



3rd EDITION – 2nd June 2008

New GOS Contracts (England)

Guidance from the Representative Bodies

Prepared by ABDO, AOP, BMA and FODO

This guidance applies to both mandatory (GOS) services and additional (domiciliary) services contracts. It should be read in conjunction with the timetable guidance issued on 15th April. Model letters to use with PCTs in line with that guidance are attached. ([Annex A](#)) (Page 10)

The Department of Health with the representative bodies has developed model contracts for mandatory and additional services. These, together with copies of the new regulations and Department of Health guidance to PCTs are available on the Primary Care Contracting and Department of Health websites.

The Department of Health is recommending these model contracts for use in every case by PCTs.

Context

As we had agreed with Ministers and discussed with the profession, the new contracts take forward the existing GOS arrangements combined with other existing requirements.

The new arrangements are described below.

At the outset of negotiations the Department of Health sought to introduce a large number of new requirements that had been developed for the new contracts for other professions. These have been rigorously resisted and no longer appear in the model contracts.

Additionally some existing legal requirements, which are themselves good practice and were available as discretionary powers to PCTs, have been made explicit within the new contracts.

Further advice is available from your representative body – details on Page 9.

1. The New Arrangements

From 1 August 2008 in England, PCTs' ophthalmic and supplementary lists will be replaced by a single performers list of optometrists and OMPs for each PCT.

All optometrists and OMPs will be on a single PCTs performers list, regardless of whether they also have a contract to provide GOS.

GOS contracts will replace the current GOS Terms of Service contained in regulations. All contractors will have to sign the new contract. Each GOS contract will relate to an individual practice or business.

Optometrists and businesses currently on an ophthalmic list will be entitled to a new GOS contract.

2. What You Should Do

PCTs in England have until 31 July 2008 to put the new arrangements in place. It is their responsibility to ensure that optometrists (or bodies corporate) currently on an ophthalmic list are given a new GOS contract and that all the optometrists and OMPs in their area are transferred automatically to the performers list.

However, as we explained in our timetable advice on 15 April, you should take steps to indicate to your PCT that either you want a GOS contract or that you want to be transferred to the performers list or both. Do not rely on your PCT making the necessary contracts in time.

If the person or company, for whom you are currently acting as a 'grandfather' or 'front man/woman', wants a GOS contract, they will probably be able to obtain one. But they will have to apply for a contract separately. Optometrists and OMPs should be transferred to their PCT's performers list from the current ophthalmic list, but check with your PCT in writing as soon as possible.

Please see model letters attached at [Annex A](#). (Page 10)

3. NHS Contracts

Regulation 10 provides for the new contracts to be either ordinary contracts or NHS contracts.

NB: Contractors need to make an active choice either to be a health service body and have an NHS contract, or not. (Part 3, clause 14)

NHS Contracts are explained at [Annex B](#). (Page 16)

4. Warranties

Both the contractor and PCT undertake that the information they have provided for the contract is true, accurate and not deficient in any significant regard. This is normal with contracts. *(Part 5, clauses 19-22)*

5. Duty of Care

Again, as is normal, contractors are required to carry out their duties under the contract in a timely fashion and with reasonable care and skill. *(Part 6, clause 23)*

6. Clinical References

GOS performers already have to be on the GOC register (GMC for OMPs) and on a PCT ophthalmic performers list. Existing Terms of Service already require performers to provide clinical references and good practice suggests that the contractor will have checked them and that staff are suitably qualified and competent.

The new regulations *(Schedule 1, Part 3, paragraphs 8-11)* and contracts *(Part 10, clauses 45-51)* therefore require contractors

- to check that performers are registered with the GOC/GMC and on a PCT's ophthalmic performers list
- to have checked and be satisfied with their clinical references
- to have taken reasonable steps to satisfy themselves that staff assisting in the provision of GOS have the qualifications, training and experience to do so.

7. CRB Checks

Legislation provides for PCT's to have access to enhanced criminal records certificates for all registered practitioners, and following the transition, PCTs will require an enhanced CRB check for all new performers. The Department of Health has confirmed that PCTs already have arrangements in place to provide these for other professions and that PCTs will meet the costs.

