension imposed following the decision of the court or body cannot exceed six months and again the assistant must be told the length of any additional period of suspension as appropriate.
- 3.4.8 Suspensions under 3.4.3(iii) last until the removal is effected.
- 3.4.9 Suspensions under 3.4.3(iv) last until the appeal is disposed of by the FHSAA.
- 3.4.10 Suspensions under 3.4.3 (i) and (ii) can be extended beyond six months by the FHSAA on application. There will be cases where the original six-month suspension expires after the Primary Care Trust has applied to the FHSAA

for an extension, but before the FHSAA has reached a decision. In such cases the suspension will continue until the FHSAA has disposed of the application. Applications may also be made to the FHSAA to extend any period of suspension that the FHSAA has already imposed.

- 3.4.11 A Primary Care Trust can revoke a suspension at any time.
- 3.4.12 A Primary Care Trust is able to review a suspension under 3.4.3 (i) & (ii) imposed upon an assistant if it considers such action appropriate and must review the decision to suspend if the assistant requests a review in writing subject to:-
- i. the request being made no earlier than three months after the assistant was suspended;
  - ii. the request being made no earlier than six months after the decision on any previous review.
- 3.4.13 On any such review the Primary Care Trust can:-
- i. maintain the suspension;
  - ii. revise the period of the suspension;
  - iii. revoke the suspension.
- 3.4.14 A Primary Care Trust cannot be required to review a suspension under 3.4.3 (iii) & (iv). However, it can of its own volition revoke or extend the period of suspensions at any time. Where it extends a suspension it must follow the same procedures as apply to a review.
- 3.4.15 For suspensions under 3.4.3(ii) the Primary Care Trust must lift a suspension when the criminal process or the regulatory, licensing or other body investigation is completed and there is no finding against the assistant. Where there is a criminal conviction or a “finding against” by the regulatory, licensing or other body the Primary Care Trust shall consider whether or not there are grounds to remove the assistant from the supplementary list under the normal procedures. This can include a further suspension not exceeding six months subject to the usual conditions being met.
- 3.4.16 The Primary Care Trust shall give notice to the assistant of any decision to suspend him from the supplementary list, giving reasons for its decision, including any facts it relies upon, and informing him of any right to a review. There is no right of appeal against a suspension. However, there is a very strong expectation that the Primary Care Trust will use all reasonable efforts to resolve the reasons for the suspension and either take substantive action against the assistant or allow him to resume his duties as quickly as possible.
- 3.4.17 During a period of suspension payments may be made to, or in respect of, the optometrist or ophthalmic medical practitioner in accordance with a determination by the Secretary of State.
- 3.4.18 [Section 5](#) of this advice discusses how Primary Care Trusts shall apply the discretion they are given in relation to these decisions and it is important that Primary Care Trusts acquaint themselves with these details. It also looks in more depth at the related procedures and information sharing.

### **3.5 Amendment of or withdrawal from the supplementary list**

- 3.5.1 An assistant is not required to withdraw from the supplementary list simply because he changes his address or the focus of his employment switches to another Primary Care Trust. However, to facilitate contact with the local ophthalmic community, this might be the norm. However, if a practitioner changes address, but continues to work in the same area, then simply notifying the PCT so that they can amend their records is all that would be necessary.
- 3.5.2 If an assistant chooses to remain on the list of the Primary Care Trust where he works irregularly this is lawful providing he works there in a six month period. In these circumstances, it would be good practice to encourage the assistant to build informal links, if he wishes, with the Primary Care Trust where he does most of his work.
- 3.5.3 Where an assistant is removed from the supplementary list for reason of voluntary removal or because of not working the Primary Care Trust is advised to retain a record of his identification and contact details for a period of at least 6-12 months. This would help in tracing the assistant should the Primary Care Trust become aware of any matters that require them to contact him. In other cases, records would likely be kept for longer.
- 3.5.4 An assistant is required to notify the Primary Care Trust of any changes to the details recorded about him on the supplementary list or any change of the address provided by him when he applied to go on the list. The Primary Care Trust is then required to amend the list and associated records accordingly. It would be sensible to remind assistants that if their address details are not kept up to date important Primary Care Trust communications might not reach them.
- 3.5.5 Subject to the situation discussed at paragraph 3.5.7, an assistant can ask to have his name removed from the supplementary list. Having given notice that he wishes to withdraw from the supplementary list an assistant can rescind that request at any time before the Primary Care Trust removes his name, except where the withdrawal is under the circumstances set out in paragraph 3.5.6 below. The assistant's name should be removed from the list three months after the date of the notification or on any earlier date to which the Primary Care Trust has agreed unless paragraph 3.5.7 below applies.
- 3.5.6 An assistant on a Primary Care Trust supplementary list is required to withdraw from that list when he is admitted to any Primary Care Trust ophthalmic list. This is treated as a voluntary removal and the assistant's name should be removed immediately.
- 3.5.7 Where the Primary Care Trust is considering:-
- i. the removal of any assistant on the grounds of fraud, efficiency or unsuitability;
  - ii. where the assistant is suspended;
  - iii. where a decision has been made to remove or contingently remove the assistant but that decision has not yet been given effect, for

example pending a potential appeal or pending the outcome of an appeal,

the assistant shall not, except with the consent of the Secretary of State, be entitled to have his name removed from the supplementary list until the matter has been determined by the Primary Care Trust. This prevents the assistant evading a determination by the Primary Care Trust (which would then be a matter of record) by voluntarily removing his name from the list.

### **3.6 Counter-signing**

3.6.1 From 31 July 2005, the relevant GOS forms must be signed by the professionally qualified person who conducted the sight test. If that person is not the contractor, then there must be a counter-signature. If the contractor was the person who carried out the sight test there would only need to be one signature.

3.6.2 Only a contractor or his duly authorised representative can counter-sign GOS forms and the Regulations introduce arrangements, which allow a contractor, or a person authorised by the contractor, to counter-sign GOS forms for an assistant. The contractor may authorise an assistant to sign GOS forms and in such cases the assistant would, as authorised signatory, be able to counter-sign their own forms and those of other assistants.

3.6.3 There is no requirement that a counter-signatory be professionally qualified. The purpose of counter-signing is to show that the signatory, if not the contractor, is a person authorised by the contractor. The contractor cannot be a layperson. If an individual, he must be either an ophthalmic optician or an ophthalmic medical practitioner or, if a corporate body, must be on the GOC list of companies practising as ophthalmic opticians. Corporate bodies obviously cannot sign in person so, as at present, provision has to be made for someone to sign on their behalf. A layperson, such as the manager of a branch, could be duly authorised to counter-sign by the contractor, although he could not be on the ophthalmic list.

3.6.4 Where a practice is owned by partners, who are registered optometrists or OMPs, if an assistant is brought in to work for one or more of the partners then arrangements will need to be made, by the partners, about whose contractor number would be used for counter-signing which contractor forms. If an assistant is brought in regularly, the partners may wish to make him an authorised counter-signatory but would need to do so for each of the partners if that was what was wanted.

3.6.5 In the case of practitioners who are on the ophthalmic list by virtue of working for non-registered providers, deputising arrangements will also apply when they are on holiday or ill, for example. The PCT will need to be notified of the deputy who will have to be made an authorised signatory if they are to sign GOS forms.

3.6.6 Contractors must notify PCTs of any person whom they wish to designate as authorised counter-signatory, who may counter-sign GOS forms, by 31 July 2005. Contractors may subsequently notify PCTs of additions to their authorised counter-signatory list in writing at any time and should do so before that person signs any claim forms on behalf of the contractor.

Contractors should also notify PCTs of removals from their authorised signatory list as appropriate.

3.6.7 It would be good practice for PCTs to maintain a list of authorised counter-signatories to ensure that signed forms can be reconciled with the list and that only authorised signatories counter-sign. Specimen signatures should be provided at the time that the PCT is notified of an authorised counter-signatory. A maximum of 10 authorised counter-signatories should be listed per practice.

3.6.8 Counter-signing procedures come into effect on 31 July 2005. This allows time for PCTs to build the supplementary list and make transfers from the ophthalmic list as necessary.

3.6.9 For GOS3 forms any practitioner on either an ophthalmic or a supplementary list may sign. The Charges and Payments Regulations are being amended to allow assistants to sign these forms from 1 April 2005.

### **Signing arrangements – transitional provisions**

3.7 Before 31 July 2005, in addition to the requirements of paragraph 9(2) of Schedule 1 to the Ophthalmic Regulations, a claim by contractor under paragraph 9(1) may be signed by an ophthalmic medical practitioner or ophthalmic optician -

- (a) whose name is included in a supplementary list or ophthalmic list; and
- (b) who is employed by that contractor.

The employee must indicate on the claim form the PCT in whose supplementary or ophthalmic list his name is included and identify the contractor on whose behalf he is signing.

### **3.8 Responsibilities of contractor and assistant**

3.8.1 Contractors are responsible for meeting all the Terms of Service including premises, equipment, records and responsibility for acts and omissions of employees, sub-contractors, deputies etc. The contractor undertakes these liabilities when he is added to/kept on the ophthalmic list. In addition to the contractor's responsibility overall, including clinical standards, assistants are also responsible for the clinical standard of their own work.

### **3.9 Newly qualified optometrists**

3.9.1 The 2005 Regulations allow students to apply to a PCT for entry on their supplementary list not less than 3 months before he anticipates being entered on the GOC 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 supplementary list.

3.9.2 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 an assistant.



## 4. The ophthalmic lists

### 4.1 Introduction

4.1.1 PCTs are currently required by the NHS Act 1977 and the General Ophthalmic Services Regulations 1986 made under it to maintain an ophthalmic list containing the names and other prescribed details of optometrist/OMPs/corporate opticians with whom they have made arrangements for the delivery of GOS in their area. The GOS Regulations were significantly amended by the NHS (GOS) Amendment (No2) Regulations 2001;

*They can be viewed on the HMSO website ([www.hmso.gov.uk](http://www.hmso.gov.uk)) and by calling up Statutory Instrument 3739 of 2001.*

**The General Ophthalmic Services Regulations have been consolidated in a word document which can be found at [http://www.dh.gov.uk/PolicyAndGuidance/HealthAndSocialCareTopics/Optical/OpticalDocumentsArticle/fs/en?CONTENT\\_ID=4101241&chk=RackB](http://www.dh.gov.uk/PolicyAndGuidance/HealthAndSocialCareTopics/Optical/OpticalDocumentsArticle/fs/en?CONTENT_ID=4101241&chk=RackB)**

4.1.2 These reforms were in part necessary as a direct consequence of the abolition of the NHS Tribunal and partly from the need to widen the criteria under which the NHS itself can deal with unsuitable and poorly performing optometrist/OMP.

4.1.3 To be entered onto the ophthalmic list an individual or a company must be able to fully meet the General Ophthalmic Services Terms of Services, which include the provision of premises and equipment, the keeping of records and responsibility for acts and omissions of employees, deputies. In the main individuals (if not practice owners or partners) are unlikely to be able to do this and the expectation is that they would be assisting the provider. Prior to 1 April 2005 assistants could not be on a list in their own right, from then they should be placed on the supplementary list.

4.1.4 Sole owned practices and partnerships, which include optometrists or ophthalmic medical practitioners, as well as corporate opticians, would be able to be entered on the ophthalmic list either as the individual owners or partners or as the business. Where limited companies are included in the ophthalmic list company directors, who are registered optometrists or ophthalmic medical practitioners, may only be listed on the supplementary list. Practitioners who lease premises and equipment would also be able to be entered into the ophthalmic list.

4.1.5 The 2005 Regulations also include a power, which allows optometrists/OMPs on the ophthalmic list at the time of the regulations coming into force, but were not entitled to be, to remain on the ophthalmic list where they are working for a provider who is not listed with the PCT, provided certain conditions are met. In these cases, commonly known as "grandfathering", the optometrist/OMP and the provider must enter into a legally binding agreement. This arrangement is expected to be temporary and further guidance will be issued when changes are planned. However, anyone listed as a contractor must comply with all the duties of a contractor and may do anything a contractor is permitted to do. Detailed guidance is at para 4.6 of this document.

4.1.6 Individuals or corporate bodies wishing to provide GOS must be on the ophthalmic list of every PCT where they wish to be providers. However, individuals on an ophthalmic



list may, in addition to providing GOS in the area of that PCT, assist in any PCT area without having to apply to that PCT.

4.1.7 As part of the ophthalmic list the assistant's GOC Registration as an optometrist **[in the case of OMPs it will be the GMC Register]** number should be directly associated with the relevant Department of Health (PCT organisational code) applying to the NHS organisation legally responsible for the list. The organisational code should be the suffix (xxx-yyy where "x" is the GOC number and "y" is the organisational code) and should be prefixed OL for Ophthalmic List. Therefore, list numbers would look like OL/01-12345/PCT organisational code. For ophthalmic medical practitioners their GMC number would replace the GOC number.

## **4.2 Admission to the Ophthalmic List**

4.2.1 Optometrists/OMPs/corporate opticians wishing be included in a PCT's ophthalmic list must apply to the PCT for inclusion and all the earlier procedures will continue to apply. PCTs are required to assess whether the optometrist/OMP/corporate optician is thought appropriate to deliver GOS in the PCT's area.

4.2.2 The application for admission to the ophthalmic list originally detailed in the NHS (GOS) Regulations 1986 were expanded in 2001. It includes such matters as criminal convictions, GOC Investigations, CFSMS investigations etc. Applicants must also provide information about any body corporate of which he is or has been a director and from 1 April 2005 corporate opticians must provide information about their directors (transitional provisions require corporate opticians already on the list to provide that information to PCTs by 31 July 2005). An optometrist/OMP/corporate optician applying to be included in the ophthalmic list must also consent to the sharing of information between organisations. Applications from corporate opticians must provide information about Directors and registration with the General Optical Council. The revised list is shown at [Annex I](#). This is largely self-explanatory.

4.2.3 In examining the details provided by the optometrist/OMP/corporate opticians about his professional career PCTs must consider any significant breaks in the career history. Further enquiries should be made of the optometrist/OMP/corporate optician where the PCT has concerns.

4.2.4 A PCT is obliged to refuse to include an optometrist/OMP/corporate optician on the ophthalmic list:-

- where he has been convicted in the United Kingdom of murder;
- where after 13 December 2001 he has been convicted in the United Kingdom of a criminal offence and has been sentenced to a term of imprisonment of over six months;
- where he is the subject of a national disqualification;
- where he has not updated his application in accordance with regulation 7(b)(4) following an earlier deferment of his application;  
where, following a conditional inclusion imposed by the FHSAA, he does not notify the PCT that he wishes to be included in the list subject to the specified conditions (regulation 7D(10) & (11));

- where it is not satisfied that he has the knowledge of English, which, in his own interest and those of his patients, is necessary for the provision of General Ophthalmic Services in its area.

4.2.5 A PCT may also refuse to include an optometrist/OMP or corporate optician in its ophthalmic list if:-

- having considered the information provided by the optometrist/OMP in accordance with paragraph 7 of Schedule 1A to the Regulations (Annex I of this guidance) and any other information in their possession in relation to this application and considers he is unsuitable to be included in the list;
- having checked the information provided by the optometrist/OMP in paragraphs 5 and 6 of Part I of Schedule 1A ([Annex I](#) of this guidance), the PCT considers the practitioner is unsuitable to be included in the list;
- that having contacted referees, the PCT is not satisfied with the references;
- that having checked with the NHS Counter Fraud and Security Management Service (CFSMS) for any facts relating to past or current fraud investigations, involving the optometrist/OMP, and having considered these and any other grounds of fraud within the meaning of section 49F(3) of the NHS Act 1977, as read with section 49H, the PCT considers these justify such refusal;
- having checked with NHSLA for any facts that the Authority considers relevant relating to past or current investigations or proceedings involving or related to the optometrist/OMP and, having considered these and any other facts in its possession involving or relating to him, it considers these justify such refusal;
- that there are any grounds for the PCT to consider that admitting the optometrist/OMP or corporate optician to the list would be prejudicial to the efficiency of the service that he/they would undertake.

Before reaching a decision on these issues the PCT must consider those matters outlined at [Annex E](#) (1).

4.2.8 Before placing someone on the ophthalmic list PCTs must, in particular, make full checks on a practitioner's qualifications.

4.2.9 In addition, the PCT must check with the CFSMS for any past or ongoing fraud investigations involving the optometrist/OMP as an individual and for corporate opticians and their directors as providers of GOS. Contact numbers are in [Annex F](#). It should be noted that the statutory power for CFSMS to disclose information about past or current investigations is permissive not mandatory. In particular, for current investigations, CFSMS staff are not compelled to disclose even the simple fact that there is an investigation if it would be premature to do so and might risk compromising or jeopardising the success of any potential criminal action by effectively forewarning the optometrist/OMP under suspicion. However, in such cases, the CFSMS will notify the PCT of any adverse outcome of an investigation.

