

**Background Information to,  
and Service Specification for,  
South of England NHS Complaints Advocacy Service**

**Part 1:**

**Background Information to NHS Complaints Advocacy Service**

**Part 2:**

**Service Specification for NHS Complaints Advocacy Service**

**Part 3:**

**NHS Complaints Advocacy Contract**

**[sample DH ICAS contract, which will need amendments/ alterations]**

**Appendix 1:** Existing ICAS recording categories

**Appendix 2:** Indicative ICAS funding for participating south of England local authorities

**Appendix 3:** NHS Complaints Process

**Appendix 4:** The Role of the Parliamentary and Health Ombudsman

## Part 1: Background Information to NHS Complaints Advocacy Service

### 1. Introduction

1.1 The new NHS Complaints Advocacy Service will ensure that independent advocacy skills are used to provide practical support and direction to Clients, in order to assist them in finding a resolution to their complaint about Health Services in the following local authority areas, hereafter known as The Commissioners:

- Buckinghamshire County Council
- Oxfordshire County Council
- Reading Borough Council
- Southampton City Council
- Surrey County Council
- West Berkshire Council
- [other councils to be inserted here]

1.2 The NHS Complaints Advocacy Service will be fully compliant with *Local Authority Social Services and National Health Service Complaints (England) Regulations 2009* and relevant regulations of the *Health and Social Care Act 2012*

### 2. Background

2.1 The *Health and Social Care Act 2012* puts a duty of Local Authorities to commission a local NHS Complaints Advocacy Service.

2.2 Local authorities are required to commission:  
'the provision of assistance for individuals making or intending to make an NHS complaint (which includes a complaint to the Health Service Ombudsman)'.  
The NHS complaints process covers:

- All NHS Trusts and NHS Bodies including NHS Foundation Trusts
- Family Health Services provided for the NHS by GPs, Dentists, Opticians or Pharmacists.
- Primary Care Trusts
- Private health care establishments if the treatment has been paid for by the NHS
- All other health services commissioned by NHS funding

2.3 This contract will provide the service described in 2.2 across the Local Authority Areas listed in 1.1.

2.4 The advocacy service provider's direct contractual relationship will be with [insert lead local authority]. [Insert lead local authority] will be responsible for monitoring, reviewing the service, via quarterly contract monitoring meetings, and

co-ordinating communication between participating local authorities and the service provider.

**2.5** The NHS Complaints Advocacy Service will have a contractual obligation to report to and work closely with each individual local authority as listed in 1.1 and its respective local Healthwatch.

### **3. General Overview**

**3.1** The Commissioners require that the service provider for this contract needs to clearly demonstrate experience of the provision of advocacy including experience of working with children and young people.

**3.2** We recognise many advocacy organisations do not work with both adults and children and young people and therefore we would welcome a consortium or other types of multi-agency bid, as well as bids from single organisations with the relevant experience.

**3.3** Applicants would be required to source their own premises from which to deliver the services described in this tender. Tenders need to describe indicative costs of the accommodation, which will include a secure storage area, where the service will be able to safely store case records. The office will be equipped with telephones, and have facilities for the installation of computers.

**3.4** The contract will start on 1<sup>st</sup> April 2013 and extend to 31<sup>st</sup> March 2014 in the first instance and, subject to the continuation of funding and satisfactory performance, may be extended for a further 1 year.

**3.5** It is expected the service will have 673 [adjust according to inclusion of additional LAs] referrals per year across all six [adjust according to inclusion of additional LAs] local authority areas based on data from SEAP for the year ending 31<sup>st</sup> March 2012.

### **4. Implementation Requirements**

**4.1** Bidders are advised to consider the application or otherwise of TUPE to this Invitation and to seek independent legal advice on the matter if they believe it to be necessary. Tenders will be considered on the basis that such matters have been accounted for in the tendered price.

**4.2** The indicative budget for this contract is [combined budget to be confirmed] per annum (this contract will have a fixed budget with no inflationary uplifts).

## Part 2: The Service Specification for South of England NHS Complaints Advocacy Service

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**[insert local authority names]** will be referred to throughout this document as ***The Commissioners***.

### 5. Scope

5.1 NHS Complaints Advocacy Service will be commissioned by **[insert lead local authority]** on behalf of the following local authorities:

- **[insert participating local authorities]**

5.2 The key aspect of the role of the NHS Complaints Advocacy Service is the focus on empowering and assisting people to go through the NHS Complaints procedure.

5.3 The NHS Complaints Advocacy Service will deliver services that meet the legal requirements as described in the Health and Social Care Act 2012 and any other regulations.

5.4 The NHS Complaints Advocacy Service will support Clients with a complaint or grievance related to any aspect of healthcare as described in the *Health and Social Care Act 2012* including that which falls under the jurisdiction of the Health Service Ombudsman, such as complaints about poor treatment or service provided through the NHS in England.

5.5 The Health Service Ombudsman looks into complaints against NHS services provided by hospitals, health authorities, trusts, GPs, dentists, pharmacists, opticians and other health care practitioners. The Health Service Ombudsman can also investigate complaints against private health contractors if the treatment was funded by the NHS.

5.6 The NHS Complaints Advocacy Service will not provide on-going advocacy for Clients outside of the health related complaint. If appropriate, referrals will be made to local advocacy services to provide on going support. Also when appropriate make referrals to PALS, professional bodies such as the GMC, and to specialist support such as medico-legal advice, bereavement support, mental health support, etc.

5.7 The Contractor will have an understanding of the diverse cultural background of service users from across all Local Authority areas listed in 5.1

### 6. Requirements

#### 6.1 Functional Requirements

6.1.1 The objects of the service are:

- to deliver the Independent Advocacy Services as described in the *Health and Social Care Act 2012* and any other relevant regulations for the local authority areas listed in 5.1
- To work closely with local Healthwatch organisations to inform them of trends of complaints within their local authority area
- To work closely with relevant health and wellbeing boards, clinical commissioning groups and local authority scrutiny committees.

**6.1.2** The Contractor is required to deliver the services to all residents and temporary residents (including prisoners, holiday-makers, students, Gypsies and travellers, and children and young people on placement) within the local authority areas listed in 5.1.

**6.1.3** The Contractor must make appropriate arrangements with similar providers of NHS Complaints Advocacy Services to ensure that the wish of the client is respected as regards to in which locality the complainant would like to pursue their case.

## **6.2 Performance requirements**

**6.2.1** The Contractor is required to empower and assist people to go through the NHS complaints procedure. The Contractor will focus on providing support at each of the following points or activities in the NHS complaints procedure, those being:

- Identifying what the available options and possible outcomes are, and deciding which option to take
- Making the complaint to the appropriate service provider
- Deciding how to proceed with the complaint, following a service providers initial response
- Complete the local resolution phase by attending meetings or entering into correct correspondence
- Making a complaint to the Parliamentary and Health Service Ombudsman
- Understanding the Health Service Ombudsman's final decision

**6.2.2** The Contractor will ensure that it meets the demands of the people seeking support during all working days, excluding statutory bank holidays.

- The accepted hours for statutory bodies making a referral to the NHS Complaints Advocacy Service are [9am – 5pm?].
- An answer-machine service should be available outside these hours to facilitate contact with the service.

**6.2.3** The Contractor is required to promote understanding and awareness about the NHS Complaints Advocacy Service to NHS and social service staff and patients to facilitate access to the service.

**6.2.4** The people the NHS Complaints Advocacy Service will be required to support will be associated with a wide range of personal, social, economic and health problems as well as reflecting the multi-cultural ethnic diversity of the [insert

xx local authorities]. The Contractor will be required to communicate in the most appropriate method including, but not exclusive to:

- Having access to appropriate foreign language translation service
- Having access to appropriate sign language translation service and an understanding of deaf culture
- Having access to appropriate pictorial supported information and an understanding of those with learning disability

**6.2.5 Confidentiality:** The Contractor will be required to have a Confidentiality Policy that complies with the *Data Protection Act 1998*. This policy will embed the need for all case work to be regarded as being confidential within the advocacy service, and not exclusively to individual advocates.

**6.2.6** The Contractor is required to collect client’s feedback about their experience of using the NHS Complaints Advocacy Service. This information should be collated and shared with relevant Commissioners as part of quarterly reporting to be used to inform service development.

