

## SCHEDULE 1

Regulations 2(1) and 18

### TERMS OF SERVICE

#### Interpretation

**1.** In this Schedule—

- (a) the expression “the regulations” means the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006;
- (b) any reference to a numbered regulation is a reference to the regulation bearing that number in the regulations;
- (c) any reference to a numbered paragraph is a reference to the paragraph bearing that number in this Schedule, and any reference in a paragraph to a numbered sub paragraph is a reference to the sub paragraph bearing that number in that paragraph;
- (d) other words and expressions have the same meaning as in the Regulations.

#### Incorporation of provisions

**2.** Any provisions of the following affecting the rights and obligations of contractors and ophthalmic medical practitioners and opticians assisting in the provision of general ophthalmic services shall form part of the terms of service—

- (a) the regulations;
- (b) the National Health Service (Tribunal) (Scotland) Regulations 2004(1);
- (c) so much of the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992(2) as relates to—
  - (i) the investigation of questions arising between ophthalmic medical practitioners or opticians and their patients, other investigations to be made by a discipline committee and the action which may be taken by the Board as a result of such investigations, including the withholding of remuneration where there has been a breach of the terms of service;
  - (ii) appeal to the Scottish Ministers from decisions of the Board;
  - (iii) the investigation of the excessive—
    - (aa) undertaking of eye examinations;
    - (bb) issuing of optical vouchers;
    - (cc) prescribing of supplements;
- (d) regulation 9 of the National Health Service (Optical Charges and Payments) (Scotland) Regulations 1998(3);
- (e) the Statement;
- (f) the General Optical Council’s Rules Relating to Injury of the Eye; and
- (g) the College of Optometrist’s Code of Ethics and Guidance for Professional Conduct.

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(1) S.S.I. 2004/38 as amended by S.S.I. 2004/122 and 271, 2005/335 and 2006/122.

(2) S.I.1992/434 as amended by S.I. 1994/3038, 1995/3201, 1996/938, 1998/657, 1998/1424 and S.S.I. 1999/53, 2004/38, 2005/118 and 334 and 2006/139.

(3) S.I. 1998/642. Regulation 9 was amended by S.I. 1999/748.

### **Certificate of training**

3.—(1) Except in the case of a body corporate, an ophthalmic medical practitioner or optician providing, or assisting in the provision of, general ophthalmic services shall undertake a course of training in the use of slit lamp biomicroscopy, condensing lens biomicroscopy, applanation tonometry and threshold visual fields from a training provider approved by NHS Education for Scotland and shall provide to the Board a certificate from the provider of that training that that person has completed the training satisfactorily

(2) Except in the case of a body corporate, any application for inclusion in the Ophthalmic List must be accompanied by such a certificate.

(3) Except in the case of a body corporate, in the case of any person to whom regulation 26(6) applies, that person shall provide such a certificate to the Board no later than 30 June 2006, or by such later date as the Board considers appropriate in the circumstances of the case if it thinks it is not reasonably practicable for that person to provide such certificate by 30 June 2006

### **Premises at which general ophthalmic services are to be provided**

4.—(1) Subject to sub paragraph (2), a contractor shall provide general ophthalmic services or cause such services to be provided by an ophthalmic medical practitioner or optician who assists in the provision of general ophthalmic services at any address which is included in relation to the contractor in the Ophthalmic List.

(2) An ophthalmic medical practitioner or optician on the Ophthalmic List may, where requested to do so by or on behalf of a patient, who is—

- (a) unable to leave home unaccompanied because of physical or mental illness or disability, agree to provide general ophthalmic services or assist in the provision of general ophthalmic services at the place at which the patient normally resides; or
- (b) attending a day centre, agree to provide general ophthalmic services or assist in the provision of general ophthalmic services at that day centre.

### **Visits**

5.—(1) In the case of a mobile practice, a contractor shall give the Board notice in accordance with sub paragraph (2) of any visits which the contractor or an ophthalmic medical practitioner or optician who assists that contractor in the provision of general ophthalmic services intends to make to provide general ophthalmic services to at least three persons at day centres or in residential centres in the Board's area.

(2) The contractor shall notify the Board at least one month in advance of the month in which the contractor or an ophthalmic medical practitioner or optician who assists that contractor in the provision of general ophthalmic services intends to visit any establishment in the Board's area and of the intervals at which the contractor intends that return visits shall be made.