8. What is available under GOS

Under the Sight Testing Regulations 1989, when a practitioner is testing sight they have to carry out:

- (i) an examination of the external surface of the eye and its immediate vicinity,
- (ii) an intra-ocular examination, either by means of an ophthalmoscope or by such other means as the doctor or optician consider appropriate,
- (iii) such additional examinations as appear clinically necessary."

for the purposes of detecting signs of injury, disease or abnormality in the eye or elsewhere.

Further guidance is available at the AOP website. (www.aop.org.uk/gos/gos_examine.html)

Under the contract, a contractor may not seek to mislead a patient about the availability, quality or extent of services available under these arrangements. (*Regulations Schedule 1, Part 2, Paragraph 3: Contract Clause 26*)

This does not however in any way rule out contractors offering services to patients privately which are not part of GOS as they have always done.

9. Inducements

The regulations include a specific prohibition on inducements by domiciliary providers to third parties. (*Regulations, Schedule 2, paragraph 7; Contract, Part 11, clause 73*) This is specifically designed to prohibit contractors from offering, for example, free gifts or free sight tests or spectacles to managers or staff of care homes in return for being able to provide domiciliary sight tests to their patients. It does not rule out generic training for care home staff as long as this is not specifically linked to the provision of NHS sight tests or sales by the contractor concerned. In cases of doubt PCTs will have to consider each case on its merits.

This prohibition specifically does not rule out normal offers to patients by either domiciliary or community optical practices.

10. Referral & GP notification

In line with the previous Terms of Service, Part 8, clause 31.3 of the contract requires a contractor or performer, on finding signs of injury, disease or abnormality, (if appropriate), to:

“refer the patient to an ophthalmic hospital, which includes an ophthalmic department of a hospital,”

However the guidance issued by the Department of Health states:

“Equally, if it is appropriate to refer the patient to a GP or another optometrist then they may do that. The decision on where it would be appropriate to refer the patient will be determined by the particular case and justified by the practitioner in their patient notes. Referral should always be appropriate for the particular patient.”

As health care professionals, practitioners should continue to make referrals in the best interest of their patients.

11. Patient & Public Safety

The requirements of the Medicines and Healthcare products Regulatory Agency (MHRA) in respect of product assembly and of health and safety legislation are not new but are now made explicit in the contract. (Part 7, clause 28)

In relation to infection control this relates to the basic requirements of:

- Hand hygiene
- Disinfection of instruments (e.g. tonometer heads) or contact lenses that touch the surface of the eye
- Basic infection control (e.g. chin rests)

The guidance issued by the College of Optometrists and ABDO applies. We will also be consulting LOCs, and working with the College and ABDO to see if further guidance would be helpful.

Meanwhile, these requirements should not be construed as a means of introducing clinical governance into GOS by the backdoor. The Department of Health has confirmed that clinical governance is not a requirement under the new contract.

“Unlike other contractor professions, for example the dental contract, there is no express provision for clinical governance in the GOS contract.

The Dental contract states:

The Contractor shall comply with such clinical governance arrangements as the PCT may establish in respect of contractors providing services under a general dental services contract.”

Department of Health

12. Provision of information

The contract requires contractors to produce information which the PCT reasonably requires in relation to the contract or its wider functions. These wider functions can only be in relation to provisions of the contract. *(Part 11, clause 59)*

PCT requests have to be reasonable and the guidance issued by the Department of Health is clear that:

“The Regulations specifically refer to information that is ‘reasonably required’ and the law requires that PCTs have regards to this in framing any requests; otherwise their requests may be challenged by the contractor.”

The Department has confirmed that clause 59.2 does not empower PCTs to construct a clinical governance system which, as indicated above, is not included in the GOS Regulations or contract.

We will be asking LOCs (with LMCs) to monitor PCTs' use of this flexibility to ensure there is no abuse and if necessary we will support members through the NHS dispute procedure, or seek wider legal sanction in cases of abuse.