4.2.10 In addition the PCT is obliged to take up and consider at least two references. These should be from referees who are willing to provide references in respect of two recent posts (which may include any current post) as an optometrist/OMP that lasted at least three months without a significant break. Usually these would be clinical references, as optometrists/OMPs are health professionals, but this will not always be

possible. PCTs should accept other references when satisfied that an applicant cannot for good reason provide clinical references. Such cases might be applications from practitioners who have worked single handedly or are newly qualified (though it would be surprising if such a newly qualified optometrist were seeking admission to the ophthalmic as opposed to the supplementary list). In any event, two references must be obtained and considered when assessing the practitioner's suitability. Examples of alternative references that a PCT might accept where the circumstances merit it include – for newly qualified practitioners a statement from a tutor who taught them; for practitioners who have previously been listed with another PCT a statement from that PCT.

4.2.11 As an alternative to admitting or refusing to admit an optometrist/OMP or corporate optician to its ophthalmic list, the PCT can decide to make admission to the list subject to conditions (a conditional inclusion). The conditions can be free standing or they can vary the GOS practitioner's formal terms of service. These conditions must be devised to minimise any risks associated with fraud or efficiency matters that the PCT has identified. For example, where there is a history of fraud or dishonesty the conditions might minimise the practitioner's direct access to public funds or seek additional checks on claims for fees and allowances. In efficiency cases they might address poor performance and other clinical issues by requiring certain additional training or supervision in a particular area.

4.2.12 The conditions cannot relate to issues of suitability. Therefore conditions such as:-

- that the optometrist/OMP avoids future convictions related to alcohol abuse;
- that because of a history of convictions for sexual offences the optometrist/OMP should only see certain patients if accompanied.

are unlikely to be appropriate.

4.2.13 Additionally conditional inclusion is not a substitute for a deficient application process. A condition that an optometrist/OMP or corporate optician should be admitted to the list subject to providing evidence in support of his application within 6 months would not be appropriate. Rather no decision should be made on an application until the necessary information is available to the PCT.

4.2.14 A PCT can remove the conditions it applies to an optometrist/OMP or corporate optician at any time. It must review those conditions if the practitioner requests a review in writing subject to:-

- the request being no earlier than three months after he was entered onto the list subject to the conditions;
- the request been no earlier than six months after the decision on any previous review.

4.2.15 On any such review the PCT can:-

- maintain the existing conditions;
- remove some or all of the existing conditions;
- impose fresh conditions.

- 4.2.16 A PCT may remove a practitioner or corporate optician, subject to the normal procedures, at any time where there is evidence that he has breached a condition (or variation to the terms of service) imposed on admission or at a subsequent review.
- 4.2.17 Before deciding to admit a practitioner or corporate optician to the ophthalmic list subject to conditions (a conditional inclusion) it would be good practice for the PCT to give the optometrist/OMP or corporate optician notice of its intention and why it proposes a particular condition(s). It should afford the practitioner an opportunity to discuss the issues with the PCT orally or in writing as he might wish. All attempts should be made to do this in a way that does not unduly delay the process of handling an application to join the list.
- 4.2.18 There is a right of appeal to FHSAA against any refusal to admit to the ophthalmic list on discretionary grounds. There is also a right of appeal to the FHSAA against any conditions applied to the optometrist/OMP/corporate optician's inclusion in the list or to any decision made by the PCT about such conditions on review. Appeals should be made in writing to the FHSAA within 28 days of the PCT's decision. Appeal processes are covered in detail in [Section 6](#) of the guidance.
- 4.2.19-The exception to this rule is if an optometrist/OMP/corporate optician who is subject to a conditional inclusion and appeals against that decision, but is prepared to accept those conditions in writing pending the outcome of the appeal. In those circumstances the optometrist/OMP/corporate optician can be entered onto the list, subject to those conditions. If, following the appeal the practitioner did not undertake to be bound by any conditions decided upon by the FHSAA on appeal the PCT will be able to remove him from the list without any further appeal right.
- 4.2.20 The PCT are required to notify applicants of the result of their applications in writing and if this involves a conditional inclusion or a refusal to admit to the list, it is required to include the reasons for the decision, including the facts relied upon, and advise the optometrist/OMP/corporate optician of any right to a review or any right of appeal.
- 4.2.21 Whenever they refuse to admit an optometrist/OMP/corporate optician to their list on grounds of efficiency, fraud or unsuitability the PCT must consider approaching the FHSAA for a national disqualification – see [section 7](#).
- 4.2.22 The PCT may also choose to defer making a decision on a practitioner's application to join the ophthalmic list. The purpose of this provision is to avoid a PCT having to make a decision to admit or to refuse admission where there is a matter outstanding against the optometrist/OMP/corporate optician which, if the outcome is adverse, would be **likely** to lead the PCT to remove the practitioner from its list if it had admitted him in the first place.
- 4.2.23 The caveat "likely" is important. Before deferring an application the PCT must form the opinion that if matters go badly for the optometrist/OMP/corporate optician it is probable that if they had admitted him to their list they would choose to remove him from that list.

- 4.2.24 Deferment is not a general option. The regulations specify the **only** circumstances where a deferment can be applied; these are listed at [Annex J](#).
- 4.2.25 The PCT must notify the optometrist/OMP/corporate optician that it is deferring the application and once the outstanding matter is resolved they must process the application. However, before processing the application they should ask the practitioner if he wishes to continue with the application and if so to confirm that the details in the application remain correct, updating the details as necessary.
- 4.2.26 The optometrist/OMP/corporate optician should be allowed 28 days to respond. Where the PCT considers it to be reasonable they can agree a longer period. This provision is included so that an application is not left in a state of limbo and PCTs should be helpful if asked to allow a longer period. They should consider that, for example, a court case that cleared the optometrist/OMP/corporate optician of all allegations against him might leave him unsure about continuing to live or work in the area. It is proper to allow the practitioner time for reflection if asked. If he does not respond within that period the PCT can refuse to admit him.
- 4.2.27 Where the application continues it needs to be processed expeditiously given the delay that will already have occurred following the decision to defer. Delay by the PCT at this stage is not acceptable.
- 4.2.28 There is no right of appeal against a deferment.
- 4.2.29 An optometrist/OMP/corporate optician subject to a deferment can at any time withdraw his application. He can also re-apply at any time. On a re-application the PCT would be required to consider the question of deferment afresh, if the reason for it (or a new one) is still outstanding.
- 4.2.30 [Section 5](#) of this guidance discusses how PCTs should apply the discretion they are given in relation to these decisions and looks in more depth at the related procedures and information sharing.

### **4.3 Removal from the Ophthalmic List**

- 4.3.1 A PCT must remove an optometrist/OMP/corporate body (where applicable) from its ophthalmic list where he :-
- is convicted in the United Kingdom of murder;
  - is convicted in the United Kingdom after 13 December 2001 of a criminal offence and has been sentenced to a term of imprisonment of over six months;
  - has been nationally disqualified
  - has ceased to be an optometrist or ceased to be on the register;
  - and if has not provided GOS in the area for 6 months.
- 4.3.2 The removal is effective from the date of the PCT's determination (although not in cases where GOS has not been provided for six months).
- 4.3.3 A PCT may remove an optometrist/OMP/corporate optician from its ophthalmic list if it becomes aware of information, from the practitioner or from another source, that provides evidence on which to make a decision that:-

- his continued presence on the list would be prejudicial to General Optical Services (NHS Act 1977 49F (2));
- he has been involved in an incident of fraud (NHS Act 1977 49F (3) and 49H);
- he is unsuitable to remain on the ophthalmic list (NHS Act 1977 49F(4)).

In all cases, the PCT must consider the relevant matters outlined in [Annex E](#) (2-4) and follow the procedure described below.

4.3.4 As an alternative to removing an optometrist/OMP/corporate optician from its ophthalmic list the PCT can decide to make his retention on the list subject to conditions – a contingent removal. The conditions may be free standing or may vary the practitioner's formal terms of service. These conditions must be devised so as to minimise any risks associated with fraud or efficiency matters that the PCT has identified. For example, where there is a history of fraud or dishonesty the conditions might minimise the optometrist/OMP's direct access to public funds or seek additional checks on claims for fees and allowances. In efficiency cases they might address poor performance and other clinical issues by requiring certain additional training or supervision in a particular area.

4.3.5 The conditions cannot relate to issues of suitability. Therefore conditions such as:-

- that the practitioner avoids future convictions related to alcohol abuse;
- that because of a history of convictions for sexual offences, that the practitioner should only see certain patients if accompanied

are unlikely to be appropriate.

4.3.6 A PCT can remove the conditions at any time. Additionally the PCT is able to review the conditions it applies to an optometrist/OMP/corporate optician where it considers such action appropriate and must review those conditions if the practitioner requests a review in writing subject to:-

- the request being no earlier than three months after the decision of the PCT to impose conditions;
- the request been no earlier than six months after the decision on any previous review.

4.3.7 On any such review the PCT can:-

- maintain the existing conditions;
- remove some or all of the existing conditions;
- impose fresh conditions.

4.3.8 A PCT may remove a practitioner, subject to the normal procedures, at any time where there is evidence that there has been a breach of a condition (or variation of the terms of service) imposed as part of a contingent removal or as a result of a subsequent review.

4.3.9 A PCT cannot, however, review conditions applying to a contingent removal decided upon by the FHSAA at an appeal. These must be reviewed by the

FHSAA although the PCT may seek such a review in the same way as the optometrist/OMP/corporate optician. The time limits appropriate to reviews requested by the PCT or the optometrist/OMP/corporate optician to conditions imposed by the FHSAA are:-

- the request being no earlier than three months after the decision of the FHSAA to impose conditions.
- the request been no earlier than six months after the decision on any previous review.
- where the optometrist/OMP/corporate optician and the PCT jointly apply for the conditions to be changed, varied or revoked no earlier than one month after the previous FHSAA decision.

4.3.10 Before making a contingent removal or a discretionary decision under paragraph 4.3.3 or 4.3.8 to remove the optometrist/OMP/corporate optician from its ophthalmic list, the PCT must give him 28 days notice of its intention and why it proposes a particular course of action. It must afford the optometrist/OMP/corporate optician an opportunity of making representations to the PCT orally or in writing as he so wishes.

4.3.11 There is a right of appeal to FHSAA against any refusal to remove from the ophthalmic list on discretionary grounds. There is also a right of appeal to the FHSAA against any conditions applied to the optometrist/OMP/corporate optician's retention on the list or to any decision made by the PCT about such conditions on review. Appeals must be made in writing to the FHSAA within 28 days of the PCT's decision. Appeal processes are covered in detail in [Section 6](#) of the guidance.

4.3.12 A decision to remove from the list, to make retention subject to conditions or any decisions about conditions made on review, must be implemented:-

- where there is no appeal – after the 28 day period for appealing has ended;
- where there is an appeal – where the FHSAA finally disposes of the appeal.

4.3.13 Where the PCT determines that it will remove an optometrist/OMP/corporate optician's name from its ophthalmic list or make retention subject to conditions it has to give notice in writing of its determination to the practitioner together with the reasons for it, including any facts it relies on, and inform him of any right of review or any right of appeal.

4.3.14 Whenever they remove an optometrist/OMP/corporate optician from their list on grounds of efficiency, fraud or unsuitability the PCT should consider approaching the FHSAA for a national disqualification – see [section 7](#).

4.3.15 [Section 5](#) of this guidance discusses how PCTs shall apply the discretion they are given in relation to these decisions and looks in more depth at the related procedures and information sharing.

#### **4.4 Suspension from the Ophthalmic List**

4.4.1 The Department anticipates that suspensions should be an uncommon event. It is imperative that suspensions are not misused as this could result in serious individual injustice damaging an individual's career and personal life as well as being a major waste of public money. It is, therefore, in the

interests of all concerned that alternatives to suspensions are carefully considered. In this context it is important in these cases that the PCT can substantiate its decision that the suspension was necessary in order to protect patients from the potential actions of the optometrist/OMP/corporate optician or that there was a genuine public interest justification. If there is no risk to patients and no public interest, justification there can be no suspension.

4.4.2 A PCT can suspend an optometrist/OMP/corporate optician from the ophthalmic list when it is necessary to do so for the protection of members of the public or is otherwise in the public interest. **All suspensions must adhere to these criteria.**

4.4.3 A risk to the public might, for instance, be said to exist if there is evidence of dangerous ophthalmic practice or assault on patients. A public interest justification might be said to exist if:-

- allowing the practitioner continued access to staff, patients or records might significantly prejudice a major fraud investigation either by the NHS CFSMS or the police;
- there is evidence of fraud.

4.4.4 The effect of a suspension is that, although the assistant's name remains included in the supplementary list, he is treated as though he has been removed. The effect is, therefore, that he cannot provide any aspect of GOS.

4.4.5 Additionally a suspension is only possible in the following circumstances:-

- i whilst the PCT considers whether or not to remove or contingently remove the optometrist/OMP/corporate optician;
- ii whilst it awaits the decision of a court or body, which regulates the optical profession anywhere in the world affecting the optometrist/OMP/corporate optician
- iii where it has decided to remove the optometrist/OMP/corporate optician but before the decision can take effect;
- iv whilst an appeal is being considered.

4.4.6 A suspension under 4.4.2 (i) cannot exceed six months. The PCT is obliged to tell the optometrist/OMP/corporate optician the extent of the suspension and where that is less than six months the PCT can extend the period but not in such a way that the overall period exceeds six months.

4.4.7 A suspension under 4.4.2(ii) is not restricted to six months but any period of suspension that follows the decision of the court or body cannot exceed six months and again the optometrist/OMP/corporate optician must be told the length of any additional period of suspension.

4.4.8 Suspensions under 4.4.2(iii) last until the removal is effected.

4.4.9 Suspensions under 4.4.2(iv) last until the appeal is disposed of by the FHSAA.

4.4.10 Suspensions under 4.4.2 (i) and (ii) can be extended beyond six months by the FHSAA on application. There will be cases where the original six-month suspension expires after the PCT has applied to the FHSAA for an extension but before the FHSAA has reached a decision. In such cases the suspension will continue until the FHSAA has disposed of the application. Applications may also be



made to the FHSAA to extend any period of suspension that they have already imposed.

4.4.11 The effect of a suspension is that although the optometrist/OMP/corporate optician's name remains part of the ophthalmic list he is treated as though he has been removed. The effect is, therefore, that he cannot undertake to treat any NHS patients within the GOS.

4.4.12 A PCT can revoke a suspension at any time.

4.4.13 A PCT is able to review a suspension under 4.4.2 (i) & (ii) applied to an optometrist/OMP/corporate optician if it considers it appropriate and must review the decision to suspend if the practitioner requests a review in writing subject to:-

- the request being no earlier than three months after the optometrist/OMP/corporate optician was suspended;
- the request being no earlier than six months after the decision on any previous review.

4.4.14 On any such review the PCT can:-

- maintain the suspension;
- revise the period of the suspension;
- revoke the suspension.

4.4.15 A PCT cannot be required to review a suspension under 4.4.2 (iii) & (iv). However, it can of its own volition revoke or extend the period of suspensions at any time. Where it extends a suspension it must follow the same procedures that apply to a review..

4.4.16 For suspensions under 4.4.2(ii) the PCT must lift a suspension when the criminal process or the regulatory, licensing or other body investigation is completed and there is no finding against the optometrist/OMP/corporate optician. Where there is a criminal conviction or a "finding against" by the professional, regulatory or licensing body the PCT shall consider whether or not there are grounds to remove or contingently remove the optometrist/OMP/corporate optician from the ophthalmic list under the normal procedures. This can include a further suspension not exceeding six months where all the usual criteria are met.

4.4.17 The PCT must give notice to the optometrist/OMP/corporate optician of any decision to suspend him from the ophthalmic list giving reasons for its decision and informing him of any right to a review. There is no right of appeal against a suspension; the expectation is that the PCT will use all available resources to resolve the reasons for the suspension and either allow him to resume his duties or take substantive action against the optometrist/OMP/corporate optician as quickly as possible.

4.4.18 [Section 5](#) of this guidance discusses how PCTs may apply the discretion they are given in relation to these decisions and it is important that PCTs acquaint themselves with these details. It also looks in more depth at the related procedures and information sharing.