**6.2.7** The Contractor will be required to provide a model of independent professional advocacy that is proactive, ensuring that each referral for NHS Complaints Advocacy Service support for patients is dealt with within five days.

**6.2.8 Risk assessment and management:** The Contractor will be required to work within the Safeguarding Procedures of all local authority areas as listed in 5.1 for all service users, including, but not exclusive to; children & young people, people with learning disabilities, people with mental health problems, Gypsies and travellers, people with dementia, and carers of all groups.

**6.2.9** The Contractor is required to have due regard to managing risk for users and staff in the delivery of this service and provide details of their Risk Assessment and Management Policies and Procedures.

**6.2.10** The Contractor is required to reduce the environmental impact of this contract and will be asked to demonstrate how this is achieved.

### **6.3 Data and Outcome Monitoring**

**6.3.1** Contractors will be monitored in line with the performance indicators and outcomes outlined below. The contractor will present the following data in quarterly reports with the details broken down and **shown for each Local Authority**.

<b>Indicator</b>
Total number of people using NHS Complaints Advocacy Service
Where the referral has originated from
Breakdown by Age – in cases where the patient is a child this will be recorded by age of child, not by age of parent
Breakdown by Disability type i.e. learning disabilities, mental health etc

Breakdown by Ethnicity
Breakdown by Gender
Breakdown by Religion
Breakdown by Sexuality
Number of Prisoners
Number of people receiving information and advice
Number of people receiving telephone/ email support
Number of people receiving face to face support
Number of local resolution meetings attended
Number of cases escalated to Health Service Ombudsman
Number of cases opened each quarter
Number of cases closed each quarter
Number of cases that have reached a satisfactory resolution
Number of cases that do not reach a satisfactory resolution and reasons why
<b>Outcomes</b>
User desired outcome
Realistic outcome
Actual outcome

## 6.4 Other Requirements

- 6.4.1** Information sharing, data protection and record retention: The Contractor will be required to have written policies on information sharing and record retention that facilitate effective multi-agency working within the clear boundaries set by the *Data Protection Act 1998*.
- 6.4.2** The Contractor will be required to have policies and procedures for making and maintaining records of contact with clients. The policies and procedures will be expected to detail standards for recording client's information, internal audit and quality monitoring, storage, cataloguing, archiving, and destruction. There will be a procedure for handling and storage of third party information.
- 6.4.3** The Contractor will be required to have a complaints procedure and the Contractor shall make arrangements to ensure support, independent of their organisation, is available to clients wishing to make a complaint about the NHS Complaints Advocacy Service.

## 6.5 Staffing requirements

- 6.5.1** The Contractor will provide suitably trained, knowledgeable and skilled advocates, who are able to successfully work with diverse clients as listed in Appendix 1.
- 6.5.2** All advocates will have undergone the necessary clearance checks, including enhanced criminal records bureau checks and POVA and POCA checks. It will be a matter for the advocacy provider to decide whether any formal

entries which appear on relevant checks will automatically act as a bar or disqualification to advocacy employment. The advocacy provider will be responsible for all actions of its staff and will have to demonstrate robust patient/ user safeguarding policies for all circumstances including when working with children, young people and vulnerable adults.

## **7. Contract / service management requirements**

- 7.1** In order that Commissioners can monitor the operation of the Services the Contractor will be required to make available management and quality information quarterly.
- 7.2** The Contractor will be required to meet with Commissioners at least quarterly to monitor the Agreement terms and service provision.
- 7.3** The Contractor will be required to comply with all reasonable requests relating to the monitoring of any aspects of its performance, in particular those which demonstrate the Contractor's ability to continue to meet the terms of the Agreement.
- 7.4** The Services will be reviewed on an annual basis. Service reviews may also be held at other times as appropriate, and may be initiated by either the Commissioners or the Contractor.
- 7.5** The Contract and Service will be subject to annual review. In advance of annual review, the Contractor will be required to provide an annual report covering:
- A quantification and description of the activities of the last year
  - Profile by gender / ethnicity/ age of users of the service based on indicators in 6.3.1.
  - A summary of the individual issues raised by qualifying patients and outcomes
  - A summary of any collective issues
  - Evidence of, and reflection on, service achievements
  - Report of annual accounts
- 7.6** The Contractor is required to present the annual report in such a way that it is fit to be circulated to appropriate local Healthwatch organisations and made public (including to Local Authority overview and scrutiny committees and health and wellbeing boards).
- 7.7** The Contractor will be required to formally present the annual report to the Commissioners.
- 7.8** The Contractor will be required to hold regular meetings with all local Healthwatch organisations and Stakeholders at which the service provider will be expected to provide progress and state of service reports.



- 7.9** The Standards of Service will include, but are not limited to, those incorporated within:
- The standards associated with the Healthwatch England and Care Quality Commission (CQC)
  - The delivery standards and terms the Department of Health require
- 7.10** The information will be required quarterly in an electronic format to be agreed with the commissioners as set out in the terms of the Agreement. As a part of the monitoring and management information requirements the Contractor will submit, in an electronic format, a range of information including, but not limited to the following:
- A written report on service developments and quality.
  - Updates on relationships with local Healthwatch organisations
  - New partnership developments and initiatives across the authorities.
  - Work undertaken with the service user group and any actions resulting.
  - Implementation of suitable training and development activities.
  - Developments planned (for next quarter)
  - Challenges encountered and risks identified.
  - Up to date financial statement.
- 7.11** The Contractor will be required to fully participate with any further requests for information and data made by relevant bodies such as:
- Local Healthwatch organisations
  - Local health and wellbeing boards
  - Healthwatch England
  - Government inspection and audit bodies
  - Government Departments
- [response times?]
- 7.12** The Contractor will be required to report immediately any problems experienced by the Service Provider with Data returns will be reported immediately to the Commissioners.
- 7.13** The Contractor will be required to report to Commissioners Significant absences or periods when posts are vacant at the time that this occurs, if this is known, or at these quarterly performance review meetings.
- 7.14** The continued payment of fees under this agreement is conditional on the provision of this agreed monitoring information, and if such information is not, or cannot be provided, it shall be regarded as a serious breach of this agreement.

## **8. Format and content of responses**

### **8.1. Method Statement Submission**

Bidders should have regard to the Information and Instructions for Bidders included in the Invitation to Tender documents. This details the structure of the contract and requirements for this contract.

In addition it details the requirements for completing Method Statements.

<b>Name of Organisation</b>		<b>Max No. of Pages</b>	<b>Max Score Available</b>	<b>Weight-ing</b>
<b>1</b>	Please set outline evidence of your organisations work in generic & specific Advocacy Provision to high standards.	<b>2</b>	<b>5</b>	<b>20%</b>
<b>2</b>	Please outline evidence of your organisations knowledge of the NHS complaints procedure and the specific challenges facing advocates	<b>2</b>	<b>5</b>	<b>20%</b>
<b>3</b>	Please set out your proposal for the management and operational delivery of the “Services” across the six local authority area	<b>3</b>	<b>5</b>	<b>10%</b>
<b>4</b>	Please set out your proposal for delivering the services as described in the specification	<b>3</b>	<b>5</b>	<b>10%</b>

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### **Part 3: NHS Complaints Advocacy Contract**

[PROVISION OF THE NHS COMPLAINTS ADVOCACY SERVICE - TERMS AND CONDITIONS OF CONTRACT – to be amended]

1. Definitions
2. Variation
3. The Price
4. Value Added Tax
5. Payment
6. Recovery of Sums Due
7. Time of Performance
8. Inspection of Contract Areas & Conditions Affecting Provision of Services
9. Contractor's Status
10. Contractor's Personnel
11. Substitution
12. Manner of Carrying Out the Services
13. Use of the Authority's Premises
14. Issued Property
15. Provision of Equipment
16. Transition of Work
17. Payment of Sub-contractors
18. Confidentiality
19. Intellectual Property Rights
20. Publicity
21. Right of Audit
22. Indemnity and Insurance
23. Corrupt Gifts and Payments of Commission
24. Conflict of Interest
25. Unlawful Discrimination
26. Health and Safety
27. Transfer and Sub-Contracting
28. Service of Notices and Communications
29. Severability
30. Waiver
31. Termination on Change of Control and Insolvency
32. Termination on Default
33. Break
34. Consequences of Termination
35. Transfer of Undertakings (Protection of Employment) (TUPE)
36. Dispute Resolution
37. Arbitration
38. Freedom of Information
39. The Contracts (Rights of Third Parties) Act 1999
40. Law and Jurisdiction