13. GOS Complaints

As now, contractors have to comply with the NHS complaints procedure in respect of the GOS they provide, and these requirements are replicated at Part 17 of the contract *(clauses 101-116)*. See [Annex C](#). (Page 19)

Contractors also have to report the number of complaints to the PCT “at such intervals as shall be agreed”. ***For the convenience of all, it is our strong recommendation that members should agree to provide the number annually (by 30 June in respect of the previous financial year).***

14. Patient Eligibility

Under existing legislation contractors do not have the right to refuse to provide an NHS sight test to patients on grounds of race, gender, social class, age, religion, sexual orientation, appearance, disability or medical or ophthalmic condition. These requirements are reflected in the new contract. *(Part 9, clause 39)*

NB: This does not prevent a practitioner from referring or recommending a patient sees another practitioner who may have particular skills or a special interest in, a particular group of patients or patients with a particular condition, with the patient’s agreement.

The right to refuse to see a patient remains, but if, exceptionally, the contractor does have to refuse GOS to a patient, other than because the patient is not eligible for an NHS sight test, they must record this information and make it available to the PCT on request. *(Part 9, clause 40)*

15. Students

We have also been able to use this opportunity to clarify with the Department of Health the longstanding issue of the eligibility of students under age 19 who find themselves between schools or between schools and university over the summer vacation.

The Primary Ophthalmic Services Guidance (*paragraph 4*) makes clear that a letter stating that a student is a pupil or will be starting as a pupil in the autumn term, or confirming that a student has been accepted on a course for the autumn term, should be sufficient proof of their eligibility for a GOS sight test during the long vacation.

16. Partners, Directors and Chief Executives

The probity conditions which already apply to owners, partners and directors of practices or optical bodies corporate i.e. that they shall not be convicted of a serious crime, bankrupt, barred from running a business etc, now also explicitly apply to the chief executives and company secretaries of those bodies.

If a PCT judges that an incoming partner, director, chief executive or company secretary of a contractor is not a suitable person to be a GOS provider, they will notify the contractor to that effect. The contractor may then remove that person from the post within 28 days (including to a different post within the organisation pending further enquiries) without the contract becoming invalid.

17. Gifts

For the purposes of transparency and probity it is good practice for contractors and their staff (in any sector) to keep a record of significant gifts from patients or suppliers. Under the contract, contractors have to keep a register of all gifts over an estimated value of £100 and make it available to the PCT on request. (*Part 5, clauses 92-97*)

18. Breach Notices

Currently, when PCTs visit a practice, they normally follow up the visit with a letter setting out anything that needs be corrected in order to continue providing GOS.

Under the new contract system, this has to be more formalised. Consequently the new regulations give PCTs power to issue a breach notice to contractors. (*Part 19, clauses 162-169*) The breach notice will normally give the contractor 28 days to rectify the problem. (*Part 19, clause 164*)

Should exceptionally the contractor not take steps to rectify the breach, the PCT may terminate the contract. However the PCT has to give the contractor written notice of this. (*Part 19, clause 165*)

19. Information Leaflets for Domiciliary Providers

Existing Terms of Service require optometric practices to display a poster (if provided by the PCT) setting out what is available under GOS, opening hours etc. Most have also developed practice information leaflets.

Domiciliary companies have also developed their own information leaflets.

To ensure patients are aware of the services on offer, this is now a requirement for domiciliary providers under the new additional services contract. (*Regulation 19, Schedule 2, paragraph 3*) The details of the requirement are set out at *Schedule 4* of the contract.

Rather than having to have a PCT-specific leaflet for every PCT, the Department of Health has agreed that contractors may have a generic leaflet which states that the contact details for the PCT (address, telephone, website) are available on request. (*Regulations Schedule 3, paragraph 11*)

20. Late Payment Notice

Just as PCTs can pursue contractors for late payments, so the contract now gives the contractor the right to issue a “late payment notice” to the PCT if a PCT fails to make payments due to the contractor. (*Part 19, clause 146*) If the PCT fails to respond appropriately, the contractor can refer the matter to the NHS dispute resolution procedure.

21. Variation of Contract

The contract can be varied by agreement between the contractor and PCT at any time. (*Part 19, clause 124*)

However the model contracts have been agreed with the representative bodies as reflecting the new regulations. Members are strongly advised to consult their LOC or representative body before agreeing to any variations to the agreed contract as published.