## **4.5 Corporate Bodies and partnerships**

- 4.5.1 Apart from individual practice owners and partners, who are optometrists and ophthalmic medical practitioners, only a corporate optician (a corporate body included on the GOC's list of corporations practising as ophthalmic opticians) can be included on a PCT's ophthalmic list. Companies not on the GOC's list cannot be included on the PCT's ophthalmic list. The list should include the corporate optician's GOC number.
- 4.5.2 In the case of partnerships where all partners are registered optometrists or OMPs each partner would be listed as a contractor at each address where the partnership provides GOS. Where some partners are not registered optometrists or OMPs only those partners who are registered optometrists or OMPs can be listed.
- 4.5.3 Franchises are in law the same as any other business and to be included in the ophthalmic list must fall into one of the categories described above. Where franchises are companies and are constituted in such a way as to be listed with the GOC as corporate bodies practising as ophthalmic opticians they should apply for listing and then, provided they meet the other requirements for listing, be included in the ophthalmic list as corporate opticians by each PCT where they wish to operate.
- 4.5.4 Where no partners are registered optometrists or OMPs none could be listed as a contractor (see 4.6 below).

#### **4.6 Temporary Arrangements**

4.6.1 It has been suggested to the Department that there are significant numbers of practitioners included in ophthalmic lists who do not meet the requirements of the contractors in that they do not provide the premises or accommodation or own, keep and maintain the records of the provision of GOS, but are instead employed, whether as employees or on a self-employed basis, by the persons who own control those premises accommodation and records to provide GOS. They are assistants and should be included in supplementary list. We describe elsewhere at 3.1.4, 3.1.5 & 3.2.4 the arrangements in place to transfer such persons to the supplementary list. However, in some cases this may not be appropriate and the special arrangements set out below will be applicable.

4.6.2 It is also been suggested the department that in some cases there will not be a contractor to put in place as there will be no optometrist/OMP/corporate optician to put on the ophthalmic lists in relation to the provision of services in relation to those premises etc. Therefore special arrangements have been put in place on a temporary basis whereby an optometrist/OMP who is included in an ophthalmic list on 31 March 2005 may remain on the list as a contractor in relation to those premises/equipment/records. There must be legally enforceable arrangements between that optometrist/OMP and his employer whereby sufficient consulting waiting room accommodation and equipment are available to him and that inspection of those premises and equipment is permitted. Similarly there must be like arrangements for the keeping of records and for them to be produced when and as needed. The PCT must be satisfied that such arrangements exist.

4.6.3 It is stressed that these are temporary arrangements, though no date on which they will come to an end has yet been fixed. Non-registered providers should seek to move to regularise the situation. One method of doing so would be by obtaining

listing with the GOC as a corporate optician and then seeking inclusion on the ophthalmic list on that basis.

4.6.4 If a practitioner has a contract with a non-registered provider and the PCT finds that the premises are not suitable that practitioner would be removed from the list. However, unless there was reason to suppose that he had not indicated to the non-registered provider the requirements of providing General Ophthalmic Services this removal would not have further impact on the practitioner, as the fault would not have been his.

4.6.5 A non-registered provider may only enter into such an arrangement with an optometrist or ophthalmic medical practitioner who was on a PCT list at 31 March 2005. If a practitioner ceases working for a non-registered provider they may be replaced by another practitioner who was on a PCT list at 31 March 2005. This arrangement is to provide assurance of continuity for the provider and their patients.

4.6.6 In these cases the practitioner and non-registered provider must enter into an oral agreement immediately. Such an agreement is legally binding and the fact such an agreement has been made should be confirmed to the PCT in writing as soon as possible. A written legal agreement between the practitioner and the non-registered provider must be put in place and provided to the PCT not later than 31 July 2005. However, the PCT must be satisfied that proper arrangements are in place and if it is not satisfied it cannot sanction the putative agreement.

4.6.7 After the transitional period where a practitioner wishes to enter into such an agreement there should be no delay at all, as an acceptable format will already exist. This may apply in particular in cases where a practitioner has decided he no longer wishes to be part of such an agreement and another practitioner is replacing him. There should be no delay which could disrupt patient services.

4.6.8 Our expectation is that there would only be one of these temporary agreements per practice but this is not a requirement and it would be possible for more than one such agreement to be entered into.

## 4.7 Mobile Optical Services

- 4.7.1 The 2005 Regulations introduce changes to the regulation of mobile optical services. They also make certain transitional arrangements for the period following their introduction. The GOS Regulations do not provide for fees, which are covered by the Optical Vouchers and Charges regulations.
- 4.7.2 The regulations create a level playing field between the different types of provider of General Ophthalmic Services in respect of provision of mobile services.
- 4.7.3 The regulations allow mobile practices to undertake sight tests in private individuals' homes, which they have not previously been legally allowed to do. The regulations allow practices with community premises to provide the full range of mobile services at other than their permanent practice premises.
- 4.7.4 All providers of mobile optical services must be approved as such by the PCT in each area where they wish to provide such services. The ophthalmic list will show which contractors the PCT has determined to be appropriate providers of mobile services, with whom they will make arrangements. Suitability to be on an ophthalmic list as a mobile service provider should be judged by PCTs on the same basis as any other application, although not all of the Terms of Service will apply. PCTs will need to be satisfied that the contractor will employ suitable personnel, provide appropriate equipment etc to provide sight tests, which meet the requirements of the Sight Testing Regulations.
- 4.7.5 PCTs should be aware that for providers who wish to provide mobile services a PCT needs to make two separate decisions – one as to the inclusion on the list as a provider of General Ophthalmic Services from premises and the second as to its inclusion as a provider of mobile services. In these cases it would be quite correct to approve a contractor to provide General Ophthalmic services, but not as a mobile services provider – they may not, for instance, have appropriate equipment to provide a mobile service. For mobile practices i.e. practices without fixed premises in an area, both decisions still must be made and a refusal to accept onto (or a removal from) the ophthalmic list would mean that they could not practice in an area at all.
- 4.7.6 “Day centre” is defined in the General Ophthalmic Services Regulations as is “residential centre”. Day centre “means an establishment in the locality of a Primary Care Trust attended by patients who would have difficulty in obtaining such services from practice premises because of physical or mental illness or disability or because of difficulties in communicating their health needs unaided.” Residential centre “means an establishment in the locality of a Primary Care Trust for patients who normally reside in that establishment and who are unable to leave the establishment unaccompanied because of physical or mental illness or disability”.
- 4.7.7 Sight tests provided in individual homes, like those to people in residential centres, are only provided to patients who are unable to leave their home unaccompanied because of physical or mental illness or disability.
- 4.7.8 The regulations introduce clearer requirements on pre-notification of domiciliary sight testing. The contractor must notify the PCT in whose area they plan to undertake three or more sight tests three weeks in advance of the planned number, date and approximate time of the sight tests to be undertaken and the names of the patients. Where sight tests are being

carried out for less than three people 48 hours notification must be given. By approximate time is meant, for example, from about 10.00 am until about 2.00pm. Meeting these requirements, like all Terms of Service, is a requirement for payment from General Ophthalmic Services funds.

Notification must, as is the general rule, be in writing.

- 4.7.9 If a provider wishes to provide General Ophthalmic Services to more or different people or change the date and time of provision they must notify the PCT 48 hours before the visit is due to take place. If the PCT is not content they will need to tell the provider this, otherwise the provider will be able to proceed.
- 4.7.10 Providers may make up to three changes, whether substitutions or additions, where it would not have been possible to give the PCT 48 hours notice. These changes are intended to allow for General Ophthalmic Services to be provided to patients with eye complaints which arose at short notice and for patients who may have only been admitted to a residential home on the day before the provider was due to visit.
- 4.7.11 In cases where providers are not permitted to attend at a residential home, day centre etc for reasons outside their control e.g. an outbreak of disease at the home, they may bring forward another previously notified visit (with three weeks notice as required) or visits in the same PCT area. The reference in the regulations to "another location" can include more than one location i.e. a provider could bring forward two short visits planned later in the month in place of one longer visit that they were prevented from making. In such cases the change may be made on the day that the visit was due to have taken place but providers must notify PCTs so that if the PCT had scheduled a member of staff to attend the visit, for example for clinical governance reasons, they are aware of the change and can send their officer to the residential home where the provider will be providing General Ophthalmic Services.
- 4.7.12 The visit that the provider was prevented from making may be rescheduled with the agreement of the PCT.
- 4.7.13 PCTs should keep a list of residential and day centres that mobile service providers intend to visit more than once. Contractors must notify PCTs of those residential and day centres which they intend to visit more than once.
- 4.7.14 Sight tests should only be undertaken by mobile service providers at the request of the patient or the patient's authorised representative where patients have difficulty acting for themselves. Contracts between contractors and residential or day centres are not sufficient for an application to be made for reimbursement under General Ophthalmic Services unless the residential or day centre have power to act for the patients.
- 4.7.15 The requirements on mobile optical services should be fully in place by 31 July 2005. From this date all mobile service providers must have been specifically approved by the PCTs in whose areas they intend to provide services. To qualify for transitional protection current mobile service providers should ensure that they have made applications to each PCT area where they wish to provide services by 16 May 2005 to be able to continue working in an area until the PCT makes its decision on their suitability.
- 4.7.16 Mobile optical service providers who have not submitted applications by 16 May 2005 will not be able to provide such services until they have been approved by the PCT as appropriate providers.

## 5. PCT Discretion/Procedures – the comments in this section apply to both the Ophthalmic and Supplementary Lists

### 5.1 Suspension

5.1.1 The basic conditions that apply to suspensions are outlined in sections 3 and 4. This section looks at the issues in greater depth and examines both mandatory procedures and those that might represent good practice.

5.1.2 The vast majority of optometrists/OMPs/corporate opticians provide a first class service to their patients. However, a very small number do not provide an adequate level of care or conduct their business in a fashion, which is seriously deficient and on occasion may even represent a danger to patients and colleagues. The public (and the public purse) has a right to be protected from these individuals. A PCT can suspend an optometrist/OMP/corporate optician from its list when it is necessary to do so for the protection of members of the public or it is otherwise in the public interest. **All suspensions must adhere to these basic criteria.**

5.1.3 A suspension should only take place after the PCT has first considered whether there is a case to answer and then considered whether there is reasonable and proper cause to suspend. This is likely to be where there is compelling evidence of guilt or lack of competence, sufficient evidence to warrant suspension pending detailed further investigation or an allegation of sufficient seriousness that immediate suspension is justified whilst an investigation is undertaken.

5.1.4 PCTs are asked to always consider alternatives to suspension where these will be effective. An optometrist/OMP/corporate optician might voluntarily agree to withdraw from part or all of his normal duties whilst any matters are investigated. It may even be possible for the PCT to identify useful alternative NHS work that the optometrist/OMP/corporate optician might be prepared to undertake during a short absence from his usual duties.

5.1.5 Where suspension is thought to be necessary the NHS Act (and its subsequent related regulations) require that as a minimum:-

- the optometrist/OMP/corporate optician is always given notice of the allegation being made against him, including details of the action being proposed and why ;
- he must have an opportunity of putting his case to the PCT at a hearing;
- he should be given notice of the PCTs decision, and the facts it relies upon, and the reasons for it.

There is no right of appeal against a suspension.

5.1.7 This is a mechanistic process and at times immediate action will be required. The regulations allow the following truncated procedure to apply:-

- the PCT to tell the optometrist/OMP/corporate optician of the course of action it is proposing and why, either in writing or verbally;

- a hearing before the PCT, a minimum of 24 hours notice should be given;
- immediately after the hearing the PCT may immediately suspend him. Thereafter it must notify the optometrist/OMP of its decision, give reasons, including any facts it relies upon, and tell him of his right to a review, and;
- if the optometrist/OMP/corporate optician does not want a hearing or does not attend for any reason the PCT may immediately suspend him and thereafter must notify him of its decision, give reasons, including any facts it relies upon, and tell him of his right to a review, and;

Where the initial notification to the optometrist/OMP/corporate optician is verbal this should be confirmed in writing as soon as possible.

- 5.1.8 The procedure is provided to enable a PCT to act quickly and effectively. At times this will be necessary. However, the PCT will wish to consider the restricted time it allows both sides to fully present their position, this could be particularly difficult for the optometrist/OMP/corporate optician. It might be possible, for example, for PCTs to agree to put back hearings for 7 days, to allow an optometrist/OMP/corporate optician a reasonable opportunity to consider his position and prepare his own observations, where other measures can be temporarily put in place to protect the public or address the relevant public interest considerations.
- 5.1.9 The procedures in 6.1.11 and 6.1.12 also apply to the consideration by a PCT of an extension to a period of suspension. It should not normally be necessary to hear these cases at 24 hours notice and a period of at least seven days notice ought to be the norm.
- 5.1.10 PCTs should also remember that they have the ability to look again at their decision to suspend at any time. In some cases where urgent action is felt to be appropriate it might be considered fair for the PCT to decide to look again at the case within a short period of time. For example an immediate suspension could be limited to 28 days where the optometrist/OMP/corporate optician agrees to attend a review hearing (at a date set by the PCT) on an agreed date (say within 10 days) at which the suspension might be extended or revoked.
- 5.1.11 The procedures for a PCT hearing are discussed at section [5.3](#).
- 5.1.12 Where a suspension is imposed it is essential that proper resources are committed to ensure that the optometrist/OMP/corporate optician is allowed to return to work or that substantive action is taken against him as quickly as possible. A suspension should be for as short a period as possible and many PCT suspensions will be restricted to a maximum of six months. It is envisaged that the FHSAA will look for evidence that the PCT is taking all practical steps before imposing suspensions beyond six months.
- 5.1.13 It is strongly recommended that all suspension decisions be reported to the PCT board at the earliest opportunity. It is further recommended that at each of its meetings the board should receive an update on the position of each suspension and that it should proactively consider whether each such suspension remains appropriate. It might also be appropriate to give a non-

executive Director specific responsibility for ensuring that suspension is being used appropriately and effectively. This role could be used to monitor all “live” suspensions.

## **5.2 Refusal, Removal, Conditional Inclusion, Contingent Removal - Discretion**

- 5.2.1 The H&SC Act amended the 1977 Act to abolish the NHS Tribunal and created for PCTs a responsible role controlling, which optometrist/OMPs/corporate opticians can work within their local GOS. These provisions work through the revised list system by providing powers to refuse admission, conditionally include, remove or contingently remove an optometrist/OMP/corporate optician. These decisions are crucial if we are to be both fair to practitioners and to offer protection to patients. In all cases it is important to understand events and circumstances as they unfold and to afford an optometrist/OMP/corporate optician every opportunity of addressing the PCT’s concerns wherever practical. It is also of the utmost importance to build cases around substantiated facts, not rumour, innuendo or prejudice.
- 5.2.2 Decisions can be made under three different, but overlapping, criteria that are spelt out in section 49F of the NHS Act 1977 (inserted by section 25 of the H&SC Act). They are “efficiency” (49F(2)), “fraud” (49F(3)) and “unsuitability” (49F(4)). By section 43D of the NHS Act and the regulations made under it they equally apply to the supplementary lists.
- 5.2.3 “Efficiency” was the criteria used by the former NHS Tribunal to the effect that the inclusion of the person on the list is prejudicial to the efficiency of the particular service they are providing. It was never felt appropriate to define or restrict the term “efficiency” and this stance has been carried forward in the new provisions.
- 5.2.4 The Health Act 1999 provided powers for the remit of the NHS Tribunal to be extended to “fraud”. Those powers were never commenced but those “fraud” provisions were given to PCTs by the Health and Social Care Act and subsequent Regulations.
- 5.2.5 There is no definition of “fraud” in law, although we all have a common understanding of what the term means - that someone has obtained resources to which he is not entitled. Under the provisions of 49F(3) of the H&SC Act, there does not have to be a proven criminal conviction if there is sufficient substantiated facts to satisfy the PCT, that an optometrist/OMP/corporate optician has secured, or tried to secure financial benefit for himself or another to which he knew he was not entitled.
- 5.2.6 “Unsuitability” as a concept was considered in the aftermath of the Harold Shipman trial to capture matters such as the effect on a primary care practitioner’s suitability of a criminal record. However, a decision was taken that we did not wish to provide a restrictive definition within legislation, a decision debated at some length in Parliament before being accepted. Consequently the term can be ascribed its everyday meaning and provides a broad area of discretion for PCTs. The overlap with “efficiency” is marked and in many cases a PCT would be able to take action under either heading (or both) against an optometrist/OMP/corporate optician.