#### **APPENDICES**

Appendix A: Variation to Contract form

Appendix B: Novation Agreement

Appendix C: List of Persons Transferring to the Contractor

## 1. DEFINITIONS

- 1.1 In this Contract: - The following definitions shall be used for the purposes of interpreting the Contract and all documents relating thereto except where the context requires otherwise. Other definitions that are not applicable to all Sections shall be stated in the Section where the definition is first used and shall apply only to that Section and subsequent Sections as appropriate:
- "Approved" or "Approval" means approved or approval in writing.
- "Associate Company" in relation to corporate body means any other corporate body controlled by the same person or persons who control the first mentioned corporate body, where "control" has the meaning assigned thereto by Section 840 of the Income and Corporation Taxes Act 1988.
- "the Authority" shall include any designated person who is authorised to act on behalf of the Secretary of State for Health in matters pertaining to the Contract.
- "the Authority's Representative" shall mean the person nominated in Section Five - Administrative Instructions - authorised to act on behalf of the Secretary of State for Health.
- "Client" means the person who makes use of the Service.
- "the Commencement Date" shall be in accordance with the programme detailed in Section Three - Scope of Work.
- "Commencement of Full Operations" means the point in time when the Contractor becomes responsible for the provision of the Services following the completion of the Setting up Operations. In the event that the Contractor's responsibility for the provision of the Services is phased, the Commencement of Full Operations means the commencement of each phase following the Setting up Operations in respect of that phase.
- "Commercially Sensitive Information" means the subset of Confidential Information listed in Section Six composed of the types of information:
- (a) which is provided by either Party in confidence for the period set out in Section Six; and/or
  - (b) that constitutes a trade secret.
- "Condition" means a condition within the Contract.
- "Confidential Information" means information that falls within the types of information which has been designated as confidential by either Party and included in Section Six - Confidential and Commercially Sensitive Information or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Goods/Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and the Commercially Sensitive Information.
- "Conflict of Interest" means a situation in which the Contractor or a member of Staff has a private, personal or corporate interest which could appear to influence the objective exercise of his or her work towards the provision of the Services.
- "the Contract" shall mean the agreement concluded between the Authority and the Contractor consisting of the following Sections which shall be read as one document and which, in the event of ambiguity or contradiction between Sections, shall be given precedence in the order listed;
- (i) Section one

Form of Agreement

- (ii) Section Two
  - General Conditions of Contract
- (iii) Section Three
  - Scope of Work
- (iv) Section Four
  - Schedule of Prices (Rates)
- (v) Section Five
  - Administrative Instructions.
- (vi) Section Six
  - Confidential and Commercially Sensitive Information

"Contract Period" shall be the period for which the Contract shall continue as defined in Section Three - Scope of Work.

"Contract Price" means the price, exclusive of Value Added Tax, payable by the Authority to the Contractor for the performance of the Services in accordance with Section Four - Schedule of Prices (Rates).

"Contracting Authority" means any contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) Regulations 2000 other than the Authority.

"the Contractor" shall mean the company named in the Form of Agreement who undertakes to carry out the Services for the Authority as is provided by the Contract and, where the Contractor is an individual or a partnership, the expression shall include the personal representatives of that individual or of the partners, as the case may be and the expression may also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority.

"Contractor's Representative" means the individual authorised to act on behalf of the Contractor for the purposes of the Contract.

"Environmental Information Regulations" means the Environmental Information Regulations 2004.

"Equipment" means all equipment, materials, consumables and plant, other than Authority's Property, to be used by the Contractor in the provision of the Services.

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

"Information" has the meaning given under section 84 of the Freedom of Information Act 2000.

"Intellectual Property Rights" includes but is not limited to patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

"Issued Property" means Government property issued in connection with the Contract.

"month" shall mean calendar month.

"Parties" means the Authority and the Contractor as identified in Section 1: Form of Agreement.

"Person" where the context allows, includes a corporation or an unincorporated association.

"Personnel" means persons directly employed by the Authority.

"Premises" means the location where the services are to be performed.

"Price" means a price entered in Section Four: Schedule of Prices (Rates).

"Rate" means a rate entered in Section 4: Schedule of Prices (Rates).

"Requests for Information" shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations.

"RRA" means the Race Relations Act 1976 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Commission for Race Equality in relation to such legislation.

"the Services" shall mean the services to be performed under this Contract.

"Setting up Operations" means the activities the Contractor shall undertake between the Commencement Date and the Commencement of Full Operations.

"Site" means the area within the Premises in which the Services are performed.

"Staff" means all persons used by the Contractor to perform the Services.

"Term" means a term within the Contract.

"Variation" means a properly executed variation to the Contract in compliance with Condition 2.1.

1.2 The interpretation and construction of the Contract shall be subject to the following provisions:

- a) a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;
- b) the headings to Conditions are for ease of reference only and shall not affect the interpretation or construction of the Conditions;
- c) references to Conditions are references to Conditions in the Section of the Contract in which they appear, unless otherwise stated;
- d) reference to a Clause is a reference to a paragraph within a Condition unless stated otherwise;
- e) where the context allows, the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa.

## 2. VARIATION

2.1 The Contract shall not be varied unless such variation is made in writing by means of a Variation to Contract Form as set out at Appendix A and agreed with the Authority's Representative.

2.2 In the event of an emergency, the Authority shall have the right to vary the Contract by oral instructions given by the Authority's Representative, which shall be confirmed by the issue of a Variation to Contract Form - Appendix A - within 7 days.

2.3 The Authority shall have the right to vary the Services at any time, subject to the Variation being related in nature to the Services being provided, and no such Variation shall vitiate the Contract.

2.4 The Contractor may request a Variation provided that:

- a) the Contractor shall notify the Authority's Representative in writing of any additional or changed requirement which it considers should give rise

- to a Variation within seven days of such occurrence first becoming known to the Contractor;
- b) any proposed Variation shall be fully supported by a quotation as detailed in Condition 2.5.
- 2.5 The Contractor, within 14 days of being requested by the Authority's Representative or where requesting a Variation pursuant to Condition 2.4, shall submit a quotation to the Authority, such quotation to contain at least the following information:
- a) a description of the work together with the reason for the proposed Variation;
- b) the price, where applicable;
- c) details of the impact, if any, on other aspects of the Contract or the Contractor's organisation.
- 2.6 The price for any Variation shall, unless otherwise agreed between the Parties, be calculated in the following order of precedence:-
- a) using the Price or Rates;
- b) prices pro-rata to the Prices or Rates;
- c) prices based on the Prices or Rates.
- 2.7 The Authority shall either approve or reject any Variation proposed by the Contractor.
- 2.8 In the event that the Contractor disputes any decision by the Authority to reject a proposed Variation or contends that a proposed Variation is outstanding or continues to be required, the Contractor shall update the information contained in his quotation for the proposed Variation every Month and shall send the updated information to the Authority.

### 3. THE PRICE

- 3.1 The prices shall be fully inclusive of carrying out the services as stated in the Contract, and shall remain firm for the duration of the Contract.
- 3.2 The Contract Price shall be firm for the initial Contract Period. In the event of an extension, being considered beyond the Contract Period the Authority would wish to review the charges with the Contractor in the six months prior to the expiry of the Contract.
- 3.3 During this six month period, the Contractor may, following agreement with the Authority and by giving the Authority 3 (three) Months' notice in writing to take effect at the end of the Contract Period increase or reduce the Contract Price subject to Clause 3.4 below.
- 3.4 Any claim for an increase in the Contract Price will only be considered if the increase does not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index specified in a schedule to this Contract) between the Commencement Date and the date of the said notice given under Clause 3.2.
- 3.5 All prices shall be strictly net of VAT.

### 4. VALUE ADDED TAX

- 4.1 The Authority shall pay to the Contractor, in addition to the Contract Price, a sum equal to the Value Added Tax chargeable on the value of the goods and services provided in accordance with the Contract.
- 4.2 Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person, be in the same form and contain

the same information as if the same were a tax invoice for the purposes of regulations made under the Finance Act, 1976.

4.3 The Contractor shall, if so requested by the Authority, furnish such information as may reasonably be required by the Authority as to the amount of Value Added Tax chargeable under the Contract and payable by the Authority to the Contractor in addition to the Contract Price. Any overpayment by the Authority to the Contractor shall be a sum of money recoverable from the Contractor under Condition 6 - Recovery of Sums Due.