### **Premises and equipment**

6.—(1) Subject to sub paragraph (2), a contractor shall provide, as may be requisite, proper and sufficient consulting and waiting room accommodation and suitable equipment, including required equipment, for general ophthalmic services.

(2) In the case of a mobile practice, the contractor shall provide suitable equipment, including required equipment, for general ophthalmic services.

(3) Subject to sub paragraph (4), a contractor, on receipt of a written request from the Board, shall admit at all reasonable times for the purposes of inspecting such accommodation or equipment

and reviewing procedures an ophthalmic officer or any authorised officer of the Scottish Ministers or the Board or member of the Board.

(4) In the case of a mobile practice, the contractor, on receipt of a written request from the Board to do so, shall arrange for an ophthalmic officer or any authorised officer of the Scottish Ministers or the Board or member of the Board to be allowed to inspect at a reasonable time the facilities and equipment that the contractor or an ophthalmic medical practitioner or opticians who assists the provider in the provision of general ophthalmic services uses.

## **Notices**

7. A contractor shall secure that at each place at which the contractor provides general ophthalmic services or an ophthalmic medical practitioner or optician assists the contractor in the provision of general ophthalmic services there is prominently displayed a notice and leaflet supplied or approved by the Board, indicating the services available under general ophthalmic services and indicating to which descriptions of the contractor's patients a payment may be made under the National Health Service (Optical Charges and Payments) (Scotland) Regulations 1998.

## **Records**

8.—(1) A contractor or ophthalmic medical practitioner or optician who assists the contractor in the provision of general ophthalmic services shall keep proper, complete, accurate and up-to-date records in respect of each patient to whom general ophthalmic services are provided, giving appropriate details of eye examinations carried out.

(2) A contractor or ophthalmic medical practitioner or optician who assists the contractor in the provision of general ophthalmic services may keep the records referred to in sub paragraph (1) in computerised form.

(3) A contractor shall retain all such records for a period of 7 years.

(4) A contractor shall, when requested to do so by any authorised officer of the Scottish Ministers, the Agency or the Board during the period in which the contractor is required to retain such records—

- (a) produce them to such authorised officer of the Scottish Ministers, the Agency or the Board; or
- (b) send them to such authorised officer of the Scottish Ministers, the Agency or the Board within such period as may be specified by the authorised officer not being less than 14 days from the date of request.

## **Deputies**

9.—(1) An ophthalmic medical practitioner may arrange for eye examinations to be carried out on his behalf by another ophthalmic medical practitioner, and an optician may arrange for eye examinations to be carried out on his behalf by another optician, provided that such other ophthalmic medical practitioner or optician is included in the Ophthalmic List of the Board for the area in which such eye examinations are to be carried out.

(2) Any contractor who makes an arrangement for the regular provision of services by a deputy in terms of paragraph (1) shall notify the Board of the arrangements.

## **Employees**

10.—(1) An ophthalmic medical practitioner who employs a person to carry out eye examinations shall employ only another ophthalmic medical practitioner on the Ophthalmic List of the Board for the area in which such eye examinations are to be carried out.

(2) An optician who employs a person to carry out eye examinations shall employ only—

*Status: This is the original version (as it was originally made).*

- (a) another optician on the Ophthalmic List of the Board for the area in which such eye examinations are to be carried out; or
  - (b) a person acting under his continuous personal supervision who is authorised to carry out eye examinations by rules made under section 24(3) of the Opticians Act 1989.
- (3) Any contractor who makes an arrangement for the regular provision of services by an employee in terms of paragraphs (1) or (2) shall notify the Board of the arrangement.
- (4) In this paragraph “employee” includes, in the case of a body corporate, a director and “employ” is to be interpreted accordingly.

### Complaints

11.—(1) Subject to sub paragraphs (2) and (3), a contractor shall establish and operate in accordance with this paragraph, a procedure (in this paragraph and in paragraphs 11 and 12 referred to as a “complaints procedure”) to deal with any complaints made by or on behalf of the patients and former patients of the contractor or an ophthalmic medical practitioner or optician who assists the contractor in the provision of general ophthalmic services.

(2) The complaints procedure to be established by a contractor may be such that it also deals with complaints made in relation to one or more other contractors or ophthalmic medical practitioners or opticians who assist the contractor in the provision of general ophthalmic services.

(3) The complaints procedure to be established by a contractor who provides general ophthalmic services or causes general ophthalmic services to be provided from more than one set of premises may be such that it relates to all those premises together.

