

## SCHEDULE 5

### OTHER CONTRACTUAL TERMS

#### PART 2

#### PATIENTS

##### **General Provision**

**12.**—(1) This Part shall apply to contractors which provide essential services.

(2) Where the contractor is a Primary Care Trust which provides essential services under the agreement this Part shall apply as modified in accordance with Schedule 7.

##### **List of patients**

**13.** Where the agreement requires the contractor to provide essential services, the Primary Care Trust shall prepare and keep up to date a list of the patients—

- (a) who have been accepted by the contractor for inclusion in its list of patients under paragraph 14 and who have not subsequently been removed from that list under paragraphs 18 to 26; and
- (b) who have been assigned to the contractor under paragraph 31 or 32 and whose assignment has not subsequently been rescinded.

##### **Application for inclusion in a list of patients**

**14.**—(1) The contractor may, if its list of patients is open, accept an application for inclusion in its list of patients made by or on behalf of any person whether or not resident in its practice area or included, at the time of that application, in the list of patients of another contractor or provider of primary medical services.

(2) The contractor may, if its list of patients is closed, only accept an application for inclusion in its list of patients from a person who is an immediate family member of a registered patient whether or not resident in its practice area or included, at the time of that application, in the list of patients of another contractor or provider of primary medical services.

(3) Subject to sub-paragraph (4), an application for inclusion in a contractor's list of patients shall be made by delivering to the contractor's premises a medical card or an application signed (in either case) by the applicant or a person authorised by the applicant to sign on his behalf.

(4) An application may be made—

- (a) on behalf of any child—
  - (i) by either parent, or in the absence of both parents, the guardian or other adult who has care of the child,
  - (ii) by a person duly authorised by a local authority to whose care the child has been committed under the Children Act 1989(1), or
  - (iii) by a person duly authorised by a voluntary organisation by which the child is being accommodated under the provisions of that Act; or
- (b) on behalf of any adult who is incapable of making such an application, or authorising such an application to be made on their behalf, by a relative or the primary carer of that person.

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(1) 1989 c. 41.

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(5) A contractor which accepts an application for inclusion in its list of patients shall notify the Primary Care Trust in writing as soon as possible.

(6) On receipt of a notice under sub-paragraph (5), the Primary Care Trust shall—

- (a) include that person in the contractor's list of patients from the date on which the notice is received; and
- (b) notify the applicant (or, in the case of a child or incapable adult, the person making the application on their behalf) of the acceptance.

### **Temporary residents**

**15.**—(1) The contractor may, if its list of patients is open, accept a person as a temporary resident provided it is satisfied that the person is—

- (a) temporarily resident away from his normal place of residence and is not being provided with essential services (or their equivalent) under any other arrangement in the locality where he is temporarily residing; or
- (b) moving from place to place and not for the time being resident in any place.

(2) For the purposes of sub-paragraph (1), a person shall be regarded as temporarily resident in a place if, when he arrives in that place, he intends to stay there for more than 24 hours but not more than three months.

(3) A contractor which wishes to terminate its responsibility for a person accepted as a temporary resident before the end of—

- (a) three months; or
- (b) such shorter period for which it agreed to accept him as a patient,

shall notify him either orally or in writing and its responsibility for that patient shall cease 7 days after the date on which the notification was given.

(4) At the end of three months, or on such earlier date as its responsibility for the temporary resident has come to an end, the contractor shall notify the Primary Care Trust in writing of any person whom it accepted as a temporary resident.

### **Refusal of applications for inclusion in the list of patients or for acceptance as a temporary resident**

**16.**—(1) The contractor shall only refuse an application made under paragraph 14 or 15 if it has reasonable grounds for doing so which do not relate to the applicant's race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition.

(2) The reasonable grounds referred to in paragraph (1) shall, in the case of applications made under paragraph 14, include the ground that the applicant does not live in the contractor's practice area.

(3) A contractor which refuses an application made under paragraph 14 or 15 shall, within 14 days of its decision, notify the applicant (or, in the case of a child or incapable adult, the person making the application on their behalf) in writing of the refusal and the reason for it.

(4) The contractor shall keep a written record of refusals of applications made under paragraph 14 and of the reasons for them and shall make this record available to the Primary Care Trust on request.