## 5. PAYMENT

5.1 Unless otherwise stated in the Contract, the Contractor shall submit an invoice for Services monthly in advance for the following month and payment shall be within 30 days of receipt of a properly prepared invoice.

## 6. RECOVERY OF SUMS DUE

6.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under the Contract or under any other contract with the Authority or with any other Department or Agent of Her Majesty's Government.

## 7. TIME OF PERFORMANCE

7.1 The Contractor shall begin performing the Services or delivering the Goods on the date stated in the Contract and shall complete them by the date stated in the Contract or continue to perform them for the period stated in the Contract (whichever is applicable). The Authority may by written notice require the Contractor to execute the Services in such order as the Authority may decide. In the absence of such notice, the Contractor shall submit such detailed programmes of work and progress reports as the Authority may from time to time require.

## 8. INSPECTION OF CONTRACT AREAS & CONDITIONS AFFECTING PROVISION OF SERVICES

8.1 The Contractor is deemed to have satisfied himself as regards to the means of communication with and access to all the various Contract Areas, the risk of injury or damage to property in the Contract Areas or to the occupiers of such property, the conditions under which the Services may be carried out, the supply of and conditions affecting labour and generally to have obtained his own information on all matters affecting the execution of the Services and the prices tendered therefore.

8.2 No claim by the Contractor for additional payment will be allowed on the grounds of any misunderstanding or misapprehension in respect of any such matter or otherwise or on the grounds of any allegation or fact that incorrect information was given to him by any person whether in the employment of the Authority or not, or of the failure on his part to obtain correct information unless such incorrect information was given in writing by the Authority's Representative nor shall the Contractor be relieved from any risks or obligations imposed on or undertaken by him under the Contract on any such grounds.

## 9. CONTRACTOR'S STATUS



9.1 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the Contractor. Accordingly:

- (a) the Contractor shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority; and
- (b) nothing in this Contract shall impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Authority to the Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of the Authority, his staff or agents.

## 10. CONTRACTOR'S PERSONNEL

10.1 The Contractor shall, unless specified elsewhere, supply a sufficient number of competent personnel for the purpose of executing the Services and shall supply sufficient extra competent personnel for any additional work covered by a Variation to Contract Form detailed in Appendix A.

10.2 If the Authority's Representative gives the Contractor notice that any person is not to be admitted to or is to be removed from any of the Contract Areas under the Contract or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and if required by the Authority's Representative the Contractor shall replace any persons removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.

10.3 If and when instructed by the Authority's Representative the Contractor shall give to the Authority a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Authority may reasonably require.

10.4 The decision of the Authority's Representative as to whether any person is to be admitted to or is to be removed from the Contract Area or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Contractor has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.

10.5 With regard to Richmond House (other buildings if applicable) the Contractor shall give to the Authority a list of names and addresses and any other particulars as the Authority may reasonably require of all persons shall or who may require access to the building in performance of the Services for the purposes of security vetting prior to commencement of the Contract. It shall be deemed a breach of the Contract by the Contractor to use staff at Richmond House, who have not previously undergone said security vetting.

10.6 The Contractor shall bear the cost of any notice, instruction or decision of the Authority under this Condition.

## 11. SUBSTITUTION

11.1 No substitution of an on-site manager or supervisor by the Contractor shall be made without the prior Approval of the Authority. Any substitution of said personnel shall be deemed to be a Variation to the Contract.

## 12. MANNER OF CARRYING OUT THE SERVICES

12.1 The Contractor shall perform the Services with due skill, care and diligence, without detriment to the fabric, fixtures, fittings or furnishings of the Contract Areas, using the most efficient and cost effective means and methods.

12.2 Access to the Contract Areas shall not be exclusive to the Contractor but only such as shall enable him to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as the Authority may reasonably require. The Contractor shall co-ordinate his activities in the provision of the Services with those of Personnel and other contractors engaged by the Authority.

12.3 The Authority's Representative shall at all times have access to the area where the Services are being carried out.

## 13. USE OF THE AUTHORITY'S PREMISES

13.1 Where the Services are performed on the Authority's Premises the Contractor shall have use of the Authority's Premises without charge as a licensee and shall vacate those premises on completion or earlier termination of the Contract.

13.2 The Contractor shall not use the Authority's Premises for any purpose or activity other than the provision of the Services unless given prior approval.

## 14. ISSUED PROPERTY

14.1 Issued Property shall remain the property of the Authority whether or not paid for or charged against the Contractor and shall be used in the execution of the Contract and for no other purpose whatsoever, save with the prior Approval of the Authority.

14.2 Upon receipt of Issued Property, the Contractor shall subject it to:

- (i) a reasonable visual inspection, and
- (ii) such additional inspection and testing as may be necessary and practicable in order to check that the Issued Property is not defective or deficient for the purpose for which it has been provided.

14.3 Within a reasonable period, the Authority shall replace or re-issue Issued Property agreed to be defective.

14.4 The Contractor shall be responsible for the safe custody and due return of all Issued Property.

## 15. PROVISION OF EQUIPMENT

15.1 The Contractor shall provide all the Equipment necessary for the provision of the Services.

15.2 The Contractor shall maintain all items of Equipment in good and serviceable condition.

15.3 All equipment shall be at the risk of the Contractor and the Authority shall have no liability for any loss of or damage to any equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Authority.

15.4 The Contractor shall provide for the haulage or carriage of equipment to the Premises and its off-loading and removal when no longer required.

15.5 The Authority may at its option purchase any item of equipment from the Contractor at any time, if the Authority considers that the item is likely to be required in the provision of the Services following the expiry or termination of the Contract. The purchase price to be paid by the Authority shall be the fair market value.

## 16. TRANSITION OF WORK

16.1 At expiration or termination of this Contract the Contractor shall co-operate in the transfer, to the new Contractor under arrangements notified to him by the Authority.

16.2 At the discretion of the Authority, the Contractor shall be reimbursed any reasonable cost incurred, paid for at the rates current at the time of expiry or determination.

16.3 Transfer of responsibility for facilities made available to the Contractor shall be the subject of a mutually agreed inventory between the interested parties at the time of transfer. The transfer shall be arranged between the Authority and the Contractor so as to reduce to a minimum any interruption of the Services. Any special equipment purchase for use in site, which have been paid for by the Authority, shall remain the property of the Authority and shall be handed over to the in-coming Contractor.

16.4 At expiration or termination of the Contract, the Contractor shall hand-over all files, records, documents, plans, and drawings etc., how so ever generated under this Contract, to the Authority or person or persons designated by the Authority.

16.5 The Contractor shall be responsible for ensuring that any computerised filing, recording, documenting, planning and drawing software systems utilised under this Contract is transferred free of any charges to the Authority or person or persons designated by the Authority to facilitate a smooth hand-over of work at expiration or termination of the Contract.

## 17. PAYMENT OF SUB-CONTRACTORS

17.1 Where the Contractor enters into a sub-contract for the provision of any part of the Services, the Contractor shall ensure that a term is included in the sub-contract which requires the Contractor to pay all sums due to the sub-contractor within a specified period, not exceeding 30 days from the date of receipt of a valid invoice as defined by the terms of that sub-contract.

## 18. CONFIDENTIALITY

18.1 Each Party:

(a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

(b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

- 18.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Contract:
- (a) is given only to such of the Staff and sub-contractors engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;
  - (b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or sub-contractors otherwise than for the purposes of the Contract.
- 18.3 The Contractor shall ensure that Staff or sub-contractors are aware of the Contractor's Confidentiality obligations under this Contract. Where it is considered necessary in the opinion of the Authority, the Contractor shall ensure that Staff or sub-contractors sign a confidentiality undertaking before commencing work in connection with the Contract.
- 18.4 The Contractor shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of the Contract.
- 18.5 The provisions of Clauses 18.1 to 18.4 shall not apply to any Confidential Information received by one Party from the other:
- (a) which is or becomes public knowledge (otherwise than by breach of this Condition);
  - (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
  - (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - (d) is independently developed without access to the Confidential Information; or
  - (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations pursuant to Condition 38 (Freedom of Information).
- 18.6 Nothing in this Condition shall prevent the Authority:
- (a) disclosing any Confidential Information for the purpose of:-
    - (i) the examination and certification of the Authority's accounts; or
    - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
  - (b) disclosing any Confidential Information obtained from the Contractor:
    - (i) to any other Contracting Authority. All Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority; or
    - (ii) to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to the Contract;
- provided that in disclosing information under sub-paragraph (b) the Authority discloses only the information, which is necessary for the purpose concerned

and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- 18.7 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 18.8 In the event that the Contractor fails to comply with this Condition 18, the Authority reserves the right to terminate the Contract by notice in writing with immediate effect.
- 18.9 The provisions under this Condition 18 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
- 18.10 Both Parties shall comply with their respective obligations under the Data Protection Acts of 1984 and 1998, as these may be deemed to apply in performance of the Contract, while accepting either Parties' over-riding legal or statutory obligations to disclose information to a third party.
- 18.11 The provision of this Condition 18 shall apply during the continuance of this Contract and after its termination howsoever arising without limitation of time.