5.2.7 This guidance does not restrict definitions where this was thought to be unnecessary in legislation but the following **examples** might indicate one way of categorising issues:-

- “efficiency” could be held to relate to everyday work and encompass issues such as poor clinical performance, poor use of resources, actions that add to the burdens of others within the NHS etc.
- 
- “fraud” could involve the misappropriation (or attempted misappropriation) of NHS resources for personal gain or for the gain of others;
- “fraud” is not merely a misunderstanding over rules or procedures;
- “unsuitability” could be held to relate to decisions taken as a consequence of the actions of others (courts, professional bodies, poor references) or a lack of something tangible related to a persons ability to undertake his role (qualifications, experience, essential qualities);
- “unsuitability” is not an excuse for imposing personal preferences or prejudices.

These are examples. The categories will inevitably overlap and it is unlikely that a PCT could be accused of acting wrongly by using “efficiency” for removing an optometrist/OMP/corporate optician convicted of serious violence or for using “unsuitability” to take action against an optometrist/OMP/corporate optician who defrauded the NHS. However, in such cases PCTs might be well advised to remove the practitioner on both grounds e.g. in a fraud case which merits removal from a list it is quite likely that the same facts will support a decision to remove on unsuitability grounds as well. Guidance to NHS Trusts on the management of a practitioner’s performance provides a useful description of what could be classed as inadequate clinical capability or poor performance. This is included at [Annex D](#).

5.2.8 Colleagues in the NHS Counter Fraud Security Management Service (NHS CFSMS) have provided an outline of their work at [Annex F](#).

5.2.9 It will be evident from reading these paragraphs that the outcome of a fraud investigation can be far from clear-cut. The Act does not require a criminal conviction for a case to come within the Act’s definition of a fraud case. PCTs are asked to at least consider the possible relevance on an optometrist/OMP/corporate optician’s future of any findings following a fraud investigation of the type described in [Annex F paragraph 18 \(iii\)-\(v\)](#). We would expect optometrists/OMPs/corporate bodies to declare this type of outcome to PCTs. The information made available to a PCT by the NHS CFSMS might involve all five categories and PCTs ought to treat cases where the information is unsubstantiated or untested with a degree of caution. If they do choose to rely on such matters in making their decisions the facts may well be tested before the FHSAA if there is an appeal.

5.2.10 The new legal framework gives PCT considerable new responsibilities. Their decisions will affect the quality of care available to patients and just as importantly the individual optometrist/OMP/corporate optician’s reputation and livelihood. As such it is vital that decisions are fair and proportionate. PCTs acting inappropriately are likely to fall foul of the FHSAA and might leave themselves open to Human Rights Act or other legal challenges.

- 5.2.11 PCTs are free to consider any information in their possession when reaching their decisions, but to help them in these considerations the regulations provide criteria that must always be considered in these cases. They may also consider a mix of issues as part of one single investigation and rely on a mix of the three removal conditions to arrive at a single proportionate decision. The compulsory criteria are in [Annex E](#).
- 5.2.12 The proper operation of these criteria in the regulations should indicate to PCTs that the simple fact of a criminal conviction (except where the mandatory rules apply), an incident of fraud or an example of poor performance does not automatically mean removal/contingent removal action should be taken. These matters must be carefully considered in context and action taken as appropriate.
- 5.2.13 Many of the criteria in [Annex E](#) are self-explanatory, but reference to a few examples and ground rules might be of assistance. These are based on examples of criminal matters.
- 5.2.14 There are many criminal offences that would render an optometrist/OMP/corporate optician liable for removal. In all cases, PCTs, having considered the facts, will need to consider whether the optometrist/OMP/corporate optician poses a risk to patients, colleagues or the public purse and whether their conduct is sufficiently serious to warrant instigating the disciplinary procedure. The PCT will have to give consideration as to whether the optometrist/OMP can continue in his position once criminal charges have been brought. When a criminal charge is brought, this does not necessarily mean that appropriate local action should be put on hold. However, removing an optometrist/OMP/corporate optician before the criminal issues are resolved might seem to be an inappropriate assumption of guilt. In these circumstances, the PCT needs to seek legal advice and consider asking the police whether the local procedures should continue. In general, the PCT may proceed with local procedures, unless the police request they be put on hold to avoid prejudicing the criminal proceedings, if a fair and proportionate decision can be made. Once proceedings have commenced liaison with the CPS would seem appropriate. However, PCTs should bear in mind that the public interest may require speedy action.
- 5.2.15 Key matters for PCTs to consider could be proportionality and public interest in Human Rights Act terms. It might not be proportional to remove or refuse to admit an optometrist/OMP for an isolated drink/driving offence 20 years before, because the penalty (removal) seems quite disproportionate to the offence particularly after this length of time. This might look very different if there had been a subsequent string of similar or other offences continuing to the present day. The PCT might then consider a pattern of recklessness was emerging that might affect the optometrist/OMP/corporate optician's patients, even though the most serious offence might be a long time ago.
- 5.2.16 Alternatively a conviction for serious bodily harm whenever committed might justify removal or refusal to admit unless it could be shown that there were extenuating circumstances. Even after a long period, such an offence must be regarded as serious, but if the optometrist/OMP/corporate optician can show it was an offence committed under extreme provocation and not in

circumstances related to the practise of his profession, the PCT might consider removal was unjustified.

5.2.17 PCTs must always give careful consideration to offences under the Sexual Offences Act 2003 and its predecessors, this is a reflection of society's serious attitude towards such offences. [Annex B](#) provides a précis of the offences detailed in the Sexual Offences Act 2003, but PCTs are recommended to obtain a copy of the legislation.

5.2.18 Some concern has been expressed by the professional bodies about the consideration of cautions, as there has been no conviction as such. They are concerned that in accepting a caution in the past the Primary Care Practitioner would have been unaware of the potential future consequences. However, for a police caution to be administered:-

- there must be evidence of the offenders guilt which would be sufficient to give a realistic prospect of conviction;
- the offender must admit the offence;
- the offender must understand the significance of the caution and give informed consent to being cautioned (one significance being that it becomes part of his antecedents).

There is therefore an unequivocal admission of guilt. However, in considering cautions PCTs should remember that they are at the bottom of the range of penalties imposed by the legal system. Therefore, given the issues a PCT **must** consider outlined in [Annex E](#), a decision to refuse admission or remove an optometrist/OMP/corporate optician from the list solely on the basis of a caution, or even a number of cautions, could be difficult to justify. PCTs might also wish to consider that an optometrist/OMP/corporate optician who chose to accept a caution before these regulations came into force, rather than allow a court to adjudicate on the question of guilt, would have done so without the knowledge that in the future a PCT would take the matter into account when assessing his suitability.

5.2.19 Overall the question the PCT must answer in each case is whether the offence suggests that the optometrist/OMP/corporate optician is unsuitable to provide/assist in providing GOS in the widest, not just clinical, sense bearing in mind the high standards expected of practitioners, and the position of trust in which they are placed and the access to public funds it affords them. To sum up, it is the relationship between the past offence and present circumstances which is vital.

5.2.20 In exercising discretion PCTs are also asked to consider the impact on public opinion if different PCTs reach different decisions on the same facts. Each PCT **must reach its own decision** but they should carefully consider the reasons why another PCT reached a different decision in relation to the optometrist/OMP/corporate optician who is being considered. If it decides that a different decision might be appropriate, the PCT is recommended to ask itself how it would justify to an independent observer why it reached a different decision on broadly identical facts. If after this they are content with their decision-making procedures they should make the decision they believe to be correct. The PCT should also consider whether it has all the

information the other PCT has, or alternatively it may find it has further information available to it than the other body.

5.2.21 In looking at the optometrist/OMP/corporate optician's declarations about both criminal, professional and fraud matters and the need for subsequent action PCTs should bear in mind the following miscellaneous issues:-

- the NHS Tribunal was a regulatory body and referrals or adverse decisions must be declared;
- for mandatory removal a sentence of more than six months imprisonment must be imposed for a single offence (two 4 month sentences of imprisonment for different charges would have to be seriously considered under the PCT's discretionary powers to remove etc); clearly any decision to imprison a professional is a most serious matter that must raise questions about their continued inclusion in any list;
- the legal definition of the term "imprisonment" does not cover sentences to youth custody or youth training (or their predecessors such as Borstal); they are however convictions, must be declared and should be considered under the PCT's discretionary powers to remove etc.
- a suspended prison sentence is not to be treated as a sentence of imprisonment and cannot therefore attract a mandatory removal whatever the length of the sentence, unless it is at some future point invoked; they are however convictions, must be declared and should be considered under the PCT's discretionary powers to remove etc.
- fixed penalty tickets that do not result in a court hearing do not constitute part of a person's criminal record and need not be declared;
- the term "regulatory, licensing or other body" covers any such body anywhere in the world and covers bodies that the optometrist/OMP/corporate optician was connected with as well as those he is currently connected with in any professional capacity;
- convictions by a military court do count as declarable convictions and a sentence of imprisonment of more than six months handed down by such a court would lead to a mandatory removal/refusal to admit;
- that the Rehabilitation of Offenders Act 1974 does not apply to GOS practitioners for the purpose of their declarations. Offences considered "spent" under that Act must be declared.

### **5.3 Refusal, Removal, Conditional Inclusion, Contingent Removal - Procedures**

5.3.1 PCTs must decide whether to admit an optometrist/OMP/corporate optician to the ophthalmic list of their receiving all the information referred to in Part I of Schedule 2 (Annex I), including references from referees.

5.3.2 Where removal or contingent removal is thought necessary the Act (and its subsequent related regulations) require that as a minimum:-

- the optometrist/OMP/corporate optician is told in writing what action the PCT is proposing;
- the grounds on which it is acting;
- that he has 28 days in which to make written representations;
- that he has a right to an oral hearing before the PCT, if he requests one, within that 28-day period.

- 5.3.3 If there are no representations the PCT can make its decision, but if there are written representations they must be considered before the decision is made.
- 5.3.4 If a hearing is requested one must be arranged. After the hearing the PCT may make its decision.
- 5.3.5 Decisions should be notified in writing, they should explain why the decision has been made, including any facts relied upon by the PCT in reaching its decision, and explain any appeal or review rights.
- 5.3.6 Beyond this we are not being prescriptive about the internal PCT procedures to be followed in reaching these decisions. PCTs are free to arrange their own procedures but these must be fair and accord with good Human Resource (HR) management principles. The following paragraphs present a potential scenario, which would represent good practice; it is for guidance – where words such as “must” or “should” appear the intention is that in **this example** we believe this should form a mandatory element.
- 5.3.7 PCTs will have matters brought to their attention from a number of sources that might lead them to conclude that some action needs to be considered in relation to the optometrist/OMP/corporate optician. Examples are:-
- concerns expressed by other NHS professionals, managers, trainees or other non-clinical staff;
  - reviews of performance, including appraisal;
  - clinical governance, clinical audit and other quality improvement activities;
  - complaints by patients, their family or carers or their representatives;
  - information from regulatory bodies;
  - litigation following allegations of negligence;
  - information from the police or coroner;
  - judgements made in courts.
- 5.3.8 PCTs will need to have procedures to deal with these issues. It is recommended that responsibility for the management of subsequent inquiries be vested in an executive member of the PCT board – the responsible board member - (deputies – the minimum number consistent with the size of the PCT - normally of board, or near board, level should also be appointed). The responsible board member or his authorised deputy would make all decisions to suspend/remove or contingently remove an optometrist/OMP/corporate optician. Ideally the responsible board member should be one of the Chief Executive, the Director of Primary Care (or a board member with these responsibilities) or HR Director (or the board member with these responsibilities). Except in sensitive cases it would be unusual for that responsible board member or their deputy to undertake the subsequent inquiries personally.
- 5.3.9 Where a PCT is investigating an optometrist/OMP/corporate optician and reaches a point in that investigation where there is evidence to suggest that there is a realistic prospect that removing or contingently the optometrist/OMP/corporate optician will have to be considered on efficiency, fraud or unsuitability grounds, under their discretionary powers (mandatory decisions should simply be signed off by the responsible board member) they should:-

- nominate an officer to manage any further investigation (“the investigator” for ease of reference);
- unless there are reasons to the contrary notify the optometrist/OMP/corporate optician of the name of the investigator and outline the nature of the PCT’s concerns;
- notify any other PCT on whose list the optometrist/OMP/corporate optician is included
- notify the NHS Litigation Authority.

5.3.10 It would be good practice for the investigator to be drawn from a small group of suitably experienced staff (these staff could be shared between PCTs so they build up experience). In this way the investigator would be familiar with local and with ophthalmic issues. It also has the advantage of sharing resources between PCTs where the difficulties involving the optometrist/OMP/corporate optician may have complications for more than one PCT. Each PCT must, however, take its own decision on suspension/removal/contingent removal. Where two or more PCTs have an interest they could each nominate the same investigator to examine the issues.

5.3.11 It is recommended that the investigating officer:

- is responsible for conducting any investigations into allegations or concerns about an optometrist/OMP/corporate optician, establishing the facts for any disciplinary panel and investigating and reviewing the position of any suspension;
- must not be the same as the person making the decision to suspend the employee and does not have the authority to impose, vary or lift a suspension, and may not be a member of any panel hearing the case;
- must involve a suitably experienced clinician where a clinical judgement is required during the investigation process; any such clinician should not be a member of any panel hearing the case;
- must ensure that checks are in place throughout the investigation so that breaches of confidentiality are avoided as far as possible; for example patient confidentiality needs to be maintained, but the disciplinary panel will need to know the details and the optometrist/OMP/corporate optician has a right to know what allegations have been made and what they are. (If witnesses have to be questioned as part of an investigation, it is important that any information they provide is not tainted by hearsay. Investigating officers will need to remember that any evidence provided is likely to be most reliable if the witness being questioned answers without knowing what the allegations are. This will not always be possible, for example, when speaking to a patient who has made an allegation);
- must ensure that most written statements have been collected prior to the decision to convene a disciplinary panel;
- must consider and comment on any new evidence that may, on occasion, be presented to the appeal panel.

5.3.12 As alluded to above it is important that where an investigation is examining clinical issues that relevant clinical input is obtained. This might be from an optometrist/OMP nominated by the LOC or LMC or some other competent person.

- 5.3.13 The course and nature of the investigation should be a matter for the officer concerned, guided by the relevant responsible board member, who should be free to discuss the issues with the optometrist/OMP/corporate optician and others as he sees fit (subject to the appropriate data protection/confidentiality rules). The investigator can be an official of the PCT or of a neighbouring PCT or NHS Trust. It should be remembered that an “investigation” could be very short in some instances such as where the decision is based on clearly established facts such as an adverse GOC report or a criminal record. Matters looking at competency or fraud are likely to need more work. Remember a referral to CFSMS might be required in fraud cases.
- 5.3.14 At any stage the investigator can discuss the need for a suspension with the responsible board member and if necessary invoke the necessary procedures.
- 5.3.15** When the investigator has completed the investigation a report must be prepared for the PCT (where two or more PCTs are involved each PCT must receive a report, as each Trust must reach its own decision). The report should specifically contain recommendations as to whether the optometrist/OMP/corporate optician should be retained on the list, should be removed or should be contingently removed from it (including a recommendation as to the appropriate conditions) and, if removal is recommended, as to whether a suspension appears to be appropriate. The investigator must not be able to remove, contingently remove or suspend the optometrist/OMP/corporate optician on his own authority; an authorised deputy should make the decision where the investigator is the responsible board member.
- 5.3.16 Where the PCT concludes that the optometrist/OMP/corporate optician will not be suspended, removed or contingently removed, and he was aware of the investigation, they should notify him accordingly. Where there are concerns remaining, such as performance, it would also be appropriate to discuss these with the optometrist/OMP/corporate optician at this stage. This might include action against him for a breach of his terms of service as set out in the Service Committee and Tribunal Regulations.
- 5.3.17 Where the PCT concludes that there appear to be grounds on which to remove or contingently remove the optometrist/OMP/corporate optician under its discretionary powers it is legally obliged to follow the procedures in 5.3.1-5.3.4 above.
- 5.3.18 Any decision to suspend, remove or contingently remove should be reserved to the responsible board member or an authorised deputy.
- 5.3.19 Where an optometrist/OMP/corporate optician receiving a notification that he is to be removed, or contingently removed, seeks an oral hearing, the PCT must convene a panel to consider those representations. The panel will be most effective if it has the authority to confirm or change the proposed PCT decision(s) under the PCT’s scheme of delegation. This is best achieved if it is chaired by the responsible board member or by an authorised deputy.
- 5.3.20 The alternative would be to convene a panel that made recommendations to the responsible board member but in general that is thought to be a less

efficient way forward. However, where two or more PCTs have an interest and have shared the investigative process a single panel could hear the optometrist/OMP/corporate optician's representations and then make recommendations to each PCT. Delegation in this way removes the need for multiple hearings on the same facts, but embodies the basic principle that each PCT must reach its own final decision.