PCTs may only vary the contract unilaterally if this is necessary to comply with the change in the law. (*Part 19, clause 125*) They must however notify the contractor if they plan to do so. Without agreement they may not do so in any other circumstances. (*Part 19, clause 125.2*)

The PCT must however vary the contract to reflect a change in a contractor’s partnership. (*Part 19, clause 136*)

22. Termination of contract

As under existing arrangements, a contract can be terminated by agreement at any time.

23. Frequently Asked Questions

As we move through the transition period and beyond, we will maintain a section of our websites for FAQs which we will update regularly in the light of issues that arise.

Members are asked to contact their representative body as soon as an issue arises on which further guidance would be welcomed.

24. Contacts

Association of British Dispensing Opticians

Katie Docker: **Tel:** 01227 733912

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Federation of Ophthalmic and Dispensing Opticians

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Annex A

Standard letters

MANDATORY SERVICES (GOS) STANDARD CONTRACT LETTER

[Officer Name

PCT Name

Address]

[Date – NB No later than 30 June 2008]

GOS Contract[s] – [PCT List Number]

[We/the following practices] are currently on the ophthalmic list and provide general ophthalmic services (GOS) in your area.

As you know, under the new Primary Ophthalmic Services and GOS Contracts Regulations, the current ophthalmic list system is to be replaced by new GOS contracts for mandatory and additional services from 1 August 2008. Under the transitional regulations, existing providers have a right to a new contract[s] under the new arrangements.

As an existing provider please accept this letter as notice of our intention to continue to provide GOS services under the new arrangements which we understand will be effective from 1st August 2008.

We look forward to receiving our draft contract(s) from you in due course.

Yours sincerely

[name]

ADDITIONAL SERVICES (DOMICILIARY) STANDARD CONTRACT LETTER

[Officer Name

PCT Name

Address]

[Date – NB No later than 30 June 2008]

GOS Contract[s] – [PCT List Number]

[We/the following practices] are currently on the ophthalmic list and listed to provide mobile general ophthalmic services (GOS) in your area.

As you know, under the new Primary Ophthalmic Services and GOS Contracts Regulations, the current ophthalmic list system is to be replaced by new GOS contracts for mandatory and additional services from 1 August 2008. Under the transitional regulations, existing providers have a right to a new contract[s] under the new arrangements.

As an existing provider please accept this letter as notice of our intention to continue to provide mobile GOS services under the new arrangements which we understand will be effective from 1st August 2008.

We look forward to receiving our draft contract(s) from you in due course.

Yours sincerely

[name]

MANDATORY AND ADDITIONAL SERVICES (FIXED PRACTICE THAT ALSO OFFERS DOMICILARY) STANDARD CONTRACT LETTER

[Officer Name

PCT Name

Address]

[Date – NB No later than 30 June 2008]

GOS Contract[s] – [PCT List Number]

[We/the following practices] are currently on the ophthalmic list and provide both general ophthalmic services (GOS) and mobile services in your area.

As you know, under the new Primary Ophthalmic Services and GOS Contracts Regulations, the current ophthalmic list system is to be replaced by new GOS contracts for mandatory and additional services from 1 August 2008. Under the transitional regulations, existing providers have a right to a new contract[s] under the new arrangements.

As an existing provider please accept this letter as notice of our intention to continue to provide GOS and services under the new arrangements which we understand will be effective from 1st August 2008.

We look forward to receiving our draft contract from you in due course.

Yours sincerely

[name]

**GRANDFATHERS STANDARD CONTRACT LETTER FROM PRACTICES USING A
“GRANDFATHERING” ARRANGEMENT**

[Officer Name
PCT Name
Address]

[Date – by 31 May 2008]

GOS Contract[s]

As you will be aware, the current NHS ophthalmic list system will be replaced by new GOS contract arrangements from 1 August 2008. We/the following practices currently provide GOS services to patients in your area under a “grandfathering” arrangement(s).

We are writing to confirm that we/the above practices would like a new GOS mandatory services/additional services/mandatory and additional services contract(s) under the new arrangements from 1 August 2008.