## 19. INTELLECTUAL PROPERTY RIGHTS

- 19.1 The Contractor hereby assigns to the Authority all Intellectual Property Rights (IPR) owned by the Contractor in any material which is generated by the Contractor and delivered to the Authority in the performance of the Services and shall waive all moral rights relating to such material.
- 19.2 In performing the Services the Contractor shall not infringe the Intellectual Property Rights of any third party. Where there are prior rights or rights of third parties in any material, the Contractor shall obtain Approval before using the material and this Approval shall include the right of the Authority to use, copy, modify adapt or enhance the material.
- 19.3 The Contractor shall indemnify the Authority and the Crown against all actions, suits claims, demands losses, charges, costs and expenses which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this Condition.
- 19.4 Subject to any prior rights and to the rights of third parties, copyright and every other property right in all reports, documents and things produced or information obtained by the Contractor or which is prepared or obtained under the Contractor's direction or control under this Agreement shall be vested as copyright in the Crown.
- 19.5 Without prejudice to Condition 21 - Right of Audit, the Contractor and his sub-contractors shall not disclose any specifications, plans, instructions, drawings, patents, models or other information obtained pursuant to or by reason of this Contract, without the written permission of the Authority.
- 19.6 The provisions of this Condition shall apply during the continuance of this Contract and after its termination howsoever arising, without limitation of time.

## 20. PUBLICITY

- 20.1 The Contractor shall not make any public statement relating to the existence or performance of the Contract without prior approval, which shall not be unreasonably withheld.

- 20.2 The Contractor and his sub-contractors shall not refer to the Authority in any advertisement without the Authority's written consent.
- 20.3 The provisions of this Condition shall apply during the continuance of this Contract and after its termination howsoever arising, without limitation of time.

## 21. RIGHT OF AUDIT

- 21.1 The Contractor shall keep secure and maintain until three years after the final payment of all sums due under the Contract, or such longer period as may be agreed between the Parties, full and accurate records of the Services, all expenditure reimbursed by the Authority and all payments made by the Authority.
- 21.2 The Contractor shall grant to the Authority, or its authorised agents, such access to those records as they may reasonably require in order to check the Contractor's compliance with the Contract.
- 21.3 For the purpose of:
- (i) the examination and certification of the Authority's accounts; or
  - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources. the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral and/or written explanations as he considers necessary. This Condition does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under Section 6(3)(d) and (5) of the National Audit Act 1983.

## 22. INDEMNITY AND INSURANCE

- 22.1 The Contractor shall indemnify the Authority fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities in respect of any death or personal injury, or loss of or damage to property, which is caused directly or indirectly by any act or omission of the Contractor. This Condition
- 22.1 shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage, was not caused or contributed to by his negligence or default, or the negligence or default of his Staff or sub-contractors, or by any circumstances within his or their control.
- 22.2 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks, which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract, in respect of death or personal injury, or loss of or damage to property. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.
- 22.3 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement for the time being in force. 22.4 The Contractor shall produce to the Authority's Representative, on request, copies of all insurance policies referred to in this Condition or other evidence confirming the existence and extent of the cover given by those policies,

together with receipts or other evidence of payment of the latest premiums due under those policies.

22.5 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Condition 22.2.

### 23. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

23.1 The Contractor shall not do (and warrants that in entering the Contract he has not done) any of the following (referred to in this Condition as "prohibited acts"):

- (i) offer, give or agree to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this or any other contract with the Crown, or for showing or not showing favour or disfavour to any Person in relation to this or any other contract with the Crown;
- (ii) enter into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, or to his knowledge, unless before the Contract is made particulars of any such commission and the terms and conditions of any such agreement for the payment of it have been disclosed in writing to the Authority.

23.2 If the Contractor, his employees, agents or any sub-contractor, or anyone acting on his or their behalf, does any of the prohibited acts or commits any offence under the Prevention of Corruption Acts 1889 to 1916, with or without the knowledge of the Contractor, in relation to this or any other contract with the Crown, the Authority shall be entitled -

- (i) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
- (ii) to recover from the Contractor the amount or value of any such gift consideration or commission; and
- (iii) to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, whether or not the Contract has been terminated.

23.3 In exercising its rights or remedies under this Condition, the Authority shall:-

- a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act;
- b) give all due consideration, where appropriate, to action other than termination of the Contract, including (without limitation to):
  - i) requiring the Contractor to procure the termination of a sub-contract where the prohibited act is that of a sub-contractor;
  - ii) requiring the Contractor to procure the dismissal of an employee (whether his own or that of a sub-contractor) where the prohibited act is that of such employee.

### 24. CONFLICT OF INTEREST

- 24.1 The Contractor shall ensure that there is no Conflict of Interest as to be likely to prejudice his independence and objectivity in performing the Contract, and undertakes that upon becoming aware of any such Conflict of Interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance), he shall immediately notify the Authority in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises, and shall furnish such further information as the Authority may reasonably require.
- 24.2 Where the Authority is of the opinion that the Conflict of Interest notified to it under Condition 24.1 is capable of being avoided or removed, the Authority may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:
- a) if the Contractor fails to comply with the Authority requirements in this respect; or
  - b) if, in the opinion of the Authority, compliance does not avoid or remove the conflict, the Authority may terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination.
- 24.3 Where the Authority is of the opinion that the Conflict of Interest which existed at the time of the award of the Contract could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed as required by the tender documents pertaining to it, the Authority may terminate the Contract immediately for breach of a fundamental condition and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such termination.

## 25. UNLAWFUL DISCRIMINATION

- 25.1 Neither Party shall unlawfully discriminate either directly or indirectly on such grounds as disability, gender, sexual reassignment or sexual orientation within the meaning of the Disabilities Discrimination Act 1995, the Sex Discrimination Act 1975 or the Employment Equality (Sexual Orientation) Regulations 2003 as amended by the Employment Equality (Sexual Orientation) (Amendment) Regulations 2003.
- 25.2 The Contractor shall not:
- (a) discriminate directly or indirectly or by way of victimisation or harassment against any person on racial grounds within the meaning of the RRA contrary to Part II (Discrimination in the Field of Employment) and/or Part III (Discrimination in Other Fields) of the RRA
  - (b) contravene Part IV (Other Unlawful Acts) of the RRA.
- 25.3 The Contractor shall notify the Authority immediately of any investigation of or proceedings against the Contractor under the RRA and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.
- 25.4 The Contractor shall indemnify the Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any investigation conducted or any proceedings brought under the RRA due directly or indirectly to any act or omission by the Contractor, its agents, employees or sub-contractors.



25.5 In the course of performing this Contract both Parties shall give all due regard to the provisions of the Human Rights Act 1998 and to comply with their respective obligations as they may apply to this Contract.

25.6 The Contractor shall take all reasonable steps to secure the observance of the provisions contained in Clauses 25.1 to 25.5 above by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

## 26. HEALTH AND SAFETY

26.1 The Contractor shall take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to health and safety, which may apply to Staff in the performance of the Services.

26.2 The Contractor shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of the Services.

26.3 The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of the Services. 26.4 The Contractor shall inform all Staff engaged in the provision of Services at the Authority's Premises of all known health and safety hazards and shall instruct those Staff in connection with any necessary safety measures.

26.5 Whilst on the Authority's Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Personnel and other Persons working on those Premises.

26.6 The Contractor shall notify the Authority's Representative immediately in the event of any incident occurring in the performance of the Services on the Authority's Premises where that incident causes any personal injury or any damage to property, which could give rise to personal injury.