- 5.3.21 The panel should not sit in public.
- 5.3.22 A list of those individuals attending any particular panel meeting should be agreed between the chairperson and the parties to the hearing with the chairperson having the absolute right to adjudicate in cases of dispute.
- 5.3.23 Witnesses who have made statements that may be used during the hearing may be called to attend the hearing. The decision to call witnesses lies solely with the chairperson and they should only be called where that officer is certain that their attendance will be crucial to the decision making process. There is no requirement for all or any witnesses to attend and in most cases written statements should prove sufficient. Witnesses who are asked to attend a disciplinary hearing are there to give direct evidence. If in exceptional circumstances they choose to be accompanied by a representative, the representative will not be able to participate in the hearing.
- 5.3.24 The panel should aim to meet within 28 calendar days of receiving the optometrist/OMP/corporate optician's representations. The panel should be chaired by a nominated PCT executive Director and include one PCT non-executive Director plus one suitably qualified optical representative nominated by the LOC/LMC as appropriate, drawn from the establishment of the PCT (or a neighbouring PCT) or from the executive board of a local (or neighbouring) PCT. An alternative to a non-executive board member might be the local CHC Chief Officer (or someone in a similar position in any successor organisation); this would add a patient dimension to proceedings. The choice of membership should be in the gift of the PCT; they may consult on the constitution of the panel as they see fit. The panel should not ordinarily sit with less than the three members.
- 5.3.25 If the optometrist/OMP/corporate optician requests a postponement for any reason other than on health grounds they should be asked to offer an alternative date, convenient to the PCT, within seven calendar days of the original hearing. This also applies if the PCT wishes in exceptional circumstances, to seek a postponement, and any such postponement must not be unreasonable. The PCT Chief Executive should be informed and is responsible for ensuring that extensions are absolutely necessary and kept to a minimum.
- 5.3.26 If the optometrist/OMP's ill health prevent the hearing taking place the PCT should consider at what point they should refer the matter to the occupational health service. After a reasonable period (not normally less than 6 weeks) proceeding with the hearing in the optometrist/OMP's absence ought to be considered. The PCT should act reasonably in deciding to do so.



- 5.3.27 The panel must have a reserve power to hear a case in the optometrist/OMP corporate optician's absence where it is satisfied that he knew of the arrangements and has failed to attend without good cause.
- 5.3.28 It would be appropriate for the investigator (who cannot be a member of the panel) to put the case for removal/contingent removal. The optometrist/OMP/corporate optician must then be afforded the opportunity of making their own representations. A friend of his choice may accompany the optometrist/OMP and this can be a representative of the LOC/LMC. These are internal procedures and there will be no need for legal representation for either the PCT or practitioner in these circumstances.
- 5.3.29 The panel must be free to consider written and oral submissions from third parties where this appears relevant to them. The chairperson must have the absolute right of adjudication where there is a dispute relating to admissibility. Witnesses may be questioned by the panel or by either party to the hearing.
- 5.3.30 The decision should be notified to the optometrist/OMP/corporate optician in writing. The notification should include, as appropriate, reasons for the decision (including any facts relied upon), clarification of any appeal and review rights and confirmation of any intent to make a referral to the FHSAA for a national disqualification or to any external or professional body.
- 5.3.31 The suggested procedure relating to PCT hearings outlined above would also be appropriate for suspension decisions, reviews of conditional inclusions and for reviews of contingent removals. It would be good practice to vary the make-up of panels (1 or 2 different members) where a panel are dealing with cases on a second or subsequent occasion (for example a removal decision where there had been an earlier suspension, or at a review hearing).
- 5.3.32 These paragraphs do not apply to decisions to defer an application or to refuse an application for inclusion in a list. These can be dealt with administratively by the PCT. It is, however, considered to be good practice informally to discuss with the applicant any issues that are not clear-cut. It might also be appropriate to have deferment decisions or refusal decisions made on efficiency, fraud or unsuitability grounds approved by the same responsible board member or a deputy. This would provide strong consistency assurances.
- 5.3.33 It would be good practice for the PCT to have agreed written procedures to follow in these cases. It is also important to document all investigations so that any future challenge can be fully responded to. A proper written record will need to be kept of any investigation into an incident or concern. This should include any written statements by witnesses and a record of any interviews. The PCT panel, the investigator and the practitioner may use these records should the need arise. PCTs must remember that, if the decision is adverse to the practitioner, they will have to give written reasons for it for which they will need to draw upon the record and the record will be needed in the event of an appeal. Care must be taken to protect the confidentiality of patients and witnesses, as appropriate. In preparing or holding such records, NHS employers must comply with the requirements of the Data Protection Act 1998.

5.3.34 It would be good practice for the board to consider any cases where, following an appeal, the FHSAA reaches a different conclusion to the PCT or in any case where the FHSAA comments on the PCT's internal procedures. The aim should be to identify what had been done well and not so well by the PCT with a view to learning and improving local systems. Groups of PCTs may wish to join together in a similar exercise as this would help the spread of good practice and help achieve consistent decision-making.

## 6. The FHSAA and The Appeal Process

### 6.1 General

6.1.1 The optometrist/OMP/corporate optician's right of appeal in ophthalmic list cases is set out in section 49M of the NHS Act 1977. The appeal rights are consistent with the NHS obligations under the Human Rights Act and as such they are to a fully independent appeal body, which is called the Family Health Services Appeal Authority (FHSAA).

6.1.2 The FHSAA is an independent tribunal established by section 49S of the NHS Act 1977. It operates to Rules issued by the Lord Chancellor. The Lord Chancellor appoints its President and members.

6.1.3 The FHSAA deals with:

- Appeals from practitioners/corporate opticians against PCT discretionary decisions to refuse to admit them to a list;
- Appeals from practitioners/corporate opticians against PCT decisions to impose conditions on their admission to a list;
- Appeals from practitioners/corporate opticians against PCT discretionary decisions to remove them from a list;
- Appeals from practitioners/corporate opticians against PCT decisions to contingently remove them from a list;
- Applications from PCTs that practitioners/corporate opticians removed/*refused admission to a list* from a list should be disqualified nationally (section 8) from all HA lists;
- Requests from PCTs to extend certain periods of suspension beyond six months;
- Requests for review of earlier decisions taken by the FHSAA or by the NHS Tribunal (see below)

Practitioners have 28 days from the date of a PCT's decision to make an appeal. The appeal should be in writing and sent to the FHSAA.

6.1.4 The President of the FHSAA is Mr Paul Kelly. The FHSAA's address is 30 Victoria Avenue, Harrogate HG1 5PR.

6.1.5 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 must be observed by all the parties to a case before the FHSAA, as well as by the FHSAA itself. These rules are clear about the way in which appeals will be dealt with. PCTs are advised to keep a copy of the Rules available for reference;

- Any directions issued by members of the FHSAA as a result or, or in connection with an individual case.

6.1.6 It is in everyone's interests that the appeal process is handled efficiently and with appropriate speed. An optometrist/OMP/corporate body involved in an appeal has a justifiable expectation that the process will not be unduly delayed.

- 6.1.7 The procedures and rules of the FHSAA have been devised to be fair to all parties but also with a view to dealing with matters efficiently and within a reasonable period of time.
- 6.1.8 Success in meeting timeframes is reliant on prompt responses from the PCT. When they write out for information they will allow the PCT 21 days for a response. If these deadlines are not met it slows down the overall process and places the PCT in breach of the FHSAA's statutory rules. The appeal process can be undertaken efficiently and quickly if everyone treats the process responsibly and with a high degree of priority. Everyone is asked to do so.
- 6.1.9 There is no right of appeal against:-
- mandatory removals from a list;
  - mandatory refusals to accept onto a list;
  - suspensions from a list;
  - decisions to defer applications.
- 6.1.10 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.
- 6.1.11 All PCT decisions must be notified to the optometrist/OMP/corporate optician in writing and must include a reference to any right of appeal that exists.
- 6.1.12 An optometrist/OMP/corporate optician who receives a notification as required by the preceding paragraph where there is a right of appeal, has 28 days in which to submit an appeal in writing to the FHSAA. Unless the appellant withdraws the appeal the FHSAA will determine the appeal in accordance with its rules and any directions it may issue. These rules are binding on the parties to the appeal.
- 6.1.13 An optometrist/OMP/corporate optician may appeal against a decision of the FHSAA to the Courts on a point of law.
- 6.1.14 PCTs must implement decisions of the FHSAA. In most cases the decision will be implemented on the basis that it is a decision of the FHSAA. However, for technical reasons, FHSAA decisions that involve conditions that are to be applied in a conditional inclusion case must be implemented as PCT decisions.
- 6.1.15 In these cases the PCT must ask the optometrist/OMP/corporate optician if he is prepared to be bound by the FHSAA decision. The optometrist/OMP/corporate optician should be allowed 28 days to respond. Where the PCT considers it to be reasonable they can agree a longer period; the intention is that they should use this power sympathetically. If the optometrist/OMP/corporate optician does not respond within that period the PCT can refuse to admit him.
- 6.1.16 If the optometrist/OMP/corporate optician confirms that he is prepared to be bound by the FHSAA's decision he should be admitted to the list accordingly. In such cases reviews will fall to the PCT not the FHSAA.

## **7 National Disqualification**

7.1.1 A decision by a PCT to remove /refuse to admit an optometrist/OMP/corporate optician from/to one of its list is only a local decision. It applies only within that PCT and whilst other PCTs must consider the facts behind that decision they can reach a different conclusion. Though it should be emphasised that in doing so they are recommended to consider how they would justify this different approach if asked to do so by the public, especially if there were to be an adverse incident.

7.1.2 Where the facts of the case are serious (and to justify removal they must be serious) it would be wrong to allow the optometrist/OMP or corporate optician to offer his services to every PCT in turn in the hope that he will find one willing to accept him. The FHSAA can issue a national disqualification to prevent such a practitioner joining the list of another PCT.

7.1.3 A national disqualification can cover:-

- all PCT “principal”, performers, supplementary or services lists involving all four primary health care professions (Not currently effective for pharmacy);
- all PCT lists of the type the optometrist/OMP/corporate optician was on or has applied to join;
- all PCT ophthalmic or supplementary list (or the equivalent for each primary health care profession);
- any combination of all PCT lists specified by the FHSAA.

7.1.4 When considering an appeal from an optometrist/OMP/corporate optician the FHSAA can decide itself to impose a national disqualification.

7.1.5 A PCT can ask the FHSAA for a national disqualification within 3 months of removing an optometrist/OMP/corporate optician from a list or within three months of refusing to admit, nominate or approve him to/for 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 their decision were essentially local it would be normal to give serious consideration to such an application. The FHSAA (Procedure) Rules 2001 govern this procedure.

7.1.6 A request for a national disqualification will cover the ophthalmic lists. The PCT can also ask the FHSAA to issue a national disqualification that covers all PCT lists across ophthalmic, medical, dental and pharmaceutical services.

7.1.7 A national conditional inclusion or contingent removal is not permissible.

7.1.8 Once subject to a national disqualification an optometrist/OMP/corporate optician can ask the FHSAA to review the disqualification. Such requests cannot be made within two years of the original decision or within one year of a previous review. On review the FHSAA may confirm or revoke the national disqualification.

7.1.09 PCTs are obliged to act in accordance with the terms of a national disqualification; removing/refusing the optometrist/OMP/corporate optician as necessary.



## **8 Declaration of Convictions etc by Optometrists and OMPs on the Ophthalmic list**

8.1 As a one off exercise all optometrist/OMP/corporate opticians on a PCT's ophthalmic list as of 1 April 2005 should already have made a declaration to the PCT (or predecessor Health Authority) in writing. HAs were asked to follow the GMS guidance to GOS practitioners about such issues as:-

- previous criminal convictions;
- investigations into their professional conduct where there has been an adverse finding;
- any continuing police inquiries;
- any continuing investigations into their professional conduct;
- any current or previous investigations by the NHS Counter Fraud Service.

Full details of the information to be provided is at Annex H. Corporate opticians included in the ophthalmic list on 1 April 2005 shall, by 31 July 2005, notify the Primary Care Trust of any matters which they would have had to provide if the 2005 Regulations had been in force at the time when the corporate body's name was included in the ophthalmic list of that Trust, except where it has already notified the Trust. These matters largely relate to their directors.

8.2 The following undertakings consenting to the sharing of information should have accompanied the declaration:-

- by any employer (or former employer), licensing, regulatory or other body in the United Kingdom or elsewhere, relating to a current investigation or a past investigation where the outcome was adverse, by them into the optometrist/OMP/corporate optician at any time;
- by one PCT to another (including equivalent bodies), about any decision to refuse an application to be included in any of its lists, or to remove or to currently suspend a person included in any such list;

8.3 On receipt of the declarations PCTs should have considered the content and if necessary suspended, contingently removed or removed the optometrist/OMP/corporate optician from the ophthalmic list as may be appropriate. Declarations that reveal past or ongoing fraud investigations should be checked with the CFSMS – contact points are at [Annex F](#).

8.4 In addition if the PCT suspect that the fraud declaration is erroneous they may also check with the CFSMS. It should be noted that the statutory power for CFSMS to disclose information about past or current investigations is permissive not mandatory. In particular, for current investigations, CFSMS staff are not compelled to disclose even the simple fact that there is an investigation if it would be premature to do so and might risk compromising or jeopardising the success of any potential criminal action by effectively forewarning the optometrist/OMP under suspicion. However, in such cases, the CFSMS will notify the PCT of any adverse outcome of an investigation.

8.5 PCTs were asked to aim to have all such decisions made by 30 June 2002. It would be good practice to notify all optometrist/OMPs when their declaration has been considered, whether removal or contingent

removal action is to be taken and such an approach is strongly recommended.

- 8.6 Where a declaration was not forthcoming or in respect of the additional 2005 Regulations requirements re corporate opticians is not forthcoming the following procedure is recommended. An optometrist/OMP/corporate optician who fails to make a declaration and give the undertakings should be reminded that this is a requirement of his terms of service. If the declarations and undertakings are still not forthcoming a further reminder should be sent by registered post to the optometrist/OMP/corporate optician's practice premises as shown in the ophthalmic list requesting the declaration within 28 days.
- 8.7 Where the optometrist/OMP/corporate optician continues to fail to meet his terms of service obligation it could be considered that he is preventing the proper consideration by the PCT of his suitability to be an optometrist/OMP/corporate optician. Further he is causing the PCT unnecessary administrative effort and associated expense and potentially placing his patients at risk. These circumstances could represent a threat to the efficiency of the service being provided by the optometrist/OMP/corporate optician and could justify action to remove or contingently remove the optometrist/OMP/corporate optician on "efficiency" grounds. These circumstances are very unlikely in themselves to justify a suspension, unless the PCT has evidence of a conviction, which would likely to lead to such actions, which was being concealed.
- 8.8 The PCT could act against the optometrist/OMP/corporate optician under the Service Committee and Tribunal Regulations for a breach of the terms of service. However, given the limited sanctions available through that route they would need to consider seriously whether this would be an effective course of action. The procedures described in this guidance are not a substitute for normal disciplinary procedures.

## **9 Sharing Information**

- 9.1 It is vitally important that PCTs not only share information between themselves, but also with all other NHS Bodies and any outside organisations that might employ an optometrist/OMP/corporate optician, when they have grounds to take action against that optometrist/OMP/corporate optician under the reformed list provisions. Patient safety is the over-riding concern.
- 9.2 It would equally be inappropriate to allow the optometrist/OMP/corporate optician to thwart this sharing of information by refusing permission for the data to be processed using the provisions in the Data Protection Act 1998. To avoid this regulations specify circumstances in which information can be shared. This means that consent to share information is not required by virtue of Schedule 2 of the Data Protection Act 1998. Other rights under the Data Protection Act such as subject access continue to apply.



9.3 In addition the optometrist/OMP/corporate optician will, via linked procedures, have given his consent to the following information sharing:-

- by any employer (or former employer), licensing, regulatory or other body in the United Kingdom or elsewhere, relating to a current investigation or a past investigation where the outcome was adverse, to him;
- by one PCT to another (including equivalent bodies), including information about any decision to refuse an application to be included in any of its lists, or to remove or currently suspend a person included in any such list.

9.4 The PCT is required to share information whenever it makes any decision in relation to its list to refuse admission, to conditionally include, to remove from, to contingently remove from or to suspend an optometrist/OMP/corporate optician. The PCT should aim to send these notifications within 14 days of the decision.