(4) A complaints procedure shall apply to complaints made in relation to any matter reasonably connected with the provision or assistance in provision of general ophthalmic services and within the responsibility or control of—

- (a) the contractor;
- (b) where the contractor is a body corporate, any of its directors or former directors;
- (c) a former partner of the contractor;
- (d) any other person (being an optician, an ophthalmic medical practitioner or a person authorised to test sight by rules made under section 24(3) of the Opticians Act 1989) who is either employed by the contractor or engaged as his deputy;
- (e) any employee of the contractor other than one falling within paragraph (d);
- (f) when the contractor is a limited liability partnership, a member or former member;
- (g) an ophthalmic medical practitioner or optician who assists the contractor in the provision of general ophthalmic services,

and in this paragraph and paragraph 12, references to complaints are to complaints falling within this sub paragraph.

(5) A complaint may be made on behalf of a patient or former patient with his consent, or—

- (a) where the patient is a child under the age of 16 years—
  - (i) by either parent, or in the absence of both parents, the guardian or other adult person who has care of the child, or
  - (ii) in the care of an authority within the meaning of section 17(6) of the Children (Scotland) Act 1995, or in the care of a voluntary organisation, by that authority or voluntary organisation; or
- (b) where the person is incapable of making a complaint, by a relative or other adult person who has an interest in his welfare.

(6) Where a patient has died, a complaint may be made by a relative or other adult person who had an interest in his welfare or, where the patient was as described in head (a)(ii) of sub paragraph (5), by the authority or voluntary organisation.

(7) A complaints procedure shall comply with the following requirements—

- (a) the contractor shall specify a person (who need not be connected with the contractor and who, in the case of an individual, may be specified by his job title) to be responsible for receiving and investigating all complaints;
- (b) all complaints shall be—
  - (i) recorded in writing,
  - (ii) acknowledged, either orally or in writing, within the period of 3 days (excluding Saturdays, Sundays, Christmas Day, New Year's Day and other public or local holidays agreed with the Board) beginning with the day on which the complaint was received by the person specified in head (a), or where that is not possible, as soon as reasonably practicable, and
  - (iii) properly investigated;
- (c) within the period of 10 days (excluding Saturdays, Sundays, Christmas Day, New Year's Day and any other public or local holidays agreed with the Board) beginning on the day on which the complaint was received by the person specified in head (a), or where that is not possible, as soon as reasonably practicable, the complainant shall be given a written summary of the investigation and its conclusions;
- (d) where the investigation of the complaint requires consideration of the patient's eye examination records, the person specified under head (a) shall inform the patient or person acting on his behalf if the investigation will involve disclosure of information contained in those records to a person other than the contractor, or a director, partner, deputy or employee of the contractor; and
- (e) the contractor shall keep a record of all complaints and copies of all correspondence relating to complaints, but such records shall be kept separate from patients' eye examination records.

(8) At each of the premises at which the contractor provides general ophthalmic services or causes general ophthalmic services to be provided the contractor shall provide information about the complaints procedure which the contractor operates and give the name (or title) and address of the person specified in sub paragraph (7)(a).

### **Co-operation with investigations**

**12.—**(1) A contractor or an ophthalmic medical practitioner or optician who assists the contractor in the provision of general ophthalmic services shall cooperate with any investigation of a complaint by the Board in accordance with the procedures which it operates in accordance with directions given under section 2(5) of the Act, whether the investigation follows one under the contractor's complaints procedure or not.

(2) The co operation required by sub paragraph (1) includes—

- (a) answering questions reasonably put to the contractor by the Board;
- (b) providing any information relating to the complaint reasonably required by the Board; and
- (c) attending any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due notice has been given), if the contractor's presence or the presence of an ophthalmic medical practitioner or optician who assists that contractor in the provision of general ophthalmic services at the meeting is reasonably required by the Board.

**Payments**

**13.—**(1) Any claim by a contractor for fees in respect of the provision of general ophthalmic services shall be made by completing or securing the completion of an eye examination form and sending it to the Agency within 6 months after the date of completion of such provision of the services.

(2) Any such claim shall be signed—

- (a) if the service was provided on behalf of a contractor by a deputy or employee who is also a contractor, by the deputy or employee who shall give the name of the contractor on whose behalf the service was provided;
- (b) if the service was provided on the contractor's behalf by a person whose name is included in the second part of the Ophthalmic List by the person who assisted in the provision of general ophthalmic services who shall also give the name of the contractor on whose behalf the service was provided; and
- (c) in other cases by the contractor.