## 27. TRANSFER AND SUB-CONTRACTING

27.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Approval of a sub-contractor shall be signified by the inclusion of the name on Appendix A to Section 5: Administration Instructions. Names can only be added to this list by a covering Variation.

27.2 The Contractor shall be responsible for the acts and omissions of his sub-contractors as though they were his own.

27.3 On giving notice to the Contractor of not less than 30 days, the Authority shall be entitled to assign any or all of its rights under the Contract to any Contracting Authority, provided that such assignment shall not materially increase the burden of the Contractor's obligations under the Contract.

27.4 Subject to Condition 27.6, the Authority shall be entitled to:

- (i) Assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any contracting authority, as defined in Regulation 3(1) of the Public Services Contracts Regulations 1993, provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations pursuant to this Contract; or

- (ii) Novate this Contract to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by any Contracting Authority
- 27.5 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Condition 27.6, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Authority.
- 27.6 If the Contract is novated to a body which is not a Contracting Authority pursuant to Condition 27.4(ii) or if a successor body which is not a Contracting Authority becomes the Authority pursuant to Condition 27.5 (in the remainder of this Condition both such bodies are referred to as the "transferee"):
  - (i) The rights of termination of the Authority in Condition 31 and Condition 32 shall be available to the Contractor in the event of the bankruptcy, insolvency or Default of the transferee;
  - (ii) The transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the previous consent in writing of the Contractor;
  - (iii) The following Conditions shall be varied from the date of the novation or the date of the change of status (as appropriate) as set out below as if the Contract had been amended by the Parties.
    - (a) In Condition 6.1 - Recovery of Sums Due - the words "or with any Department or Agent of Her Majesty's Government" shall be deleted;
    - (b) Condition 21 - Right of Audit - ceases to be applicable in the event that the Contract is novated to a private sector body;
    - (c) In Condition 23.1 - Corrupt Gifts and Payments of Commission, the word "Crown" shall be replaced with the word "Authority";
- 27.7 The Authority shall be entitled to disclose to any transferee any Confidential Information of the Contractor, which relates to the performance of the Services by the Contractor. In such circumstances the Authority shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Services and for no other purposes and shall take all reasonable steps to ensure that the transferee accepts an obligation of confidence.
- 27.8 To assign the Contract the Authority shall complete the form as set out at Appendix B, amended appropriately.

## 28. SERVICE OF NOTICES AND COMMUNICATIONS

- 28.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- 28.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter, or by facsimile transmission or electronic mail confirmed by letter. Such letters shall be delivered by hand or sent prepaid by first class post, addressed to the other Party referred to in Section Five – Administration Instructions. If the other Party does not acknowledge receipt of any such letter, facsimile transmission or item of electronic mail, and the relevant letter is not returned as undelivered, the notice or communication shall be deemed to have been given 3 working days after the day on which the letter was posted.

## 29. SEVERABILITY

29.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

## 30. WAIVER

30.1 The failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy.

30.2 No waiver shall be effective unless it is communicated to the other Party in writing.

30.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

## 31. TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY

31.1 The Authority may terminate the Contract by written notice having immediate effect if:

- (i) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, impacting adversely and materially on the performance of the Contract; or
- (ii) where the Contractor is an individual or a firm, the Contractor or any partner in the firm becomes bankrupt or has a receiving order or administration order made against him; or makes any compromise or arrangement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom; or
- (iii) where the Contractor is a company, the Contractor passes a resolution or the Court makes an order that the Contractor be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Contractor's business or any part of it; or the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

31.2 The Authority may only exercise its right under Condition 31.1(i) within 6 months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify the Authority immediately when any change of control occurs.

## 32. TERMINATION ON DEFAULT

32.1 The Authority may terminate the Contract, or terminate the provision of any part of the Services, by written notice to the Contractor with immediate effect if the Contractor is in default of any obligation under the Contract and:

- (i) the Contractor has not remedied the default to the satisfaction of the Authority within 30 days, or such other period as may be specified by the Authority, after service of written notice specifying the default and requiring it to be remedied; or (ii) the default is not capable of remedy; or (iii) the default is a fundamental breach of the Contract.

### 33. BREAK

33.1 The Authority shall have the right to terminate the Contract, or to terminate the provision of any part of the Services, at any time by giving 3 months' written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

### 34. CONSEQUENCES OF TERMINATION

34.1 If the Authority terminates the Contract under Condition 32, or terminates the provision of any part of the Services under that Condition, and then makes other arrangements for the provision of the Services, the Authority shall be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. Where the Contract is terminated under Condition 32, no further payments shall be payable by the Authority until the Authority has established the final cost of making those other arrangements.

34.2 If the Authority terminates the Contract, or terminates the provision of any part of the Services, under Condition 33, the Authority shall reimburse the Contractor in respect of any loss, not including loss of profit, actually and reasonably incurred by the Contractor as a result of the termination, provided that the Contractor takes immediate and reasonable steps, consistent with the obligation to provide the Services during the period of notice, to terminate all contracts with sub-contractors on the best available terms, to cancel all capital and recurring cost commitments, and to reduce Equipment and labour costs as appropriate.

34.3 For the purposes of Condition 34.2, the Contractor shall submit to the Authority's Representative, within 20 working days after service of the notice, a fully itemised and costed list, with supporting evidence, of all losses incurred by the Contractor as a result of the termination of the Contract, or the termination of any part of the Services, to be updated only in respect of ongoing costs each week until the Contract is terminated.

34.4 The Authority shall not be liable under Condition 34.2 to pay any sum which, when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the provision of the Services had been completed in accordance with the Contract.

### 35. TRANSFER OF UNDERTAKINGS (Protection of Employment) TUPE

35.1 The Parties recognise that the Transfer of Undertakings (Protection of Employment) Regulations 1981 apply in respect of the award of the Contract

and that for the purposes of those Regulations the undertaking concerned, or any relevant part of the undertaking, shall transfer to the Contractor on the Commencement of Full Operations.

- 35.2 The Contractor shall comply with the requirements of those Regulations in respect of the persons identified in Appendix C to Terms and Conditions of Contract (who will have been employed in the undertaking, or a relevant part of the undertaking, immediately before its transfer to the Contractor).
- 35.3 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person currently or previously employed by the Authority or by the Contractor for breach of contract, loss of office, unfair dismissal, redundancy, loss of earnings or otherwise (and all damages, penalties, awards, legal costs, expenses and any other liabilities incurred by the Authority) resulting from any act or omission of the Contractor on or after the Commencement of Full Operations, except where such claim arises as a result of any breach of obligations (whether contractual, statutory, at common law or otherwise) by the Authority arising or accruing before the Commencement of Full Operations.
- 35.4 The Contractor shall, on request, provide full details of all Staff who may be affected by such transfer to any other contractor who may require such details in the future. These details shall include but not be limited to:
- (i) copies of Employment Contracts including offer letters;
  - (ii) standard terms;
  - (iii) company rules and disciplinary procedures and details of any collective agreements, written or unwritten, with employees;
  - (iv) details of staff benefit schemes (if any) including but not limited to:
    - pensions;
    - employee share schemes;
    - company cars;
    - bonus/profit sharing; insurance schemes.
  - (v) details of all recognised unions and/or staff associations;
  - (vi) copies of all redundancy/job security agreements with Unions;
  - (vii) name;
  - (viii) age;
  - (ix) sex;
  - (x) length of employment (start and finish dates, where applicable);
  - (xi) contracted basic hours of work;
  - (xii) contracted overtime;
  - (xiii) rate of pay (broken down by gross pay and allowances / enhancements included);
  - (xiv) holiday entitlement and notice entitlement;
  - (xv) present work location;
  - (xvi) whether employment is permanent or temporary;
  - (xvii) whether on maternity leave or on long-term sick leave;
  - (xviii) details of current Industrial Tribunal, or Litigation by or against the employee;
  - (xix) details of any claims in respect of allegations of unlawful discrimination

## 36. DISPUTE RESOLUTION

- 36.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Contract promptly through negotiations between their representatives.
- 36.2 If the matter is not resolved through negotiation, the Parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution (ADR) procedure.
- 36.3 The performance of obligations under the Contract shall not cease or be delayed by the application of an ADR procedure pursuant to condition 36.2
- 36.4 If the matter has not been resolved by an ADR procedure within one month of the initiation of such procedure, or if either Party will not participate in an ADR procedure, the dispute shall be referred to arbitration in accordance with Condition 37 below.