### **Patient preference of practitioner**

**17.**—(1) Where the contractor has accepted an application for inclusion in its list of patients, it shall—

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- (a) notify the patient (or, in the case of a child or incapable adult, the person who made the application on their behalf) of the patient's right to express a preference to receive services from a particular performer or class of performer either generally or in relation to any particular condition; and
  - (b) record in writing any such preference expressed by or on behalf of the patient.
- (2) The contractor shall endeavour to comply with any reasonable preference expressed under sub-paragraph (1) but need not do so if the preferred performer—
- (a) has reasonable grounds for refusing to provide services to the patient; or
  - (b) does not routinely perform the service in question under the agreement on behalf of the contractor.

### **Removal from the list at the request of the patient**

**18.**—(1) The contractor shall notify the Primary Care Trust in writing of any request for removal from its list of patients received from a registered patient.

(2) Where the Primary Care Trust—

- (a) receives notification from the contractor under sub-paragraph (1); or
- (b) receives a request from the patient to be removed from the contractor's list of patients,

it shall remove that person from the contractor's list of patients.

(3) A removal in accordance with sub-paragraph (2) shall take effect—

- (a) on the date on which the Primary Care Trust receives notification of the registration of the person with another provider of essential services (or their equivalent); or
- (b) 14 days after the date on which the notification or request made under sub-paragraph (1) or (2) respectively is received by the Primary Care Trust,

whichever is the sooner.

(4) The Primary Care Trust shall, as soon as practicable, notify in writing—

- (a) the patient; and
- (b) the contractor,

that the patient's name will be or has been removed from the contractor's list of patients on the date referred to in sub-paragraph (3).

(5) In this paragraph and in paragraphs 19(1)(b) and (9), 20(6) and (7), 22(1), 25(2) and 27(3), a reference to a request received from or advice, information or notification required to be given to a patient shall include a request received from or advice, information or notification required to be given to—

- (a) in the case of a patient who is a child, a parent or other person referred to in paragraph 14(4)(a); or
- (b) in the case of an adult patient who is incapable of making the relevant request or receiving the relevant advice, information or notification, a relative or the primary carer of the patient.

### **Removals from the list at the request of the contractor**

**19.**—(1) Subject to paragraph 20, a contractor which has reasonable grounds for wishing a patient to be removed from its list of patients which do not relate to the applicant's race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition shall—

- (a) notify the Primary Care Trust in writing that it wishes to have the patient removed; and

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(b) subject to sub-paragraph (2), notify the patient of its specific reasons for requesting removal.

(2) Where in the reasonable opinion of the contractor—

(a) the circumstances of the removal are such that it is not appropriate for a more specific reason to be given; and

(b) there has been an irrevocable breakdown in the relationship between the patient and the contractor,

the reason given under sub-paragraph (1) may consist of a statement that there has been such a breakdown.

(3) Except in the circumstances specified in sub-paragraph (4), a contractor may only request a removal under sub-paragraph (1), if within the period of 12 months prior to the date of its request to the Primary Care Trust, it has warned the patient that he is at risk of removal and explained to him the reasons for this.

(4) The circumstances referred to in sub-paragraph (3) are that—

(a) the reason for removal relates to a change of address;

(b) the contractor has reasonable grounds for believing that the issue of such a warning would—

(i) be harmful to the physical or mental health of the patient, or

(ii) put at risk the safety of any party to the agreement who is an individual, any member of the contractor's staff or any other person; or

(c) it is, in the opinion of the contractor, not reasonable or practical for a warning to be given.

(5) The contractor shall record in writing—

(a) the date of any warning given in accordance with sub-paragraph (3) and the reasons for giving such a warning as explained to the patient; or

(b) the reason why no such warning was given.

(6) The contractor shall keep a written record of removals under this paragraph which shall include—

(a) the reason for removal given to the patient;

(b) the circumstances of the removal; and

(c) in cases where sub-paragraph (2) applies, the grounds for a more specific reason not being appropriate,

and shall make this record available to the Primary Care Trust on request.

(7) A removal requested in accordance with sub-paragraph (1) shall, subject to sub-paragraph (8), take effect from—

(a) the date on which the Primary Care Trust receives notification of the registration of the person with another provider of essential services (or their equivalent); or

(b) the eighth day after the Primary Care Trust receives the notice referred to in sub-paragraph (1)(a),

whichever is the sooner.

(8) Where, on the date on which the removal would take effect under sub-paragraph (7), the contractor is treating the patient at intervals of less than seven days, the contractor shall notify the Primary Care Trust in writing of the fact and the removal shall take effect—

(a) on the eighth day after the Primary Care Trust receives notification from the contractor that the person no longer needs such treatment; or

(b) on the date on which the Primary Care Trust receives notification of the registration of the person with another provider of essential services (or their equivalent), whichever is the sooner.