As we/they are already/have been operating under the “grandfathering” arrangements [for some time] we hope that, in accordance with the Department of Health guidance, you will be able to streamline as much of the application process as possible for us.

We look forward to working with you to ensure continuity of service to our patients through the transition period and look forward to having new contracts in place by the 1 August commencement date.

We look forward to working with you on this.

Yours sincerely

[name]

GRANDFATHERS – TRANSFER TO PERFORMERS LIST LETTER - FROM PRACTITIONERS CURRENTLY ACTING AS A “GRANDFATHER”

[Officer Name]

[PCT name]

[Address]

[DATE – NB no later than 13 June 2008]

Dear [INSERT NAME]

GOS Contracts – [PCT LIST NUMBER]

I am currently on the ophthalmic list as a grandfather providing general ophthalmic services (GOS) in your area.

Under the new Primary Ophthalmic Services and GOS Contracts Regulations the current ophthalmic list system is to be replaced by new GOS contracts for mandatory and additional services from 1 August 2008. The transitional regulations allow for existing providers to be transferred from the Ophthalmic List to the Performers List as those optometrists/ophthalmic medical practitioners will cease to be grandfathers/providers.

As an existing provider of GOS services please accept this letter as a notice of my intention to continue to perform GOS services under the new arrangements which come into effect on 1 August 2008.

Yours sincerely

OPHTHALMIC PERFORMERS LIST STANDARD LETTER

[Officer Name
PCT Name
Address]

[Date – NB no later than 30 June 2008]

Ophthalmic Performers List – [Current PCT List Number]

I am currently on the [ophthalmic/supplementary ophthalmic] list of your PCT to [provide/perform] General Ophthalmic Services (GOS) in your area.

As you know, under the new Primary Ophthalmic Services and GOS Contract Regulations, the current ophthalmic list system to be replaced by new GOS contracts for mandatory and additional services from 1 August 2008. Under the transitional regulations, existing providers and performers have a right to be transferred automatically to the new ophthalmic performers list under the new arrangements.

As an existing [provider/performer] I am writing to ask you to accept this letter as notice of my intention to continue to perform GOS under the new arrangements, which I understand to be effective from 1 August 2008.

I look forward to receiving in due course your written confirmation that I will be transferred to your ophthalmic performers list by 1 August 2008.

I declare that I am not applying to be transferred to the ophthalmic performers list of any other PCT in England.

Yours sincerely,

[name]

Annex B

NHS Contracts

Regulation 10 provides for the new contracts to be either ordinary contracts or NHS contracts.

How should I choose between remaining as I am or becoming a Health Service Body (NHS Contracts)?

Contractors need to make an active choice either to be a health service body and have an NHS contract; or remain as they are (not an NHS body) and have a non-NHS contract

What are NHS Contracts?

Created when the NHS internal market was introduced in 1990, NHS contracts were entered into between health service bodies.

NHS contracts were originally developed to enable health authorities to contract with NHS hospitals without the need for expensive legal contracts. Since then, NHS contracts have been increasingly applied to the contractor professions.

Is there any Difference between NHS and Non-NHS contracts?

The only difference between NHS contracts and non-NHS contracts is the NHS dispute resolution procedure, which includes a binding arbitration mechanism.

[NB This applies only to disputes between PCTs and contractors about the contract terms and interpretation. It has nothing whatsoever to do with patients' complaints which are dealt with separately.]

With an NHS contract, either the contractor or the PCT can refer the matter to the NHS dispute resolution procedure with or without the other's consent.

Under a non-NHS contract, the PCT and contractor can refer any dispute to the NHS dispute resolution procedure by consent. Equally the contractor can refer a dispute to NHS dispute resolution procedure without the PCT's agreement. However the PCT cannot refer a dispute to the NHS dispute resolution procedure without the contractor's agreement.

Which is better?

On the face of it therefore, the non-NHS contract would seem to offer an advantage to contractors over the NHS contract. However, this is a matter for each contractor to decide.

We understand that increasingly GPs and dentists are opting to become health service bodies and have NHS contracts rather than non-NHS contracts because they find the NHS dispute procedure a simple, easy and fair way of dealing with disputed contractual terms.