### 37. ARBITRATION

- 37.1 All disputes, differences or questions between the Parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of the Authority is under the Contract to be final and conclusive which cannot be resolved in accordance with Condition 36, and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to the arbitration of two persons, one to be appointed by the Authority and one by the Contractor in accordance with the provisions of the Arbitration Act 1950 or any other statutory modification or re-enactment thereof.

### 38. FREEDOM OF INFORMATION

- 38.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with these Information disclosure requirements.
- 38.2 The Contractor shall and shall procure that its sub-contractors shall:
- (a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within five working days of receiving a Request for Information;
  - (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five working days (or such other period as the Authority may specify) of the Authority requesting that Information; and
  - (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 38.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
  - (b) is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 38.4 The Contractor acknowledges that the Authority may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge

of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA, or the Environmental Information Regulations to disclose Confidential Information:

- (a) without consulting with the Contractor, or
- (b) following consultation with the Contractor and having taken its views into account.

38.5 The Contractor shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

38.6 The Contractor acknowledges that any lists provided by it outlining Confidential Information (including the sub-set Commercially Sensitive Information) are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information and/or Commercially Sensitive Information in accordance with Clause 38.4.

39. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

39.1 A person who is not a party to this Contract shall have no right to enforce any terms of it, which confer a benefit on him.

40. LAW AND JURISDICTION 40.1 This Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

**Appendix A**

**VARIATION TO CONTRACT FORM**

CONTRACT TITLE: PROVISION OF THE INDEPENDENT COMPLAINTS ADVOCACY SERVICE

CONTRACT REF:

VARIATION

No.....

DATE: //

BETWEEN:

The Secretary of State to The Department of Health (hereinafter called the Authority) and [insert provider name] (hereinafter called the Contractor) having his main or registered office at [insert provider address]:

The Contract is varied as follows:

(DN: INSERT DETAILS OF VARIATION)

Words and expressions in this Variation shall have the meanings given to them in the Contract.

The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

SIGNED:

For: The Authority For: The Contractor

By: .....

By:

Full Name: .....

Full Name:

Grade/Pay Band: .....

Title:

Date:.....

Date:

DN: If provided with copies already signed on behalf of the Authority sign both and return one copy to the Authority. If unsigned, sign both and return both to the Authority for completion.

## **Appendix B**

### **NOVATION AGREEMENT**

THIS AGREEMENT is made on the day of

**BETWEEN**

(Original Company)

(Company which has taken over the obligations of the Original Company)

SECRETARY OF STATE FOR HEALTH (“The Customer”) whose principal place of business is at Richmond House, 79 Whitehall, London, SW1A 2NS

**WHEREAS**

This Agreement is supplemental to an agreement dated (date of contract) between (Original Company) and the Customer (“the Contract”) under which (Original Company) agreed to provide certain services to the Customer.

**IT IS HEREBY AGREED AS FOLLOW:**

The Contract shall continue in full force and effect from (date of takeover of company) as if (Company which has taken over original company) were named as a party to the Contract in place of (Original company).

All rights, obligations or liabilities arising under the Contract from the date of this Agreement shall be rights, obligations and liabilities between the Customer and (Company which has taken over original company)

Any existing rights, obligations or liabilities of (Original Company) relating to the performance of the Contract up to the date of this Agreement shall pass to (Company which has taken over original company) and shall be enforceable between the Customer and (Company which has taken over original company) in place of (Original company)

This Agreement shall be governed by and interpreted in accordance with English law and shall be subject to the jurisdiction of the courts of England and Wales.

Signed by:

For and on behalf of (Original company)

In the presence of

Signed by:

For and on behalf of (Company which has taken over the original company)

In the presence of

Signed by:

For and on behalf of the Secretary of State for Health

In the presence of



Based on *Commissioning Independent NHS Complaints Advocacy Services Briefing Pack, DH June 2012* with acknowledgements to *Merseyside Independent Complaints Advocacy draft service specification*

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## **Appendix 1: Existing ICAS contract recording categories**

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### **National complaints and activity summary**

- No. of new clients this quarter
- No. of cases closed this quarter
- Total no. of live cases as of last day this quarter
- Cumulative no. of cases received since start of contract (running total)
- No. of calls to 0845 lines this quarter
- No. of referrals for medico-legal advice this quarter

### **Case resolution stage**

- Local resolution
- Referred to Health Service Ombudsman

### **Practitioner area by profession**

- Ambulance crews (including paramedics)
- Dental
- Maintenance and Ancillary staff
- Medical
- Nursing, Midwifery and Health Visiting
- PCT Administrative staff
- Professions supplementary to medicine
- Scientific, Technical and Professional
- Trust Administrative staff
- Other

### **Grievance area by service setting**

- Ambulance services
- Blood Transfusion
- Cardiology
- Children's (paediatric) services
- Community hospital services
- Dentistry
- Ear, Nose and Throat
- Elderly (geriatric) services
- General Medicine
- General Surgery
- Gynaecology and obstetrics
- Hospital acute services: A&E
- Hospital acute services: Inpatient
- Physiotherapy
- Trauma and orthopaedics
- Walk in centres
- Hospital acute services: Outpatient
- Independent Providers of NHS care
- Maternity services
- Mental health services
- Ophthalmic
- Other community health services
- PCT commissioning [will become CCG / NHS CB commissioning]
- Pharmacy

### **Cause of grievance (headline categories)**

- A clean, friendly comfortable place to be
- Access & waiting
- Aspects of clinical treatment
- Better information, more choice
- Building closer relationships
- Safe, high quality, coordinated care
- Special interest areas
- Other

**Breakdown by ethnicity**

*ICAS monitoring categories:*

White:

- British
- Irish
- Other white

Mixed:

- White & Black Caribbean
- White & Black African
- White & Asian
- Other mixed

Asian or Asian British

- Indian
- Pakistani
- Bangladeshi
- Other Asian

Black or black British

- Black Caribbean
- Black African
- Other Black

Other ethnic

- Chinese
- Other ethnic category (includes Gypsy/ Traveller)

Not stated

**Monitoring by age:**

- 0-16
- 17-59

**Monitoring by disability:**

- Learning Disability/ Difficulty
- Long Term condition/Illness
- Mental Health Conditions
- Multiple Disabilities

**Prison summary:**

- Number of new prison clients
- Number requiring on-going support (total number of clients who had support during this quarter – i.e. any existing clients plus new referrals)
- Number of face-to-face meetings attended

*Existing national categories defined in Census 2011:*

White:

- Gypsy or Irish Traveller
- Any other White background

Mixed / multiple ethnic groups:

- White and Black African
- White and Black Caribbean
- White and Asian
- Any other mixed / multiple ethnic background

Asian or Asian British:

- Indian
- Pakistani
- Bangladeshi
- Chinese
- Any other Asian background

Black / African / Caribbean / Black British:

- African
- Caribbean
- Any other Black / African / Caribbean background;

Other ethnic group:

- Arab
- Any other ethnic group

Not stated

- 60 +
- Not Stated

- Physical Impairment
- Sensory Impairment
- Other general special needs

**Appendix 2: Indicative ICAS funding for participating south of England authorities**

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<b>Locality</b>	<b>Funding</b>	<b>SEAP activity 2011-12</b>	<b>£ per complaint (2012-13 funding / 2011-12 cases)</b>
Buckinghamshire	£ 99,594	177	£562.68
Oxfordshire	£ 134,361	110	£1,221.46
Reading	£ 33,475	32	£1,046.09
Southampton	£ 67,906	61	£1,113.21
Surrey	£ 231,960	248	£935.32
West Berkshire	£ 28,828	45	£640.62
<b>Total funding</b>	<b>£596,124</b>	<b>673</b>	<b>£745.55</b>

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### **Appendix 3: The NHS Complaints Procedure (England)**

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If you are not happy with the medical treatment that you or a family member has received under the National Health Service it is your right to have your concerns investigated and to be given a full and prompt response by the treating body. This is known as the NHS Complaints Procedure.

