

SCHEDULE 1

OTHER CONTRACTUAL TERMS

PART 5

Complaints

Complaints procedure

22.—(1) The contractor shall establish and operate a complaints procedure to deal with any complaints in relation to any matter reasonably connected with the provision of services under the contract and that procedure shall comply with the requirements of paragraphs 23, 25 and 27.

(2) The contractor shall take reasonable steps to ensure that patients are aware of—

- (a) the complaints procedure;
- (b) the role of the PCT and other bodies in relation to complaints about services under the contract; and
- (c) their right to assistance with any complaint from independent advocacy services provided under section 248 (independent advocacy services).

(3) The contractor shall take reasonable steps to ensure that the complaints procedure is accessible to all patients.

Making of complaints

23.—(1) A complaint may be made by or, with his consent, on behalf of a patient or former patient, who is receiving or has received services under the contract, or—

- (a) where the patient is a child, by—
 - (i) a parent;
 - (ii) a person duly authorised by a local authority to whose care the child has been committed under the provisions of the Children Act 1989; or
 - (iii) a person duly authorised by a voluntary organisation by which is accommodating the child under the provisions of that Act; or
- (b) where the patient is incapable of making a complaint, by a relative or other adult person who has an interest in his welfare.

(2) 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 falls within sub-paragraph (1)(a)(ii) or (iii), by the local authority or voluntary organisation.

Period for making complaints

24.—(1) Subject to sub-paragraph (2), the period for making a complaint is—

- (a) 6 months beginning with the date on which the matter which is the subject of the complaint occurred, or
- (b) 6 months beginning with the date on which the matter which is the subject of the complaint comes to the complainant's notice provided that the complaint is made no later than 12 months after the date on which the matter which is the subject of the complaint occurred.

(2) Where a complaint is not made during the period specified in sub-paragraph (1), it shall be referred to the person nominated under paragraph 25(2)(a) and if he is of the opinion that—

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- (a) having regard to all the circumstances of the case, it would have been unreasonable for the complainant to make the complaint within that period; and
 - (b) notwithstanding the time that has elapsed since the date on which the matter which is the subject of the complaint occurred, it is still possible to investigate the complaint properly,
- the complaint shall be treated as if it had been received during the period specified in sub-paragraph (1).

Further requirements for complaints procedures

25.—(1) A complaints procedure shall also comply with the requirements set out in sub-paragraphs (2) to (6).

(2) The contractor must nominate—

- (a) 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 the operation of the complaints procedure and the investigation of complaints; and
- (b) a partner, or other senior person associated with the contractor, to be responsible for the effective management of the complaints procedure and for ensuring that action is taken in the light of the outcome of any investigation.

(3) All complaints must be—

- (a) either made or recorded in writing;
- (b) acknowledged in writing within the period of 3 working days beginning with the day on which the complaint was made or, where that is not possible, as soon as reasonably practicable; and
- (c) properly investigated.

(4) Within the period of 10 working days beginning with the day on which the complaint was received by the person specified under sub-paragraph (2)(a) or, where that is not possible, as soon as reasonably practicable, the complainant must be given a written summary of the investigation and its conclusions.

(5) Where the investigation of the complaint requires consideration of the patient's ophthalmic records, the person specified in sub-paragraph (2)(a) must 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 an employee of the contractor.

(6) The contractor must keep a record of all complaints and copies of all correspondence relating to complaints for a period of at least two years from the date on which such complaints were made, but such records shall be kept separate from patients' ophthalmic records.

Co-operation with investigations

26.—(1) The contractor shall co-operate with—

- (a) any investigation of a complaint in relation to any matter reasonably connected with the provision for services under the contract undertaken by—
 - (i) the PCT; and
 - (ii) the Commission for Healthcare Audit and Inspection; and
- (b) any investigation of a complaint by an NHS body or local authority which relates to a patient or former patient of the contractor.

(2) In sub-paragraph (1)—

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“NHS body” means a Primary Care Trust, an NHS trust, an NHS foundation trust, a Strategic Health Authority, a Local Health Board, a Health Board, a Health and Social Services Board, a Health and Social Services Trust or a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978(1); and

“local authority” means—

- (a) any of the bodies listed in section 1 of the Local Authority Social Services Act 1970 (2)(local authority);
 - (b) the Council of the Isles of Scilly; or
 - (c) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(3) (constitution of councils).
- (3) The co-operation required by sub-paragraph (1) includes—
- (a) answering questions reasonably put to the contractor by the PCT;
 - (b) providing any information relating to the complaint reasonably required by the PCT; 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 at the meeting is reasonably required by the PCT.

Provision of information

27. The contractor shall inform the PCT, at such intervals as it shall agree with the PCT, of the number of complaints it has received under the procedure established in accordance with this Part.

(1) 1978 c.29.

(2) 1970 c. 42; s. 1 was amended by the Local Government Act 1972 (c. 70), s. 170.

(3) 1994 c. 39.