(9) The Primary Care Trust shall notify in writing—

- (a) the patient; and
- (b) the contractor,

that the patient's name has been or will be removed from the contractor's list of patients on the date referred to in sub-paragraph (7) or (8).

### **Removals from the list of patients who are violent**

**20.**—(1) A contractor which wishes a patient to be removed from its list of patients with immediate effect on the grounds that—

- (a) the patient has committed an act of violence against any of the persons specified in sub-paragraph (2) or behaved in such a way that any such person has feared for his safety; and
- (b) it has reported the incident to the police,

shall notify the Primary Care Trust in accordance with sub-paragraph (3).

(2) The persons referred to in sub-paragraph (1) are—

- (a) any party to the agreement who is an individual;
- (b) any member of the contractor's staff; or
- (c) any other person present—

- (i) on the contractor's premises, or
- (ii) in the place where services were provided to the patient under the agreement.

(3) Notification under sub-paragraph (1) may be given by any means including telephone or fax but if not given in writing shall subsequently be confirmed in writing within seven days (and for this purpose a faxed notification is not a written one).

(4) The Primary Care Trust shall acknowledge in writing receipt of a request from the contractor under sub-paragraph (1).

(5) A removal requested in accordance with sub-paragraph (1) shall take effect at the time that the contractor—

- (a) makes the telephone call to the Primary Care Trust; or
- (b) sends or delivers the notification to the Primary Care Trust.

(6) Where, pursuant to this paragraph, the contractor has notified the Primary Care Trust that it wishes to have a patient removed from its list of patients with immediate effect, it shall inform the patient concerned unless—

- (a) it is not reasonably practicable for it to do so; or
- (b) it has reasonable grounds for believing that to do so would—
  - (i) be harmful to the physical or mental health of the patient, or
  - (ii) put at risk the safety of any party to the agreement who is an individual, a member of the contractor's staff or any other person.

(7) Where the Primary Care Trust has removed a patient from the contractor's list of patients in accordance with sub-paragraph (5) it shall give written notice of the removal to that patient.

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(8) Where a patient is removed from the contractor's list of patients in accordance with this paragraph, the contractor shall record in the patient's medical records that the patient has been removed under this paragraph and the circumstances leading to his removal.

**Removals from the list of patients registered elsewhere**

- 21.**—(1) The Primary Care Trust shall remove a patient from the contractor's list of patients if—
- (a) he has subsequently been registered with another provider of essential services (or their equivalent) in the area of the Primary Care Trust; or
  - (b) it has received notice from another Primary Care Trust, a Local Health Board, a Health Board or a Health and Social Services Board that he has subsequently been registered with a provider of essential services (or their equivalent) outside the area of the Primary Care Trust.
- (2) A removal in accordance with sub-paragraph (1) shall take effect—
- (a) on the date on which the Primary Care Trust receives notification of the registration of the person with the new provider; or
  - (b) with the consent of the Primary Care Trust, on such other date as has been agreed between the contractor and the new provider.
- (3) The Primary Care Trust shall notify the contractor in writing of persons removed from its list of patients under sub-paragraph (1).

**Removals from the list of patients who have moved**

- 22.**—(1) Subject to sub-paragraph (2), where the Primary Care Trust is satisfied that a person on the contractor's list of patients has moved and no longer resides in that contractor's practice area, the Primary Care Trust shall—
- (a) inform that patient and the contractor that the contractor is no longer obliged to visit and treat him;
  - (b) advise the patient in writing either to obtain the contractor's agreement to his continued inclusion in the contractor's list of patients or to apply for registration with another provider of essential services (or their equivalent); and
  - (c) inform him that if, after the expiration of 30 days from the date of the advice mentioned in paragraph (b), he has not acted in accordance with the advice and informed it accordingly, the Primary Care Trust will remove him from the contractor's list of patients.
- (2) If, at the expiration of the period of 30 days referred to in sub-paragraph (1)(c), the Primary Care Trust has not been notified of the action taken, it shall remove the patient from the contractor's list of patients and inform him and the contractor accordingly.
- 23.** Where the address of a patient who is on the contractor's list of patients is no longer known to the Primary Care Trust, the Primary Care Trust shall—
- (a) give to the contractor notice in writing that it intends, at the end of the period of six months commencing with the date of the notice, to remove the patient from the contractor's list of patients; and
  - (b) at the end of that period, remove the patient from the contractor's list of patients unless, within that period, the contractor satisfies the Primary Care Trust that it is still responsible for providing essential services to that patient.