9.5 The information must be shared with:-

- the Secretary of State/NHSLA;
- any PCT in England that has the optometrist/OMP/corporate optician on its list, or is considering an application for inclusion in its list from him;
- the Scottish Executive;
- the National Assembly for Wales;
- the Northern Ireland Executive;
- the General Optical Council, General Medical Council or any other appropriate regulatory body;
- any other organisation that, to the knowledge of the PCT, employs or uses the services of the optometrist/OMP/corporate optician in a professional capacity;
- where it is a fraud case, the National Health Service Counter Fraud and Security Management Service
- the National Clinical Assessment Authority in the case of Ophthalmic Medical Practitioners.

9.6 Home Country contact details are:-

- Scotland  
*John Davidson*  
*Scottish Executive Health Department*  
*Directorate of Service Policy & Planning*  
*Primary Care Division*  
*1 East Rear*  
*St Andrew's House*  
*Edinburgh*  
*EH1 3DG*

- Wales  
*Gerry Lynch*  
*HSC-CPCHSD*  
*National Assembly for Wales*  
*4<sup>th</sup> Floor CP2*  
*Cathays Park*  
*Cardiff*  
*CF10 3NQ*

• Northern Ireland  
John Farrell  
Primary Care Department  
Dept of Health Social Services and Public Safety  
Room D3.5  
Castle Buildings  
Stormont  
Belfast  
BT4 3SJ

9.7 For the CFSMS contact details are in [Annex F](#).

9.8 The information that must be shared is:-

- identifying details of the optometrist/OMP/corporate optician (name, DoB, NI Number or similar);
- professional registration number;
- date and copy of the decision;
- contact name within the PCT for further details.

The requirement for a copy of the decision would be met by providing the substance of the decision such as “removed from the list on [date] following a criminal conviction for [.....].”

- The GOC/GMC operate statutory conduct procedures to investigate and discipline corporate opticians/optometrist/OMPs respectively. Where appropriate, the GOC/GMC should be supplied with information to enable it to consider whether professional disciplinary proceedings should be instigated. In determining whether it is appropriate to supply the GOC with the specified information, it may be helpful to discuss the matter, initially on an informal and anonymised basis, with the GOC/GMC;

9.9 Where one of the above bodies in paragraph 9.5 above contacts the PCT seeking further information the PCT may provide further information relating to the evidence it considered in arriving at its decision. This can include the representations made by the optometrist/OMP/corporate optician. PCTs have discretion in what they provide and it would be advisable at this stage to anonymise third party information to protect identities where this is considered appropriate.

9.10 In addition to the bodies mentioned at 9.5 the PCT can also share information as in 9.8 & 9.11 with other bodies who can establish they are considering employing the optometrist/OMP in his professional capacity.

9.11 Once information has been shared with a third party the PCT is responsible for keeping that information up to date. For example if a suspension or conditions applied on inclusion are lifted this information should be passed on. There is a clear moral duty on the PCT to pass these updates on immediately a decision is changed.

9.12 Where the PCT is notified by the FHSAA that an optometrist/OMP/corporate optician has been nationally disqualified they should pass this on immediately to:-

- any PCT in England that has the optometrist/OMP/corporate optician on any of its lists, or is considering an application for inclusion in any of its lists from such an optometrist/OMP/corporate optician;
- any other organisation that, to the knowledge of the PCT, employs or uses the services of the optometrist/OMP/corporate optician in a professional capacity;
- where it is a fraud case, the CFSMS .

### **Notifying the Secretary of State**

9.13 The Secretary of State notification should be sent to the NHS Litigation Authority, at 30 Victoria Avenue, Harrogate HG1 5PR.

9.14 The NHSLA is building a database providing details of optometrist/OMP/corporate opticians (and other professions on lists) who have been removed, refused access, conditionally included, conditionally removed, suspended etc. They will provide information about specific optometrist/OMP/corporate opticians to NHS Bodies who might, for example, have doubts about the validity of a practitioner's application. It will not be a definitive source of information but will provide a useful fallback as the role develops.

9.15 The contact telephone number is 01423 530280.

### **Notifying the optometrist/OMP/corporate optician**

9.16 An optometrist/OMP/corporate optician who has been the subject of an investigation should know what information about him is being shared.

9.17 Where the same information is sent to a number of bodies a list of those bodies together with the shared information should be copied to the optometrist/OMP/corporate optician if his address is known. In other cases the optometrist/OMP/corporate optician should be sent a copy of the information sent to any third party where his address is known.

### **Alert Letters**

9.18 These procedures do not replace the "Alert Letter" processes. The Department issued revised alert letter guidance and they describe how the system should relate to doctors working in general practice. The "Alert" letter system is the only way other NHS organisations including PCTs unconnected with the individual will know that there are reasonable grounds to believe that he poses a serious potential danger to the safety of patients or other staff and his performance or conduct has been such as to seriously compromise the effective functioning of a clinical team or local primary care services, or both; and that he is likely to be working or may seek work

elsewhere. It is important that optometrists/OMPs in the GOS are aware of the system and that it is used in all appropriate cases.

### **Reporting Gifts from Patients**

9.19 The H&SC Act, section 23, provides that regulations can be introduced requiring the declaration of financial interests and gifts. No regulations have yet been made in relation to GOS, so therefore at present there is no “terms of service” requirement to make this type of declaration.

## **10. The NHS Litigation Authority**

10.1 The FHSAA was a Special Health Authority dealing with appeals and adjudicating on disputes on behalf of the Secretary of State for Health. Its functions will continue to be performed by the NHS Litigation Authority:-

10.1.2 The main other areas in which the NHS Litigation Authority operates are:

- determining appeals to the Secretary of State made under the Pharmaceutical Regulations
- determining appeals made under Parts I and II of the Service Committees & Tribunal Regulations;
- determining certain appeals, references and representations to the Secretary of State made under the General Ophthalmic Services Regulations

10.1.3 The NHS Litigation Authority will continue to perform these existing functions, and it may perform additional appellate and adjudication functions if the Secretary of State directs it to.

10.1.4 In addition, the NHS Litigation Authority will:

provide staff and support services for the President and members of the new FHSAA

- maintain a NHS database of practitioners refused admission to a list, conditionally admitted to a list, suspended by a PCT, removed from the list on efficiency, suitability and fraud grounds, or contingently removed from a PCT list.

10.1.5 PCTs should:

- continue to deal with the NHS Litigation Authority, at its usual address (30 Victoria Avenue, Harrogate HG1 5PR) on matters set out above
- send the NHS Litigation Authority a copy of their formal notification to any practitioner whom they refuse to admit to a list, conditionally include in a list, suspend from a list, remove from a list or contingently remove from a list,
- note that the contact point for telephone inquiries about a practitioner’s list status is [01423-530280].



## **12 Other Important Issues**

### **12.1 Appeals Against Criminal Convictions**

12.1.1 The PCT can act against an optometrist/OMP/corporate optician once he has been convicted by a court irrespective of any appeal that the optometrist/OMP/corporate optician might lodge. There will be instances where the optometrist/OMP/corporate optician wins his appeal and the sentence that lead to the decision to remove the optometrist/OMP/corporate optician is either quashed or reduced.

12.1.2 A quashed sentence is effectively struck from the record, it did not happen and PCTs can have no further regard to it in any way, unless it is reinstated on a further appeal, when the previous decision of the PCT is automatically also reinstated.

12.1.3 Where a sentence is reduced on appeal the optometrist/OMP/corporate optician may apply to join an ophthalmic list and that application shall be decided on the facts in the normal way, but considering the revised sentence not the original sentence.

12.1.4 In all these instances the optometrist/OMP/corporate optician may well wish to resume his practice quickly and PCTs are asked to ensure that any application to join a list from an optometrist/OMP/corporate optician in these circumstances is given priority and dealt with expeditiously.

12.1.5 Where an optometrist/OMP/corporate optician is on any list, but subject to conditions (conditional inclusion or contingent removal) and has a conviction quashed or a sentence reduced the PCT is advised to consider whether or not the conditions should be reviewed; this will depend on the reasons the conditions were imposed. There would be no justification for not reviewing them where they directly relate to the conviction or sentence dealt with by the Court of Appeal.

12.1.6 If on a further appeal the conviction is restored then the original decision of the PCT is automatically reinstated (if it is restored, but with a reduced sentence then para 12.1.12 applies).

12.1.7 The FHSAA can review a national disqualification when any criminal conviction considered in reaching the original decision is quashed or reduced on appeal. The optometrist/OMP/corporate optician is required to seek such a review directly.

### **12.2 Access by NHS CFSMS to Declarations**

12.2.1 there is no objection to the CFSMS seeing the declarations made by practitioners under the new regulatory regime as part of a genuine investigation. The purpose is to check deceitful declarations, so it follows that they can be checked by suitably qualified people; such as accredited fraud investigators.

It is however, recommended that PCTs should check their data protection registrations to ensure that they reflect this use of the PCT's data.

## **12.3 Checking Declarations of Criminal Convictions**

12.3.1 Section 19 of the H&SC Act amended section 115 of the Police Act to provide that PCTs can have access to enhanced criminal records certificates for all optometrist/OMPs as well as the other three contractor professions. In addition the Home Office have by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2001 clarified that the four contractor professions are exempt from the provisions of the Rehabilitation of Offenders Act.

12.3.2 To be entitled to countersign an application, and therefore receive a copy of the criminal record certificate, an employer will have to register with the CRB. In return they will be required to adhere to a strict "Code of Practice" which is available from the CRB or via its website at <http://www.crb.gov.uk/index.htm> PCTs and PCTs should register now if they have not already done so. There is a registration fee of £300.

12.3.3 These regulations give PCTs a discretionary power to ask for a CRB certificate in respect of applications to join their list and any person who is included in such a list. It is not intended, at present, that this power should be used routinely, but it is intended that, as with the medical profession, a catch up exercise in relation to all optometrists/OMPs on ophthalmic and supplementary lists will be conducted when this is practically possible.

12.3.4 The CRB will not be a source of data for overseas offences although they have indicated that they may hold very limited data in respect of some countries. They may also be able to advise PCTs on how to check overseas matters.

## **12.4 Payments to Optometrist/OMPs during a PCT imposed suspension.**

12.4.1 The general principle, where an optometrist/OMP is suspended by the PCT under its new powers, is that the suspended optometrist/OMP shall have his normal level of income protected as far as is practical, although the Secretary of State may make provision that payments should not exceed a specified amount in any specified period. Suspension is a neutral act and the protection of income is an important symbol of this status.

12.4.2 Payments to any optometrist/OMP who is suspended by a PCT will be made in accordance with the Secretary of State's determination.

## **12.5 Statistics**

12.5.1 Statistical information on the number of decisions made under these new powers will be collected annually on 1 April – beginning in April 2002. The information, which PCTs will be asked to collect, falls into the following categories and should be made in respect of ophthalmic lists:

- numbers refused admission to list – mandatory or discretionary – (broken down by grounds of fraud/unsuitability/prejudicial to the efficiency of the service). In cases where there is more than one reason, only the main reason should be stated on the return;
- numbers conditionally included in list;
- numbers suspended from list;
- number of applications deferred;

- numbers removed from list (broken down by grounds of fraud/unsuitability/prejudicial to the efficiency of the service);
- numbers contingently removed from list and variation of conditions/terms of service on review.

All of the above data should also reflect gender profile.

12.5.2 Further information will be provided in due course by the Department of Health.

12.5.3 As now PCTs may periodically be asked to provide details of any optometrist/OMP/corporate optician who might find himself in difficulties and who is under investigation by the PCT or other body.

## **12.6 Direct referral by optometrists**

12.6.1 The regulations introduce the right for optometrists to refer patients directly to an ophthalmic hospital where that is appropriate. Ophthalmic hospital includes eye departments of general hospitals and Treatment Centres. This is a permissive power and does not require the optometrist to refer the patient to hospital. The practitioner should judge where a patient should most appropriately be referred. This may be a hospital but it may equally be to the patient's own doctor if that is appropriate in the particular case. The Sight Testing Regulations are amended to permit this, but in a case where a referral to a hospital is not appropriate, the existing duty continues unabated.



## DECLARATIONS OF PROFESSIONAL INVESTIGATIONS

### General

- 1 The regulations provide that an optometrist/OMP/corporate optician going onto the ophthalmic list has to declare if he has been subject to any investigation into his professional conduct by any licensing, regulatory or other body anywhere in the world where the outcome is adverse or outstanding, and if so, give details, including approximate dates, of where the investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.
- 2 Such declarations are also required;
  - i) within 7 days of the optometrist/OMP/corporate optician becoming subject to such an investigation
  - ii) and a new catch up exercise for corporate opticians directors following the introduction of the 2005 regulations.
- 3 The regulations further provide that a PCT has the discretion to refuse to admit (or conditionally include) or remove (or contingently remove) an optometrist/OMP/corporate optician from ophthalmic list if he has been the subject of any investigation into his professional conduct by any licensing, regulatory or other body in the United Kingdom or elsewhere where the outcome of that investigation was a finding against him.
- 4 In addition a PCT may suspend an optometrist/OMP/corporate optician from the ophthalmic list if it is satisfied that it is necessary to do so to protect members of the public or it is otherwise in the public interest where the optometrist/OMP/corporate optician's professional conduct is being investigated by any licensing, regulator or other body in the United Kingdom or elsewhere.

**Sexual Offences Act 2003**

**Schedule 3: Sexual Offences in England and Wales for the purposes of Part 2**

1. Offences under the following provisions of the Sexual Offences Act 1956:-
  - a) Section 1 (rape);
  - b) Section 5 (intercourse with a girl under 13);
  - c) Section 6 (intercourse with a girl under 16) (see note i);
  - d) Section 10 (incest by a man) (see note ii);
  - e) Section 12 (buggery) (see note iii);
  - f) Section 13 (indecency between men) (see note iii);
  - g) Section 14 (indecent assault on a woman) (see note iv);
  - h) Section 15 (indecent assault on a man) (see note iv);
  - i) Section 16 (assault with intent to commit buggery) (see note ii);
  - j) Section 28 (causing or encouraging the prostitution of, intercourse with or indecent assault on a girl under 16).
2. An offence under section 1 of the Indecency with Children Act 1960 (indecent conduct towards a young child).
3. An offence under section 54 of the Criminal Law Act 1977 (inciting a girl under 16 to have incestuous sexual intercourse).
4. An offence under section 1 of the Protection of Children Act 1978 (indecent photographs of children) (see note v).
5. An offence under section 170 of the Customs and Excise Management Act 1979 (penalty for fraudulent evasion of duty etc) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (indecent or obscene articles), if the prohibited goods included indecent photographs (see note v).
6. An offence under section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of a child) (see note v).
7. An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust) (see note i).
8. Offences under the provisions of the Sexual Offences Act 2003:-
  - a) Section 1 (rape);
  - b) Section 2 (assault by penetration);
  - c) Section 3 (sexual assault) (see note vi);
  - d) Section 4 (causing sexual activity without consent);
  - e) Section 5 (rape of a child under 13);
  - f) Section 6 (assault of a child under 13 by penetration);
  - g) Section 7 (sexual assault of a child under 13) (see note vii);

- h) Sections 8-12 (causing or inciting a child under 13 to engage in sexual activity, child sex offences committed by adults);
- i) Section 13 ((child sex offences committed by children or young persons) (see note viii);
- j) Section 14 (arranging or facilitating the commission of a child sex offence) (see note vii);
- k) Section 15 (meeting a child following sexual grooming etc);
- l) Sections 16-19 (abuse of a position of trust) (see note ix);
- m) Sections 25 or 26 (familial child sex offences) (see note vii);
- n) Sections 30-37 (offences against persons with a mental disorder impeding choice, inducements etc to persons with mental disorder);
- o) Sections 38-41 (care workers for persons with mental disorder) (see note x);
- p) Section 47 (paying for sexual services of a child) (see note vii);
- q) Section 61 (administering a substance with intent);
- r) Section 62 or 63 (committing an offence or trespassing, with intent to commit a sexual offence) (see note vi);
- s) Section 64 or 65 (sex with an adult relative) (see note x);
- t) Section 66 (exposure) (see note vi);
- u) Section 67 (voyeurism) (see note vi);
- v) Section 69 or 70 (intercourse with an animal, sexual penetration of a corpse) (see note x) .

9. An offence under:

- a) section 70 of the Army Act 1955;
- b) section 70 of the Air Force Act 1955; or
- c) section 42 of the Naval Discipline Act 1957,

of which the corresponding civil offence (within the meaning of that Act) is an offence listed in paragraphs 1-8 above (see note xi).