Views have also been expressed that PCTs may find NHS contracts more familiar and reassuring to deal with and so both parties might find the relationship easier.

Others have even suggested that being a health service body might encourage the PCTs to look more favourably on those contractors when it comes to investment in such areas in future as NHS IT - although there is no evidence for this and the negotiating bodies would always strongly resist any unfair treatment between contractors.

Ultimately, however, the issue is finely balanced and one for each contractor to decide in the light of their own local circumstances, history of trust and joint working with their PCT and how they think the future might develop.

It is also worth remembering that contractors can opt into or out of NHS contract status at any time (other than when the dispute resolution procedure has been initiated).

Monitoring

We will of course be monitoring the situation closely and, if difficulties emerge with either NHS or non-NHS contracts, will both seek to inform members immediately as well as to resolve the issue with the PCT concerned.

Where an issue has national implications, we will also take it up with the Department of Health.

If I opt to have a NHS contract will I be subject to inspection by the Care Quality Commission?

No, currently the remit of the Care Quality Commission does not include optometry. Although that may change in the future, any change would have to be negotiated with the representative bodies. We would inform you of this in advance, as well as issuing further advice if necessary. This is unaffected by whatever decision you make on whether to be a Health Service Body.

NHS Dispute Resolution Procedure

The NHS dispute resolution procedure covers any dispute arising out of or in connection with the contract including before it is agreed or after the contract has been terminated.

With an NHS contract, either the contractor or the PCT can refer the matter to the NHS dispute resolution procedure with or without the other's consent.

Under a non-NHS contract, the PCT and contractor can refer any dispute to the NHS dispute resolution procedure by consent. Equally the contractor can refer a dispute to NHS dispute resolution procedure without the PCT's agreement. However the PCT cannot refer a dispute to the NHS dispute resolution procedure without the contractor's agreement.

The NHS dispute resolution procedure can be invoked by a contractor at any time. However disputes have to be raised within three years of the date on which the matter giving rise to the dispute happened or should reasonably have come to the attention of the party wishing to dispute the issue.

To activate a dispute you must set out in writing

- the names and addresses of the parties to the dispute (ie contractor and PCT)
- a copy of the contract
- a brief statement of the nature and circumstances of the dispute.

Further details are set out at paragraphs 33-34 of Schedule 1 to the General Ophthalmic Services Contract Regulations 2008.

The representative bodies are happy to advise members who believe a dispute issue may arise or has arisen. The sooner they are contacted, the easier a resolution may be.

Annex C

GOS Complaints

The existing requirement to comply with the NHS complaints procedure in respect of the GOS they provide is replicated in the contract. *(Part 17 clauses 101-116)*

In brief contractors have to

- take reasonable steps to ensure the patients are aware of the NHS complaints procedure, who does what under the procedure (role of PCT etc) and their rights to assistance under the NHS independent advocacy service (This can be by means of a poster, practice leaflet or other means)
- nominate a partner or senior person to be responsible for the effective management for the NHS complaints procedure and ensure that action is taken in the light of the outcome of any complaints
- nominate a person to investigate complaints.

As now, complaints about GOS have to be in writing within six months of the date of which the issue occurred or from the date on which it came to the complainant's attention (provided this is no later than 12 months after the date on which it occurred).

The contractor has to

- acknowledge the complaint in writing within three working days (or as soon as practicable thereafter)
- investigate the complaint properly
- send the complainant a written summary of the investigation and its conclusions within 10 working days (or as soon as practicable thereafter).

The contractor is required to keep a record of all complaints and copies of all correspondence related to the complaints for a period of at least two years. However these must be kept separate from the patient's optical records. The contract provides for contractors to report to the PCT "at such intervals as shall be agreed" the number of complaints it has received under the NHS complaints procedure. *(Part 17, clause 115)* ***It is our strong recommendation that everyone should agree to provide the number annually (by 30 June in respect of the previous financial year).***

Contractors need to agree a time interval, but the time interval specification may be left blank if, by 1 August 2008, time has not permitted the agreement of an interval with the PCT. This does not invalidate the contract.