### **Removals from the list of patients absent from the United Kingdom etc.**

24.—(1) The Primary Care Trust shall remove a patient from the contractor's list of patients where it receives notification that that patient—

- (a) intends to be away from the United Kingdom for a period of at least three months;
- (b) is in Her Majesty's Forces;
- (c) is serving a prison sentence of more than two years or sentences totalling in the aggregate more than that period;
- (d) has been absent from the United Kingdom for a period of more than three months; or
- (e) has died.

(2) A removal in accordance with sub-paragraph (1) shall take effect—

- (a) in the cases referred to in sub-paragraph (1)(a) to (c) from the date of the departure, enlistment or imprisonment or the date on which the Primary Care Trust first receives notification of the departure, enlistment or imprisonment whichever is the later; or
- (b) in the cases referred to in sub-paragraph (1)(d) and (e) from the date on which the Primary Care Trust first receives notification of the absence or death.

(3) The Primary Care Trust shall notify the contractor in writing of patients removed from its list of patients under sub-paragraph (1).

### **Removals from the list of patients accepted elsewhere as temporary residents**

25.—(1) The Primary Care Trust shall remove from the contractor's list of patients a patient who has been accepted as a temporary resident by another contractor or other provider of essential services (or their equivalent) where it is satisfied, after due inquiry—

- (a) that the patient's stay in the place of temporary residence has exceeded three months; and
- (b) that he has not returned to his normal place of residence or any other place within the contractor's practice area.

(2) The Primary Care Trust shall notify in writing of a removal under sub-paragraph (1)—

- (a) the contractor; and
- (b) where practicable, the patient.

(3) A notification to the patient under sub-paragraph (2)(b) shall inform him of—

- (a) his entitlement to make arrangements for the provision to him of essential services (or their equivalent), including by the contractor by which he has been treated as a temporary resident; and
- (b) the name and address of the Primary Care Trust in whose area he is resident.

### **Removals from a list of pupils etc of a school**

26.—(1) Where the contractor provides essential services under the agreement to persons on the grounds that they are pupils at or staff or residents of a school, the Primary Care Trust shall remove from the contractor's list of patients any such persons who do not appear on particulars of persons who are pupils at or staff or resident of that school provided by that school.

(2) Where the Primary Care Trust has made a request to a school to provide the particulars mentioned in sub-paragraph (1) and has not received them, it shall consult the contractor as to whether it should remove from its list of patients any persons appearing on that list as pupils at, or staff or residents of, that school.

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(3) The Primary Care Trust shall notify the contractor in writing of patients removed from its list of patients under sub-paragraph (1).

### **Termination of responsibility for patients not registered with the contractor**

**27.**—(1) Where the contractor—

(a) has received an application for the provision of medical services other than essential services—

(i) from a person who is not included in its list of patients,

(ii) from a person whom it has not accepted as a temporary resident, or

(iii) on behalf of a person mentioned in sub-paragraph (i) or (ii), from one of the persons specified in paragraph 14(4); and

(b) has accepted that person as a patient for the provision of the service in question, its responsibility for that patient shall be terminated in the circumstances referred to in sub-paragraph (2).

(2) The circumstances referred to in sub-paragraph (1) are—

(a) the patient informs the contractor that he no longer wishes it to be responsible for provision of the service in question;

(b) in cases where the contractor has reasonable grounds for terminating its responsibility which do not relate to the person's race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition, the contractor informs the patient that it no longer wishes to be responsible for providing him with the service in question; or

(c) it comes to the notice of the contractor that the patient—

(i) no longer resides in the area for which the contractor has agreed to provide the service in question, or

(ii) is no longer included in the list of patients of another contractor to whose registered patients the contractor has agreed to provide that service.

(3) A contractor which wishes to terminate its responsibility for a patient under sub-paragraph (2) shall notify the patient of the termination and the reason for it.

(4) The contractor shall keep a written record of terminations under this paragraph and of the reasons for them and shall make this record available to the Primary Care Trust on request.

(5) A termination under sub-paragraph (2)(b) shall take effect—

(a) from the date on which the notice is given where the grounds for termination are those specified in paragraph 20(1); or

(b) in all other cases, 14 days from the date on which the notice is given.

### **Closure of lists of patients**

**28.**—(1) A contractor which wishes to close its list of patients shall notify the Primary Care Trust in writing to that effect.