Notes

- i. Offences under paragraphs 1(c) or 7 are only within Schedule 3 if the offender was 20 or over.
- ii. Offences under paragraphs 1(d) or (i) are only within Schedule 3 if the victim or (as the case may be) other party was under 18.
- iii. Offences under paragraphs 1(e) or (f) are only within Schedule 3 if-
  - a) the offender was 20 or over, and
  - b) the victim or (as the case may be) other party was under 18.
- iv. Offences under paragraphs 1(g) or (h) are only within Schedule 3 if-
  - a) the victim or (as the case may be) other party was under 18, or
  - b) the offender, in respect of the offence or finding, is or has been—
    - (i) sentenced to imprisonment for a term of at least 30 months; or
    - (ii) admitted to a hospital subject to a restriction order.
- v. Offences under paragraphs 4, 5 and 6 are only within Schedule 3 if the indecent photographs or pseudo-photographs showed persons under 16 and—

- a) the conviction, finding or caution was before the commencement of this Part (1<sup>st</sup> May 2004), or
- b) the offender—
  - (i) was 18 or over, or
  - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.

vi. Offences under paragraphs 8(c), (r), (t) or (u) are only within Schedule 3 if-

- a) where the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months;
- b) in any other case—
  - (i) the victim was under 18 (or, in the case of paragraph 8(r), the intended offence was against a person under 18), or
  - (ii) the offender, in respect of the offence or finding, is or has been—
    - (a) sentenced to a term of imprisonment,
    - (b) detained in a hospital, or
    - (c) made the subject of a community sentence of at least 12 months.

vii. Offences under paragraphs 8(g), (j), (m) or (p) are only within Schedule 3 if the offender-

- a) was 18 or over, or
- b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

viii. An offence under paragraph 8(i) is only within Schedule 3 if the offender is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months.

ix. An offence under paragraph 8(l) is only within Schedule 3 if the offender, in respect of the offence, is or has been—

- a) sentenced to a term of imprisonment,
- b) detained in a hospital, or
- c) made the subject of a community sentence of at least 12 months.

x. Offences under paragraphs 8(o), (s) or (v) are only within Schedule 3 if-

- a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- b) in any other case, the offender, in respect of the offence or finding, is or has been—
  - (i) sentenced to a term of imprisonment,
  - (ii) detained in a hospital, or
  - (iii) (for the purposes of paragraph 8(o) only) made the subject of a community sentence of at least 12 months.

xi. Any reference in paragraphs 1-8 to being made the subject of a community sentence of at least 12 months is to be read, in relation to an offence under an enactment referred to in paragraph 9 as a reference to being sentenced to a term of service detention of at least 112 days.

xii. Schedule 3 also covers equivalent offences in Scotland and Northern Ireland.

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

**Model form of declaration from a GOS Practitioner in accordance with the NHS (GOS) Regulations 1986 (Schedule 1A) and the 2005 Regulations, regulation 4(2)-(5)**

Optometrist/OMP/corporate optician's Name

GOC Registration Number

Have you any criminal convictions anywhere in the world?  
or  
Have you been bound over following a criminal conviction  
Or have you accepted a police caution  
in the United Kingdom?

Yes/No

Or  
Are you currently the subject of any proceedings anywhere in the world  
that might lead to such a conviction?

Have you accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution);

Have you, in proceedings in Scotland for an offence, been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging you absolutely;

Have you ever been the subject of an investigation:-

\* by any licensing, regulatory or other body into your professional conduct any where in the world; or

\* by any current or former employer into your professional conduct any where in the world or

\* by the Directorate of Counter Fraud and Security Management  
where the finding was adverse?

Yes/No

Are you currently the subject of any investigation:-

\* by any licensing, regulatory or other body into your professional conduct any where in the world; or

Yes/No

\* by any current or former employer into your professional conduct any where in the world; or

\* by the CFSMS

Are you currently the subject of any PCT, or equivalent body in Wales, NI or Scotland, investigation that could lead to your removal from a list of theirs?

Yes/No

Have you ever been refused admission or conditionally included in, removed or contingently removed from, or are you currently suspended from any PCT, or equivalent body in Wales, NI and Scotland, list?

Yes/No

Are you, or have you been, a director of a corporate body? If, yes then provide information about directorships.

Yes/No

Have any of the directors of a corporate Body ever been refused admission or conditionally included in, removed or contingently removed from, or is currently suspended from any PCT or equivalent body in Wales, NI and Scotland, list?

Yes/No

**Note:**

- i. Please note that the Rehabilitation of Offenders Act 1974 does not apply to general practitioners for the purpose of this declaration. Offences considered "spent" under that Act must be declared.
- ii. Matters dealt with by a fixed penalty ticket need not be declared.

**If you have answered yes to any of the preceding questions please give details below, including approximate dates, of where the investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome. (Please use a separate sheet of paper if required)**

Declaration by the optometrist/OMP/corporate optician. I declare that the information I have given on this form (and any continuation sheet) is correct and complete and I understand that if it is not action may be taken against me.

**Signature:**

**Date:**



**Extract from “NHS Medical Workforce: Dealing with Performance – Fitness to Practice”**

**Clinical Capability to deliver adequate standards of care**

- ❑ 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.
- ❑ If an employer considers a failure to deliver an adequate standard of care, or standard of management, is through lack of knowledge or ability, then the case will be categorised as “clinical capability”.
- ❑ 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
- ❑ The key to dealing with issues of capability is that, wherever possible, employers should be looking to satisfactorily resolve the issue, through assessment and support. The employer should be looking to identify any problems early enough to prevent serious harm to patients. Where the employee is prepared to work with the 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. The introduction of the NCAA will greatly facilitate this process.

**Criteria that must be considered by the PCT in discretionary decision making.**

1. When considering applications for admission the PCT must consider the following criteria before making any discretionary decisions to refuse to admit or conditionally include an optometrist/OMP/corporate optician in its lists:-
  - i. the nature of any offence, investigation or incident;
  - ii. the length of time since such offence or incident was committed and since any conviction or investigation;
  - iii. whether there are other offences, incidents or investigations to be considered;
  - iv. 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;
  - v. 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;
  - vi. whether any offence was a sexual offence to which Part II of the Sexual Offences Act 2003 applies(see [Annex B](#));
  - vii. 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, what the facts were in those cases and the reasons given by the PCT or equivalent body involved; and
  - viii. 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 in, removed or contingently removed from other PCT lists or equivalent lists, and if so, what the facts were in those cases and the reasons given by the PCT or equivalent body involved; and
  - ix. 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, what the facts were in those cases and the reasons given by the PCT or equivalent body involved.
  
2. When considering the removal or contingent removal of an optometrist/OMP/corporate optician on discretionary efficiency grounds the PCT must consider:-
  - i. Whether it was prejudicial to the efficiency of the General Ophthalmic Services provided by the optometrist/OMP/corporate optician;
  - ii. the length of time since any incident occurred, and since the investigation was concluded;
  - iii. any action taken by any licensing, regulatory or other body National Health Service body, any licensing, regulatory or other body (which

includes any NHS organisation), the police or the courts as a result of any such incident;

- iv. the nature of the incident and whether there is a likely risk to patients;
- v. whether the optometrist/OMP/corporate optician has previously failed to make a declaration or comply with an undertaking required by these Regulations ;
- vi. whether the optometrist/OMP/corporate optician has been refused admittance to, conditionally included, removed, contingently removed or is currently suspended from other PCT lists including equivalent lists in Wales, Scotland and NI, and if so, what the facts were in those cases and what were the reasons given by the PCT or equivalent body in the case.

3. When considering the removal or contingent removal of an optometrist/OMP/corporate optician on discretionary fraud grounds the PCT must consider:-

- i. the nature of the incidents of fraud;
- ii. the length of time since any incident occurred, and since the investigation was concluded;
- iii. whether there are other incidents of fraud or other criminal offences to be considered;
- iv. any action taken by any licensing, regulatory or other body (which includes any NHS organisation), the police or the courts as a result of any such incident;
- v. the relevance of the investigation to the provision by him of general optical services and the likely risk to patients or to public finances;
- vi. whether the optometrist/OMP/corporate optician has been refused admittance to, conditionally included, removed, contingently removed or is currently suspended from other PCT lists including equivalent lists in Wales, Scotland and NI, and if so, what the facts were in those cases and what were the reasons given by the PCT or equivalent body in the case.

4. When considering the removal or contingent removal of an optometrist/OMP/corporate optician on discretionary unsuitability grounds the PCT must consider:-

- i. the nature of any criminal offence, investigation or incident ;
- ii. the length of time since any such offence or incident was committed, and since any criminal conviction or investigation ;
- iii. whether there are other criminal offences to be considered;
- iv. the penalty imposed on any criminal conviction or the outcome of any investigation ;
- v. the relevance of any criminal offence or investigation into professional conduct to the provision by him of General Ophthalmic Services and the likely risk to patients;

- vi. whether any criminal offence was a sexual offence to which Part II of the Sexual Offences Act 2003 (see [Annex B](#)) applies;

whether the optometrist/OMP/corporate optician has been refused admittance to, conditionally included, removed, contingently removed or is currently suspended from other PCT lists including equivalent lists in Wales, Scotland and NI, and if so, what the facts were in those cases and what were the reasons given by the PCT or equivalent body in the case.

- viii 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 in, removed or contingently removed from other PCT lists or equivalent lists, and if so, what the facts were in those cases and the reasons given by the PCT or equivalent body involved; and
- ix 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, what the facts were in those cases and the reasons given by the PCT or equivalent body involved.

## **INTRODUCTION TO THE NHS COUNTER FRAUD AND SECURITY MANAGEMENT (CFSMS)**

1. The Counter Fraud and Security Management Service (CFSMS) is a Special Health Authority which 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 National Health Service.
2. The creation of the CFSMS on 1<sup>st</sup> January 2003, follows the successes of the NHS Counter Fraud Service (NHS CFS) which was established in September 1998 with the remit of tackling all losses to fraud and corruption in the NHS.
3. The CFSMS consists of nine Directorates, namely the;
  - Policy Directorate
  - Operations Directorate
  - Risk Measurement Directorate
  - Security Management Directorate
  - Quality and Research Directorate
  - Training and Skills Directorate
  - Communications and Liaison Directorate
  - Information Systems Directorate
  - Executive Office
4. The CFSMS Operational Service is based in each region of the NHS. There are nine Regional Operational Teams, a Specialist Dental Fraud Team, a specialist Pharmaceutical Fraud Team and a National Proactive Team. These teams undertake special projects and investigate the largest cases of fraud.

The CFSMS Operational Service works to detect and investigate fraud and corruption, to seek to apply sanctions where fraud is found and to supply information where fraud is proven to PCTs and NHS Trusts so that losses to fraud can be effectively recovered. The CFSMS Operational Service also provides advice and support to Local Counter Fraud Specialists (LCFSs).

5. CFSMS takes action across the whole range of generic counter fraud work:
  - the creation of an anti-fraud culture;
  - maximum deterrence of fraud;
  - successful prevention of fraud which cannot be deterred;
  - prompt detection of fraud which cannot be prevented;
  - professional investigation of detected fraud;
  - effective sanctions, including appropriate legal action against people committing fraud;
  - effective methods of seeking redress in respect of money defrauded.

### **Local Counter Fraud Specialists (LCFSs)**

6. Secretary of State (SoS) Directions issued in December 1999, require every PCT and NHS Trust to appoint a Local Counter Fraud Specialist (LCFS) and set out the respective responsibilities between PCTs and NHS Trusts. LCFSs have a vital role to play in acting as the first line of defence against fraud and corruption.

Every Counter Fraud Specialist, whether an LCFS or a member of CFSMS Operational Service, is required to pass a course of specialist professional training accredited by the Institute of Criminal Justice Studies at Portsmouth University.

### **What is a Fraud Case?**

7. The new Section 49F (3) of the NHS Act 1977 Act describes “fraud cases” as where the person concerned:

“(a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit, and knew that he or (as the case may be) the other was not entitled to the benefit.”

8. This definition is expanded further in subsequent sections of the Act:

### **“Health scheme”**

9. A “health scheme” means any publicly funded health or medical scheme as defined in regulations made under the power set out in the new section 49F(8) of the NHS Act 1977.
10. The Act specifies that it includes the corresponding services in Scotland and Northern Ireland (Wales are covered by the same primary legislation).
11. Health schemes are further defined in the subsequent regulations for each of the professions to include services:
  - (a) provided by HM forces. This includes medical and surgical treatment;
  - (b) by the Port Health Authorities – e.g. to asylum seekers;
  - (c) to prisoners in the care of the medical officer of a prison, or of another officer, such as a dentist, optician or pharmacist, appointed for the purposes of section 7 of the Prison Act 1952;
  - (d) which are publicly funded health services provided by or on behalf of the NHS by any organisation anywhere in the world. This includes, for example, where a service has been contracted out to the private sector but is still funded by the NHS.

PCTs may therefore consider any evidence of fraud involving the above services as well as fraud involving services provided by the NHS itself.

12. “Fraud cases” under (d) could include, for example,

- operations in private sector hospitals on NHS patients, paid for by the NHS – where the operation is either not actually provided, or is also paid for privately and the optician pockets the money.
- Collusion between opticians and private sector management running stand alone NHS or out of hours provision.
- Collusion between doctors and PFI e.g. over improvements grants and development of computer systems.

### **Detriment**

13. “Detriment” is defined in new section 49F(9) of the NHS Act 1977 as including detriment to a patient, or a person working in that health scheme, or any person liable to pay charges for services under that scheme.

### **Corporate bodies and fraud**

14. The new section 49H of the NHS Act 1977 states that if any individual of a body of people controlling a corporate body meets the grounds for removal for fraud, then the body corporate itself is also to be treated as meeting those grounds. This applies even if the fraud relates to a time before that person became a director.
15. Sanctions may be imposed on a body corporate if a director of an ophthalmic business, or of a dental corporation, or any person controlling a pharmacy business meets the condition for removal, whether or not he was a director or person controlling the company at the time. This is necessary to prevent, for example, an optometrist already removed for fraud from practising again simply by setting up a new company.
16. Similarly, if they have failed to take reasonable steps to prevent fraud, opticians will be liable for removal on fraud grounds on the basis of the fraudulent acts or omissions of other people e.g. an employee providing services on their behalf. This means an optician will be held liable where he has failed to take reasonable steps to prevent fraud by an employee acting on his behalf.
17. PCTs will need to consider the specific circumstances of each case in deciding the nature and extent of the fraud by a practitioner and/or body corporate, as illustrated by the following examples:
- where an agency or deputising service is engaged by an optician to find work for him and the optician has colluded with the agency for both his and the agency’s financial gain (e.g. in falsifying or failing to obtain references), this would be a clear breach of section 49H(2) of the NHS Act 1977. The Primary Care Trust may consider taking action against both the agency and the optician. Action should only be considered against the principal practitioner where it can be shown that he failed to take reasonable steps to prevent the fraud.

This list of examples is not exhaustive.

- 18 Examples of types of fraud by an employee acting on behalf of a contractor include:

- where a practice manager or receptionist has falsified cheques;
  - receptionists or practice managers diverting practice funds for their own purposes; or
  - practice staff making inappropriate claims.
19. In considering whether a contractor has failed to take adequate steps to prevent the fraud occurring, the PCT should take into account all relevant factors, including whether:
- the practice manager/receptionist/assistant was capable of, or suitable to, undertake all functions assigned by the principal practitioner;
  - there was a clear delegation of functions from the principal practitioner to the practice manager/receptionist/assistant;
  - lines of accountability were clear and there were adequate checks to monitor financial accounts.

Again, this list is illustrative and not exhaustive.

In all cases, as soon as a suspicion of fraud arises or advice as to whether an issue is fraud is needed, early consultation with either the LCFS or Regional CFSMS team should be sought. Failure to do so may result in the loss of potential evidence and sanctions being compromised.

### **Fraud Outcomes**

20. The CFSMS may decide to pursue a range of sanctions in investigating allegations of fraud and corruption. A key factor in deciding which course of action to take will be the amount and quality of evidence available to substantiate a case. In the civil courts and for disciplinary cases, the burden of proof is “on the balance of probability”, whereas for prosecutions in the criminal courts, the burden of proof is “beyond reasonable doubt”. The CFSMS may decide to take a “triple tracking” approach – to pursue action across the disciplinary/civil courts/and criminal prosecution routes.
21. There are a range of outcomes which may be the result of an investigation into allegations of fraud and corruption;
- i. **No evidence/mistake** – where there is no evidence to substantiate the initial allegation, or the initial allegation was made on false premises
  - ii. **Insufficient evidence** – there may be some evidence of a possible fraud, but insufficient to take the matter further, either through disciplinary systems or through the civil or criminal courts.
  - iii. **Disciplinary action** – taken either alone or in conjunction with civil and/or criminal sanctions. This may include action in relation to a professional regulatory body or the new PCT/FHSAA regime or under the existing rules relating to a breach of the optician’s terms of service (Schedule 1 to the NHS (GOS) Regulations 1986). Where a practitioner who is under investigation resigns from his post and the matter does not proceed any further, this is not classified as an adverse outcome for the purposes of these regulations. However, this will not prevent other sanctions being taken or considered.