(3) A signatory shall sign any such claim in ink with his or her initials or forename and with his or her surname in his own handwriting and not by means of a stamp.

(4) Where an eye examination is undertaken by an ophthalmic medical practitioner or optician who assists the contractor in the provision of general ophthalmic services that ophthalmic medical practitioner or optician shall complete a claim for remuneration in respect of that eye examination which—

- (a) is separate from any claim form in respect of eye examinations given by the contractor personally; and
- (b) identifies the ophthalmic medical practitioner or optician who undertook the eye examination and his or her status as an ophthalmic medical practitioner or optician who assists the contractor in the provision of general ophthalmic services.

(5) Except as provided in the regulations, in the Statement, or in the National Health Service (Charges for Overseas Visitors) (Scotland) Regulations 1989<sup>(4)</sup>, or in sub paragraph (6), a contractor shall not demand or accept or cause to be demanded or accepted from any patient or from other persons the payment of any fee or other remuneration in respect of the provision of general ophthalmic services.

(6) A contractor shall be entitled to demand and recover from a patient or person having charge of a patient a sum in respect of loss of remunerative time resulting from a failure by that patient to keep an appointment.

(7) A contractor shall not demand or accept or cause to be demanded or accepted from the Agency the payment of any fee or other remuneration in respect of any item of service—

- (a) which has not been provided under the general ophthalmic services; or
- (b) for which a claim has already been submitted to the Agency.

**Eye examinations**

**14.—**(1) An ophthalmic medical practitioner or optician who accepts in accordance with these regulations—

- (a) an application from a patient for a primary eye examination; or
- (b) an application from a patient for a supplementary eye examination,

<sup>(4)</sup> S.I. 1989/364, amended by S.I. 1992/411, 1994/1770, 1998/251, S.S.I. 2004/369, and S.S.I. 2006/141 with effect from 1st April 2006.

shall carry out an eye examination.

(2) Where an ophthalmic medical practitioner or optician is of the opinion that it is clinically necessary to carry out a sight test on a patient whose eyes he or she has examined in accordance with sub paragraph (1), he or she shall carry out a sight test.

(3) Where an ophthalmic medical practitioner or optician carries out a sight test, he or she shall fulfil any duty imposed on him or her by, or in regulations made under, the Opticians Act 1989.

(4) Where an ophthalmic medical practitioner or optician is of the opinion that a patient whose eyes he or she has examined in accordance with sub paragraph (1)–

- (a) shows signs of injury, disease or abnormality in the eye or elsewhere which may require medical treatment; or
- (b) is not likely to attain a satisfactory standard of vision notwithstanding the application of corrective lenses,

he or she shall, if appropriate, and with the consent of the patient–

- (i) refer the patient to an ophthalmic hospital;
- (ii) inform the patient's doctor or GP practice that he or she has done so; and
- (iii) give the patient a written statement that he or she has done so, with details of the referral.

(5) Where an ophthalmic medical practitioner or optician undertakes an eye examination of a patient diagnosed as suffering from diabetes or glaucoma he or she shall inform the patient's doctor of the results of the test.

(6) A prescription for glasses issued following an eye examination which includes a sight test shall be completed by the method recommended in Appendix A to British Standard 3521:1962 (Glossary of Terms relating to Ophthalmic Lenses and Spectacle Frames) published by the British Standards Institution, as effective on the date of its publication, and shall comply with any requirements as to its form specified in the Statement for the purposes of payment in respect of the eye examination.

(7) An ophthalmic medical practitioner or optician shall carry out a maximum of 20 eye examinations in any working day.

(8) Following a primary eye examination or a supplementary eye examination the ophthalmic medical practitioner or optician who carried out the examination shall give a statement of the outcome of the examination to the patient.

### **Use of disqualified name**

**15.—**(1) Subject to sub paragraph (2), a contractor shall not use in any manner whatsoever the name or part of the name, either alone or in combination with any other words or letters, of or used by, any person so long as that person is disqualified from inclusion in any Ophthalmic List.

(2) Nothing in sub paragraph (1) shall prevent a contractor other than a body corporate from using his own name or being a body corporate, from using the name by which it is enrolled in the register maintained pursuant to the provisions of the Opticians Act 1989.