(2) Within a period of 7 days beginning with the date of receipt of the notification referred to in sub-paragraph (1), or, if that is not reasonably practicable, as soon as is practicable thereafter, the Primary Care Trust shall enter into discussions with the contractor concerning the support which the Primary Care Trust may give the contractor, or other changes which the Primary Care Trust or the contractor may make, which would enable the contractor to keep its list of patients open.

(3) In the discussions referred to in sub-paragraph (2), both parties shall use reasonable endeavours to achieve the aim of keeping the contractor's list of patients open.

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(4) The discussions mentioned in sub-paragraph (2) shall be completed within a period of 28 days beginning with the date of the Primary Care Trust's receipt of the notification referred to in sub-paragraph (1), or within such longer period as the parties may agree.

(5) If, following the discussions mentioned in sub-paragraph (2), the Primary Care Trust and the contractor reach agreement that the contractor's list of patients should remain open, the Primary Care Trust shall send full details of the agreement in writing to the contractor.

(6) The Primary Care Trust and the contractor shall comply with the terms of an agreement reached as mentioned in sub-paragraph (5).

(7) If, following the discussions mentioned in sub-paragraph (2)—

- (a) the Primary Care Trust and the contractor reach agreement that the contractor's list of patients should close; or
- (b) the Primary Care Trust and the contractor fail to reach agreement and the contractor still wishes to close its list of patients,

the contractor shall send a closure notice to the Primary Care Trust.

(8) A closure notice shall be submitted in the form specified in Schedule 8, and shall include the following details which (in a case falling within sub-paragraph (7)(a)) have been agreed between the parties or (in a case falling within sub-paragraph (7)(b)) are proposed by the contractor—

- (a) the period of time (which may not exceed 12 months) for which the contractor's list of patients will be closed;
- (b) the current number of the contractor's registered patients;
- (c) the number of registered patients (lower than the current number of such patients, and expressed either in absolute terms or as a percentage of the number of such patients specified pursuant to paragraph (b)) which, if that number were reached, would trigger the re-opening of the contractor's list of patients;
- (d) the number of registered patients (expressed either in absolute terms or as a percentage of the number of such patients specified pursuant to paragraph (b)) which, if that number were reached, would trigger the re-closure of the contractor's list of patients; and
- (e) any withdrawal from or reduction in provision of any service which had previously been provided under the agreement.

(9) The Primary Care Trust shall forthwith acknowledge receipt of the closure notice in writing to the contractor.

(10) Before the Primary Care Trust reaches a decision as to whether to approve or reject the closure notice under sub-paragraph (12), the Primary Care Trust and the contractor may enter into further discussions concerning the details of the closure notice referred to in sub-paragraph (8), with a view to reaching agreement; and, in particular, if the parties are unable to reach agreement regarding the period of time for which the contractor's list of patients will be closed, that period shall be 12 months.

(11) A contractor may not withdraw a closure notice for a period of three months beginning with the date on which the Primary Care Trust has received the notice, unless the Primary Care Trust has agreed otherwise in writing.

(12) Within a period of 14 days beginning with the date of receipt of the closure notice, the Primary Care Trust shall—

- (a) approve the closure notice; or
- (b) reject the closure notice,

and shall notify the contractor of its decision in writing as soon as possible.

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(13) Approval of the closure notice under sub-paragraph (12)(a) includes approval of the details specified in accordance with sub-paragraph (8) (or, where those details are revised following discussions under sub-paragraph (10), approval of those details as so revised).

### **Approval of closure notice**

**29.**—(1) If the Primary Care Trust approves the closure notice in accordance with paragraph 28(12)(a), the contractor shall close its list of patients—

- (a) with effect from a date agreed between the Primary Care Trust and the contractor; or
- (b) if no such agreement has been reached, with effect from the date on which the contractor receives notification of the Primary Care Trust’s decision to approve the closure notice.

(2) Subject to sub-paragraph (3), the contractor’s list of patients shall remain closed for the period specified in the closure notice in accordance with paragraph 28(8)(a) (or, where the period of 12 months specified in paragraph 28(10) applies, for that period).

(3) The contractor’s list of patients shall re-open before the expiry of the period mentioned in sub-paragraph (2) if—

- (a) the number of the contractor’s registered patients falls to the number specified in the closure notice in accordance with paragraph 28(8)(c); or
- (b) the Primary Care Trust and the contractor agree that the list of patients should re-open.