- iv. **Civil action – taken either alone or in conjunction with disciplinary and/or criminal sanctions or where the burden of proof of fraud is insufficient to consider prosecution, action may be taken to recover money, interest and costs through the civil courts (where the burden of proof is on the “balance of probability”).**
- v. **Criminal sanction – taken either alone or in conjunction with civil and/or disciplinary sanctions. Cases of fraud may be prosecuted under a range of offences such as:**
- theft;
  - false accounting;
  - obtaining by deception;
  - dishonest handling;
  - gaining pecuniary advantage; and
  - conspiracy to defraud.

**Where the courts decide that the defendant is guilty, they may impose a range of sanctions. These include:**

- imprisonment;
- fine;
- community service order;
- conditional discharge.

In addition, in serious cases of fraud where the suspect is charged with a relevant criminal offence, the CFSMS can apply to the courts to make orders concerning restraint/confiscation or compensation orders.

Procedures for PCTs checking with the CFSMS

22. On receipt of a declaration from an optometrist/OMP who is applying to join one of its lists, the PCT is required to check with the CFSMS whether or not the applicant admits to being subject to an investigation in relation to fraud.
23. In handling catch up declarations this check should be limited to optometrists/OMPs who declare that they have been investigated at some point or are currently subject to an investigation.
24. In addition, PCTs may wish to check a random sample with the CFSMS, where there is any doubt or suspicion about the optician's past.
25. In all cases PCTs should provide the CFSMS Operational Service with the following basic information about the practitioner:
- full name, and any known previously used name(s);
  - address and telephone number, plus previous address if new to an area;
  - identifying details (e.g. date of birth, NI number or similar);
  - professional registration number;
  - if they are, or have been a member of a body corporate, the name and registered office of any such body;

- contact name within the PCT for further details and name and postal address to whom the reply should be sent.
26. This information should be requested in writing, by e-mail [hsc@cfms.nhs.uk](mailto:hsc@cfms.nhs.uk), so that there is a clear audit trail for disclosure of information. Urgent information may be requested by telephone and confirmed in writing, although this should be the exception rather than the rule.

### **Information to be provided by CFSMS**

27. CFSMS will provide information relating to any NHS fraud investigation since the NHS CFS was established in 1998. It will not be able to provide information about fraud in the NHS prior to this. The enquiry from a health body will be matched against the national database. If no match is found on the details given, then a response to this effect will be made, by letter, directly to the health body concerned. If a potential match is found then it will be referred to the relevant Operational Fraud Manager to deal with and liaise with the health body concerned, confirming that they have the right person. Please remember that CFSMS can only provide information on the details given to them. It is the PCT's responsibility 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.
28. It should be noted that the statutory power for the CFSMS to disclose information about past or current investigations is permissive not mandatory. In particular, for current investigations, CFSMS staff are not compelled to disclose even the simple fact that there is an investigation if it would be premature to do so and might risk compromising or jeopardising the success of any potential criminal action by effectively forewarning the optician under suspicion. However, in such cases, the CFSMS should notify the PCT of any adverse outcome of an investigation.
29. 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, or a mistake was made, or insufficient evidence for any action to be taken, CFSMS will advise PCTs that there is no evidence of a proven fraud.
30. CFSMS may, in certain circumstances, contact the PCT during the course of an investigation where 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 where an optician 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 optometrist/OMP to continue practising, but prevent them from dealing with practice affairs, until the matter has been concluded.
31. Where CFSMS records indicate that disciplinary action has resulted in an adverse outcome, it will advise the PCT to contact the original body who made the decision for further details, e.g. the relevant human resources department or the professional regulatory body.

32. The CFSMS will need to decide what information it wishes to provide in relation to the categories on which the PCT will make its decision listed in the regulations. Standard forms will be used to request and supply this information between PCTs and the CFSMS.
33. The CFSMS Operational Service will provide PCTs with any relevant information in relation to the practitioner within 14 working days following a properly made request. However, in exceptional cases, the PCT may request an urgent response. E-mails should be clearly marked as confidential and urgent and the CFSMS Operational Service will endeavour to respond within 3 working days. If the PCT has not heard within these time-scales, they should follow up with a telephone call to the FCRL or the Deputy Director of Operations on 01744 692602.
34. The following contacts should be used when contacting the CFSMS Operational Service regional teams:-

**Counter Fraud Operational Teams; Contact details**

<p><b>South Western Regional Team</b></p> <p>Debbie Lloyd  CFSMS Operational Service  3<sup>rd</sup> Floor,  Kings Square House  Kings Square  Bristol BS2 8EE</p> <p>Tel (0117) 900 2572  Fax (0117) 924 8852  e-mail: <a href="mailto:Debbie.Lloyd@cfsms.nhs.uk">Debbie.Lloyd@cfsms.nhs.uk</a></p>	<p><b>Northern &amp; Yorkshire Regional Team</b></p> <p>Derek Johnson  CFSMS Operational Service  3<sup>rd</sup> floor  Block A, Scottish Life House  11-17 Archibold Terrace  Jesmond  Newcastle Upon Tyne  NE2 1DB</p> <p>Tel: 0191 203 5060  Fax: 0191 203 5061  e-mail: <a href="mailto:Derek.Johnson@cfsms.nhs.uk">Derek.Johnson@cfsms.nhs.uk</a></p>
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<p><b>London Regional Team</b></p> <p>Nikki Leonard  CFSMS Operational Service  Weston House  246 High Holborn,  London, WC1V 7EX</p> <p>Tel (020) 7895 4668  Fax (020) 7895 4700  e-mail: <a href="mailto:Nikki.Leonard@cfsms.nhs.uk">Nikki.Leonard@cfsms.nhs.uk</a></p>	<p><b>Eastern Regional Team</b></p> <p>Frank Ginnelly  CFSMS Operational Service  Level 11, Terminal House  Terminus Street  Harlow  Essex CM20 1XE</p> <p>Tel (01279) 694 719  Fax (01279) 437 929  e-mail: <a href="mailto:Frank.Ginnelly@cfsms.nhs.uk">Frank.Ginnelly@cfsms.nhs.uk</a></p>
<p><b>East Midlands Team</b></p> <p>Steve Guillon  CFSMS Operational Service  Unit C Pine House  Ransom Wood Business Park  Southwell Road West  Mansfield  Nottinghamshire NG21 0ER</p> <p>Tel (01623) 676 041  Fax (01623) 633 871  e-mail: <a href="mailto:Steve.Guillon@cfsms.nhs.uk">Steve.Guillon@cfsms.nhs.uk</a></p>	<p><b>North West Regional Team</b></p> <p>Pauline Smith  CFSMS Operational Service  3<sup>rd</sup> Floor Lakeside Building  Alexandra Park  Prescott Road  St Helens  Merseyside WA10 3TL</p> <p>Tel (01744) 692 605  Fax (01744) 692 613  e-mail: <a href="mailto:Pauline.Smith@cfsms.nhs.uk">Pauline.Smith@cfsms.nhs.uk</a></p>

<p><b>West Midlands Regional Team</b></p> <p>Nick Dann CFSMS Operational Service 8<sup>th</sup> Floor, Coventry Point Market Way Coventry CV1 1EA</p> <p>Tel (02476) 245570 Fax (02476) 245571 e-mail: Nick <a href="mailto:Dann@cfsms.nhs.uk">Dann@cfsms.nhs.uk</a></p>	<p><b>South East Regional Team</b></p> <p>Sharon Stokes CFSMS Operational Service 1<sup>st</sup> Floor 187, Ewell Road Surbiton Surrey KT6 6AU</p> <p>Tel (020) 8339 4616 Fax (020) 8390 8037 e-mail: <a href="mailto:Sharon.stokes@cfsms.nhs.uk">Sharon.stokes@cfsms.nhs.uk</a></p>
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**Supplementary List – Application Details (to be accompanied by a declaration as to convictions etc)**

- (a) his full name;
- (b) his sex;
- (c) his date of birth;
- (d) his private address and telephone number;
- (e)** his qualifications and where they were obtained;
- (f)** a declaration that he is a fully registered ophthalmic medical practitioner or optician, included in the register;
- (g) his professional registration number and date of first registration in the register;
- (h)** 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;
- (i) names and addresses of two referees, who are willing to provide references in respect of two recent posts (which may include any current post) as an ophthalmic medical practitioner optician, which lasted for at least three months without significant break, and, where this is not possible, a full explanation and the names and addresses of alternative referees;
- (j) 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;
- (k) details of any Primary Care Trust 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;
- (l) if he is the director of any corporate body that is included in any list or equivalent list, or which has an outstanding application (including a deferred application) for inclusion in such a list, the name and registered office of that body and details of the Primary Care Trust or equivalent body concerned; and
- (m) 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 contingently included, from which it has been removed, 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.
- (n) There is a duty placed on an optometrist/OMP/corporate optician on the ophthalmic list to make further declarations detailing any offences for which he is charged, any new investigations into professional conduct by regulatory, licensing or other bodies, or investigation by the Counter Fraud and Security Management Services within 7 days of its coming to his attention. Similar requirements apply in respect of the directors of corporate bodies.



**Information to be supplied by optometrist/OMPs already on the GOS  
Ophthalmic list at 14 December 2001**

An optometrist/OMP shall by 31 March 2002 supply in writing information to the PCT as to whether he -

- (a) has any criminal convictions in the United Kingdom;
  - (b) has been bound over following a criminal conviction in the United Kingdom;
  - (c) has accepted a police caution in the United Kingdom;
- has been convicted elsewhere of a offence, or what would constitute a criminal offence if committed in England and Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
- (d) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the PCT;
  - (e) has been subject to any investigation into his professional conduct by any licensing, regulatory or other body anywhere in the world, where the outcome was adverse;
  - (f) is currently subject to any investigation into his professional conduct by any licensing, regulatory or other body anywhere in the world;
  - (g) is, to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the National Health Service Counter Fraud Service in relation to any fraud case;
  - (h) is the subject of any investigation by another PCT or equivalent body, which might lead to his removal from any of that PCT's lists or equivalent lists;
  - (i) is, or has been where the outcome was adverse, subject to an investigation into his professional conduct in respect of any current or previous employment;
  - (j) has been removed, contingently removed, refused admission to, or conditionally included in any list or equivalent list kept by another PCT or equivalent body, or is currently suspended from such a list,

and if so, he must give details including approximate dates of any investigation or proceedings, which were or are to be brought, the nature of that investigation or proceedings, and any outcome.

Any change to the information must be notified to the PCT within 7 days.



**Ophthalmic list – Application Details**

- 1 Full name.
- 2 Sex. **[DN: not for c/o]**
- 3 Date of birth. **[DN: not for c/o]**
- 4 Private address. **[DN: not for c/o who must give registered company address]**
- 4 Date of registration as an optical practitioner in the register kept under section 7 of the Optician Act 1989 or in the case of a corporate optician list under section 9 and registration number, optical qualifications registrable under that Act and when obtained.
- 5A His vocational training number, if he has one.
- 5B Information on whether –
  - (a) he has any criminal convictions in the United Kingdom;
  - (b) he has been bound over following a criminal conviction in the United Kingdom;
  - (c) he has accepted a police caution in the United Kingdom;
  - (d) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution);
  - (e) has, in proceedings in Scotland for an offence, been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging you absolutely;
  - (f) he has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England or Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
  - (g) he is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the PCT;
  - (h) he is currently, or has been where the outcome was adverse, subject to any investigation into his professional conduct by any licensing, regulatory or other body anywhere in the world;
  - (i) he is to his knowledge or has been where the outcome was adverse, subject to any investigation into his professional conduct in respect of any current or previous employment;

- (j) he is currently to his knowledge, or has been where the outcome was adverse, subject to an investigation by the National Health Service CFSMS in relation to a fraud case;
- (k) is the subject of an investigation by another PCT or equivalent body which might lead to his removal from any of that PCT's lists or equivalent lists;

and if so, he must give details, including approximate dates, of any investigation or proceedings, which were or are to be brought, the nature of that investigation or proceedings, and any outcome.

- 6 Address of proposed practice premises and in the case of any mobile service, the address to which correspondence may be sent.
- 7 Proposed days and hours of attendance and whether patients will be seen by appointment only and in the case of any mobile service, particulars of places to be visited regularly by the optometrist/OMP/corporate optician and the times of those visits.
- 8 An undertaking to –
  - (a) be bound by the terms of service;
  - (b) notify the PCT within 7 days of any material changes to the information provided in the application until the application is finally determined;
  - (c) supply the information required by Schedule 1A; and
  - (d) provide GOS in the locality of the PCT.
- 9 Whether intending to practice –
  - (a) as a single-handed practitioner; or
  - (b) as a partner and if so the name and address of each intended partner and whether his name is included in the PCT's ophthalmic list; or
  - (c) as an associate and if so the name and address of each intended associate and whether his name is included in the PCT's ophthalmic list or
  - (d) corporate optician.
- 10 The names of any assistants he or any person referred to in paragraph 9(b) or (c) intends to employ or already employs at the proposed practice premises.
- 11 Professional experience (including starting and finishing dates of each appointment with an explanation of any gaps between appointments) an explanation of why he was dismissed from any post, and any additional supporting particulars.

- 12 The names and addresses of two referees who are willing to provide clinical references for the last two clinical posts where the employment lasted for a continuous period of at least three months, and where this is not possible, a full explanation and the names and addresses of alternative referees.
- 13 Proposed place of residence (including telephone number and distance from main practice) and an undertaking to inform the PCT whenever changing permanent residence.
- 14 Whether he –
  - (a) is or has ever been subject to a national disqualification;
  - (b) has ever been removed or contingently removed from a list held by a PCT or by an equivalent body from an equivalent list;
  - (c) has been refused admission to or conditionally included in a PCT list or equivalent list, with an explanation as to why; or
  - (d) is suspended.
- 15 Whether he is indemnified against claims relating to GOS practice in relation to practice performed by himself, and by any assistant or deputy whose work the optometrist/OMP/corporate optician intends to direct, and if he is so indemnified documentary evidence to that effect.
- 16 Details of any limitations imposed by the Home Office, which restrict his ability to work in any specific capacity in England and Wales.
- 17 Consent to the PCT requesting from any employer or former employer, licensing, regulatory or other body in the United Kingdom or elsewhere, information relating to a current investigation, or an investigation where the outcome was adverse, by them into the optometrist/OMP/corporate optician.
- 18 If he is the director of any corporate body that is included in any list or equivalent list, or which has an outstanding application (including a deferred application) for inclusion in such a list, the name and registered office of that body and details of the Primary Care Trust or equivalent body concerned.
- 19 There is a duty placed on an optometrist/OMP/corporate optician on the ophthalmic list to make further declarations detailing any offences for which he is charged, any new investigations into professional conduct by regulatory, licensing or other bodies, or investigation by the Counter Fraud and Security Management Services within 7 days of its coming to his attention. Similar requirements apply in respect of the directors of corporate bodies.

**Circumstances where an Application to Join a List can be Deferred**

- i. where there are criminal proceedings against the optometrist/OMP/corporate optician anywhere in the world that if successful would be likely to lead to the removal of the optometrist/OMP/corporate optician from the PCT list if he were to be included;
- ii. where there is an investigation anywhere in the world by the optometrist/OMP/corporate optician's licensing or regulatory body or any other investigation (including one by another PCT ) relating to him in his professional capacity that if successful would be likely to lead to the removal of the optometrist/OMP/corporate optician from the PCT list if he were to be included;
- iii. where the optometrist/OMP/corporate optician is suspended from any of the lists or equivalent lists by any PCT or equivalent body, or is suspended nationally;
- iv. where the FHSAA is considering an appeal by the optometrist/OMP/corporate optician against a decision of a PCT to refuse to approve, nominate or admit him to its list, or to conditionally include him in or to contingently remove him from, or to remove him from any list kept by a PCT and if that appeal is unsuccessful the PCT would be likely to remove him from the PCT list if he were to be included;
- v. where the optometrist/OMP/corporate optician is being investigated by the National Health Service Counter Fraud Service in relation to any fraud, where the result if adverse would be likely to lead to his removal from the PCT list if he were to be included; and
- vi. where the FHSAA is considering an application from a PCT for a national disqualification of the optometrist/OMP/corporate optician.