(4) If the contractor’s list of patients has re-opened pursuant to sub-paragraph (3)(a), it shall nevertheless close again if, during the period specified in the closure notice in accordance with paragraph 28(8)(a) (or, where the period of 12 months specified in paragraph 28(10) applies, during that period) the number of the contractor’s registered patients rises to the number specified in the closure notice in accordance with paragraph 28(8)(d).

(5) Except in cases where the contractor’s list of patients is already open pursuant to sub-paragraph (3), the Primary Care Trust shall notify the contractor in writing between seven and fourteen days before the expiry of the period of closure specified in sub-paragraph (2), confirming the date on which the contractor’s list of patients will re-open.

(6) Where the details specified in the closure notice in accordance with paragraph 28(8) have been revised following discussions under paragraph 28(10), references in this paragraph to details specified in the closure notice are references to those details as so revised.

### **Rejection of closure notice**

**30.**—(1) This regulation applies where the Primary Care Trust rejects the closure notice in accordance with paragraph 28(12) (b).

(2) The contractor and the Primary Care Trust may not refer the matter for determination in accordance with the NHS dispute resolution procedure (or, where applicable, commence court proceedings) until the assessment panel has given its determination in accordance with the following sub-paragraphs.

(3) The Primary Care Trust must ensure that the assessment panel is appointed as soon as is practicable to consider and determine whether the contractor should be permitted to close its list of patients, and if so, the terms on which it should be permitted to do so.

(4) The Primary Care Trust shall provide the assessment panel with such information as the assessment panel may reasonably require to enable it to reach a determination and shall include in such information any written observations received from the contractor.

(5) The members of the assessment panel shall be—

- (a) the Chief Executive of the Primary Care Trust of which the assessment panel is a committee or sub-committee;
  - (b) a person representative of patients in an area other than that of the Primary Care Trust which is a party to the agreement; and
  - (c) a general medical practitioner or other person who, in the opinion of the Primary Care Trust of which the assessment panel is a committee or sub-committee, is representative of the interests of contractors provided that the practitioner or other person which is a party to the agreement does not practise or work within the area of the Primary Care Trust.
- (6) At least one member of the assessment panel shall visit the contractor before reaching a determination under sub-paragraph (7).
- (7) Within the period of 28 days beginning with the date on which the Primary Care Trust rejected the closure notice, the assessment panel shall—
- (a) approve the list closure; or
  - (b) reject the list closure,
- and shall notify the Primary Care Trust and the contractor of its determination in writing as soon as possible.
- (8) Where the assessment panel determines in accordance with sub-paragraph (7)(a) that the contractor's list of patients should close, it shall specify—
- (a) a date from which the closure shall take effect, which must be within a period of 7 days beginning with the date of the assessment panel's determination; and
  - (b) those details specified in paragraph 28(8)(a) to (d).
- (9) Where the assessment panel determines in accordance with sub-paragraph (7)(b) that the contractor's list of patients may not close, that list shall remain open, and the Primary Care Trust and the contractor shall enter into discussions with a view to ensuring that the contractor receives support from the Primary Care Trust which will enable it to continue to provide services safely and effectively.
- (10) Where the assessment panel determines in accordance with sub-paragraph (7)(b) that the contractor's list of patients may not close, the contractor may not submit a further closure notice as described in paragraph 28 until—
- (a) the expiry of a period of three months beginning with the date of the assessment panel's determination; or
  - (b) (if applicable) the final determination of the NHS dispute resolution procedure (or any court proceedings),
- whichever is the later, unless there has been a change in the circumstances of the contractor which affects its ability to deliver services under the agreement.

#### **Assignment of patients to lists: open lists**

**31.—(1)** A Primary Care Trust may, subject to paragraph 33, assign a new patient to a contractor whose list of patients is open.

- (2) In this paragraph and in paragraphs 32 and 34 to 36, a “new” patient means a person who—
- (a) is resident (whether or not temporarily) within the area of the Primary Care Trust;
  - (b) has been refused inclusion in a list of patients of, or has not been accepted as a temporary resident by, a contractor whose premises are within such an area; and
  - (c) wishes to be included in the list of patients of a contractor whose practice premises are within that area.

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### **Assignment of patients to lists: closed lists**

**32.**—(1) A Primary Care Trust may not assign a new patient to a contractor which has closed its list of patients except in the circumstances specified in sub-paragraph (2).

(2) A Primary Care Trust may, subject to paragraph 33, assign a new patient to a contractor whose practice premises are within the Primary Care Trust's area and which has closed its list of patients, if—

- (a) most or all of the providers of essential services (or their equivalent) whose practice premises are within the Primary Care Trust's area have closed their lists of patients;
- (b) the assessment panel has determined under paragraph 34(7) that patients may be assigned to the contractor in question, and that determination has not been overturned either by a determination of the Secretary of State under paragraph 35(13) or (where applicable) by a court; and
- (c) the Primary Care Trust has entered into discussions with the contractor in question regarding the assignment of a patient if such discussions are required under paragraph 36.

### **Factors relevant to assignments**

**33.** In making an assignment to a contractor under paragraph 31 or 32, the Primary Care Trust shall have regard to—

- (a) the wishes and circumstances of the patient to be assigned;
- (b) the distance between the patient's place of residence and the contractor's practice premises;
- (c) whether, during the six months ending on the date on which the application for assignment is received by the Primary Care Trust, the patient's name has been removed from the list of patients of any contractor or other provider of essential services (or their equivalent) in the area of the Primary Care Trust under paragraph 19 or its equivalent provision applying in relation to that contractor;
- (d) whether the patient's name has been removed from the list of patients of any contractor or other provider of essential services (or their equivalent) in the area of the Primary Care Trust under paragraph 20 or its equivalent provision applying in relation to that contractor and, if so, whether the contractor has appropriate facilities to deal with such a patient; and
- (e) such other matters as the Primary Care Trust considers to be relevant.

### **Assignments to closed lists: determinations of the assessment panel**

**34.**—(1) This paragraph applies where most or all of the providers of essential services (or their equivalent) whose practice premises are within the area of a Primary Care Trust have closed their lists of patients.

(2) If the Primary Care Trust wishes to assign new patients to contractors which have closed their lists of patients, it must prepare a proposal to be considered by the assessment panel which must include details of those contractors to which the Primary Care Trust wishes to assign patients.

(3) The Primary Care Trust must ensure that the assessment panel is appointed to consider and determine its proposal made under sub-paragraph (2), and the composition of the assessment panel shall be as described in paragraph 30(5).

(4) The Primary Care Trust shall notify in writing—

- (a) the relevant Strategic Health Authority; and
- (b) contractors or general medical services contractors whose practice premises are within the Primary Care Trust's area which—
  - (i) have closed their list of patients, and

(ii) may, in the opinion of the Primary Care Trust, be affected by the determination of the assessment panel,

that it has referred the matter to the assessment panel.

(5) In reaching its determination, the assessment panel shall have regard to relevant factors including—

(a) whether the Primary Care Trust has attempted to secure the provision of essential services (or their equivalent) for new patients other than by means of their assignment to contractors with closed lists of patients; and

(b) the workload of those contractors likely to be affected by any decision to assign such patients to their list of patients.

(6) The assessment panel shall reach a determination within the period of 28 days beginning with the date on which the panel was appointed.

(7) The assessment panel shall determine whether the Primary Care Trust may assign patients to contractors which have closed their lists of patients; and if it determines that the Primary Care Trust may make such assignments, it shall also determine those contractors to which patients may be assigned.

(8) The assessment panel may determine that the Primary Care Trust may assign patients to contractors other than those contractors specified by the Primary Care Trust in its proposal under sub-paragraph (2), as long as the contractors were notified under sub-paragraph (4)(b).

(9) The assessment panel's determination shall include its comments on the matters specified in sub-paragraph (5), and shall be notified in writing to—

(a) the Primary Care Trust;

(b) the relevant Strategic Health Authority; and

(c) those contractors which were notified under sub-paragraph (4)(b).

#### **Assignments to closed lists: NHS dispute resolution procedure relating to determinations of the assessment panel**

**35.**—(1) Where an assessment panel makes a determination under paragraph 34(7) that the Primary Care Trust may assign new patients to contractors which have closed their lists of patients, any contractor specified in that determination may refer the matter to the Secretary of State to review the determination of the assessment panel.

(2) Where a matter is referred to the Secretary of State in accordance with sub-paragraph (1), it shall be reviewed in accordance with the procedure specified in the following sub-paragraphs.

(3) Where more than one contractor specified in the determination in accordance with paragraph 34(7) wishes to refer the matter for dispute resolution, those contractors may, if they all agree, refer the matter jointly, and in that case the Secretary of State shall review the matter in relation to those contractors together.

(4) Within the period of 7 days beginning with the date of the determination by the assessment panel in accordance with paragraph 34(7), the contractor (or contractors) shall send to the Secretary of State a written request for dispute resolution which shall include or be accompanied by—

(a) the names and addresses of the parties to the dispute;

(b) a copy of the agreement (or agreements); and

(c) a brief statement describing the nature and circumstances of the dispute.

(5) Within the period of 7 days beginning with the date on which the matter was referred to him, the Secretary of State shall—

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- (a) give to the parties notice in writing that he is dealing with the matter; and
  - (b) include with the notice a written request to the parties to make in writing within a specified period any representations which they may wish to make about the dispute.
- (6) The Secretary of State shall give, with the notice given under sub-paragraph (5), to the party other than the one which referred the matter to dispute resolution a copy of any document by which the dispute was referred to dispute resolution.
- (7) The Secretary of State shall, upon receiving any representations from a party, give a copy of them to the other party, and shall in each case request (in writing) a party to which a copy of the representations is given to make within a specified period any written observations which it wishes to make on those representations.
- (8) For the purpose of assisting it in its consideration of the matter, the Secretary of State may—
- (a) invite representatives of the parties to appear before him to make oral representations either together or, with the agreement of the parties, separately, and may in advance provide the parties with a list of matters or questions to which he wishes them to give special consideration; or
  - (b) consult other persons whose expertise he considers will assist him in his consideration of the dispute.
- (9) Where the Secretary of State consults another person under sub-paragraph (8)(b), he shall notify the parties accordingly in writing and, where he considers that the interests of any party might be substantially affected by the result of the consultation, he shall give to the parties such opportunity as he considers reasonable in the circumstances to make observations on those results.
- (10) In considering the dispute, the Secretary of State shall consider—
- (a) any written representations made in response to a request under sub-paragraph (5)(b), but only if they are made within the specified period;
  - (b) any written observations made in response to a request under sub-paragraph (7), but only if they are made within the specified period;
  - (c) any oral representations made in response to an invitation under sub-paragraph (8)(a);
  - (d) the results of any consultation under sub-paragraph (8)(b); and
  - (e) any observations made in accordance with an opportunity given under sub-paragraph (9).
- (11) Subject to the other provisions of this paragraph and to any agreement by the parties, the Secretary of State shall have wide discretion in determining the procedure of the dispute resolution to ensure the just, expeditious, economical and final determination of the dispute.
- (12) In this paragraph, “specified period” means such period as the Secretary of State shall specify in the request, being not less than one, nor more than two, weeks beginning with the date on which the notice referred to is given, but the Secretary of State may, if the period for determination of the dispute has been extended in accordance with sub-paragraph (16), extend any such period (even after it has expired) and, where he does so, a reference in this paragraph to the specified period is to the period as so extended.
- (13) Subject to sub-paragraph (16), within the period of 21 days beginning with the date on which the matter was referred to him, the Secretary of State shall determine whether the Primary Care Trust may assign patients to contractors which have closed their lists of patients; and if he determines that the Primary Care Trust may make such assignments, he shall also determine those contractors to which patients may be assigned.
- (14) The Secretary of State may not determine that patients may be assigned to a contractor which was not specified in the determination of the assessment panel under paragraph 34(7).

(15) In the case of a matter referred jointly by contractors in accordance with sub-paragraph (3), the Secretary of State may determine that patients may be assigned to one, some or all of the contractors which referred the matter.

(16) The period of 21 days referred to in sub-paragraph (13) may be extended (even after it has expired) by a further specified number of days if an agreement to that effect is reached by—

- (a) the Secretary of State;
- (b) the Primary Care Trust; and
- (c) the contractor (or contractors) which referred the matter to dispute resolution.

(17) The Secretary of State shall record his determination, and the reasons for it, in writing and shall give notice of the determination (including the record of the reasons) to the parties.

#### **Assignments to closed lists: assignments of patients**

**36.**—(1) Before the Primary Care Trust may assign a new patient to a contractor, it shall, subject to sub-paragraph (3), enter into discussions with that contractor regarding additional support that the Primary Care Trust can offer the contractor, and the Primary Care Trust shall use its best endeavours to provide appropriate support.

(2) In the discussions referred to in sub-paragraph (1), both parties shall use reasonable endeavours to reach agreement.

(3) The requirement in sub-paragraph (1) to enter into discussions applies—

- (a) to the first assignment of a patient to a particular contractor; and
- (b) to any subsequent assignment to that contractor to the extent that it is reasonable and appropriate having regard to the numbers of patients who have been or may be assigned to it and the period of time since the last discussions under sub-paragraph (1) took place.