#### **What are the potential stages of the NHS Complaints Procedure?**

- Stage 1 Local Resolution
- Stage 2 The Independent Review (The Ombudsman)

#### **Which services are covered by the NHS Complaints Procedures?**

- All NHS Trusts and NHS Bodies including NHS Foundation Trusts
- Family Health Services provided for the NHS by GPs, Dentists, Opticians or Pharmacists.
- Primary Care Trusts.
- Private Health Care establishments if the treatment has been paid for by the NHS.

#### **What do I want to achieve?**

It is important to think about what you want to achieve before putting in your complaint and what the NHS can do to satisfy this. You may not need to make a formal complaint. If you are more concerned about having something put right or registering a concern informally, you are normally better off raising this directly with staff concerned or their managers. If you prefer, you can ask to speak to a Patient Advice and Liaison Service (PALS) Officer. They will try to resolve your problem and provide feedback to the NHS Body.

Under the NHS Complaints Procedure at present the following can be obtained:

- An explanation for what happened.
- An apology or other statement of regret.
- Steps to review procedures to avoid such incidents in future.

In general the NHS cannot:

- Offer financial compensation (although in some circumstances NHS bodies will agree to an ex-gratia payment for relatively small sums)
- Address issues of staff discipline for instance sacking staff or striking off a practitioner (although disciplinary action may result as a consequence of information obtained through complaints investigations).
- Address private treatment unless financed by the NHS.

#### **Is there a time limit for making a complaint?**

Your complaint should be made no later than 12 months after the event(s) in question or from the date that you were first made aware of the issues in question. However it is advisable to make your complaint as soon as possible so that your and other people's recollection of events is fresh. NHS organisations do have discretion to consider complaints outside these time limits and can consider aspects such as the duration of your illness.

#### **Where do I start?**

##### ***Stage 1: Local Resolution***

If you would like your complaint to be dealt with more formally (for example if you would like to receive a written response to your complaint) you should use the NHS Complaints Procedure. The first stage of this is called Local Resolution, where the NHS body or family health service practice is required to investigate and respond to your complaint.

A complaint can be made orally, in writing or electronically. Where a complaint is made orally the healthcare provider to whom the complaint is being made must make a written copy of the complaint and provide a copy of the written record to you. Ideally, we would advise that your complaint is made in writing and addressed to the Chief Executive or, in the case of family health services, the Complaints Manager at the practice concerned. In summary, you should include:

- Who or what you are complaining about.
- Where and when the events happened.
- What you have done already about the complaint.
- What result you want - this can include any issues about clinical matters, which the hospital may be able to offer you help with. For instance, if your fertility has been affected by treatment can the hospital guarantee the provision of fertility treatment or pay for the treatment to be carried out?

### **What happens next?**

The healthcare provider to whom the complaint is directed must provide you with an acknowledgement of your complaint no later than 3 working days after it has been received. At the same time you should also be:

- Offered the opportunity to discuss your complaint
- Advised of the way in which your complaint is going to be investigated
- Be advised of the time period within which the investigation of your complaint is likely to be completed

When you are likely to receive the response and conclusion to your complaint – if there is likely to be a delay in concluding the investigation and providing you with a response, then you should be notified in writing and given an explanation as to the reason for this.

At the end of the investigation you should receive a formal written response. Sometimes as part of the investigation you may be invited to meetings. Meetings can be very helpful particularly where there are complex medical issues. However you should be well briefed and prepared for such meetings.

After any meeting if the NHS organisation considers that the matter has been adequately addressed, then they should send you a full written response concluding the Local Resolution stage of the complaints procedure. This should also tell you what to do next if you are not satisfied.

At the conclusion of any meeting it is a good idea to remind the Complaints Manager that you wish to have a full written response.

It is open to you to talk over the meeting with the Complaints Manager beforehand and you may wish to consider:-

- What form will the meeting take?
- Who will attend - sometimes complainants do not want to see staff members who have been involved in the incident in question. In other cases you may be disappointed to find that the staff involved, are not available.

Whilst there is no formal time limit for the NHS to investigate and respond to your complaint, the whole process should be discussed and agreed with you including any extensions. Where an unreasonable amount of time is taken, you can appeal to the Ombudsman.

Whilst the complaints procedure is not specifically designed to award compensation, NHS bodies do have the discretion to make 'ex-gratia' payments. There is no harm in asking for this, but if the amount requested is very substantial it may be more appropriate to take legal action. As of 1st April 2009 there is no automatic bar on your taking legal action and having a complaint investigated at the same time.

### **What happens if I am not happy with the response to my complaint?**

If you are not satisfied with the response to your complaint, you have the right to request an Independent Review by the Health Service Ombudsman of your complaint. However, an Independent Review is unlikely to be granted if it is considered that more should be done to resolve the complaint at Local Resolution stage.

Obviously the NHS organisation cannot solve all medical problems that you have or turn the clock back to how things were before the events complained of, but they should try and answer all your concerns and try to provide as comprehensive an explanation as possible. If you think that they have not done this, you can ask them to take further steps such as asking for further investigation or examination of the medical records. One option is to ask the hospital to consider obtaining or funding an independent report from a medical expert which can be very helpful in resolving any dispute about the medical issues relating to your complaint.

You may like to consider:-

- Does the response explain things in a way that you understand? If the reply contains too much medical jargon you can ask for this to be put into layman's language.
- Does it tell you how the investigation was carried out, for instance were the staff involved in the care complained of interviewed?
- Are there any other matters you are still concerned about?

Often the formal response to your complaint will offer a further meeting to clarify any outstanding issues. This can be useful, and may help clarify issues without the formality and delay involved in an Independent Review. However you are not obliged to take this option. It is your right to request an Independent Review at this stage. You and the body also have the option of continuing to try to resolve the complaint locally in writing. If you agree to a meeting, the same principles apply as with earlier meetings during Local Resolution – you will need to clarify what you remain dissatisfied with and why (usually in writing). Following any such meeting, or further correspondence under local resolution, you should be provided with a further formal written response dealing with these issues, and you still have the right to ask the Ombudsman to investigate.

### ***Stage 2: Independent Review by the Health Service Ombudsman***

If you have attempted Local Resolution and are not happy with the result, or the organisation you have complained about has not completed its investigation within six months, you have the right to ask for an Independent Review of your complaint. The Parliamentary and Health Service Ombudsman will take responsibility for the Independent review stage of the NHS Complaints Procedure. As well as complaints about healthcare, the Parliamentary and Health Service Ombudsman and the Local

Government Ombudsman will be able to work together on complaints that cross the boundaries of both health care and social care.

You should make a request for an Independent Review within 12 months of the incident in question occurring or when you first became aware that something had gone wrong. You should try to abide by this time limit, but if it is not possible it is always a good idea to ask the Ombudsman to consider your request, particularly if you have a good reason for the delay such as trying to obtain other advice.

The Ombudsman has also made it clear that one of the remedies that should be considered where appropriate is financial compensation. If the amount of financial compensation sought is very large or if responsibility for a failing is denied, however, it may be necessary to take legal action.

Your statement should include:

- A summary of the events in question.
- Details of the main issues of concern.
- Details of what action has been taken so far.
- Details of the aspects that you remain unhappy with.
- Why you feel that further action under the Local Resolution stage of the complaint would not adequately address the issues.
- Why you think an Independent Review would be helpful.

### **What can the Ombudsman do?**

If your complaint is found to be justified the Ombudsman will seek an apology or other remedy for you. This may include calling for changes to prevent such an incident happening again or reviewing procedures.

The Ombudsman has also made it clear that one of the remedies that should be considered where appropriate is financial compensation. If the amount of financial compensation sought is very large or if responsibility for a failing is denied, however, it may be necessary to take legal action.

### **What will happen after I have sent my complaint to the Ombudsman?**

Once your case has been received by the Ombudsman they will let you know within 5 days who your contact person is who you can call upon for information about how your complaint is progressing.

How long will it take to resolve my complaint?

Many of the cases being considered by the Ombudsman will be dealt with in a matter of months and it has been advised that around 80% will be dealt with within 40 working days. However some cases may take longer depending upon the circumstances and complexity of the complaint.

### **How will my complaint be dealt with?**

Each case will be looked at individually. The Ombudsman will examine the issues that have been raised and how the complaint has been handled at local level. Where appropriate the Ombudsman will take clinical advice and then make a decision.

What happens if I am unhappy with the Ombudsman's response to my complaint?

If you are unhappy about the decision made by the Ombudsman you can ask for a review by a special team who consider complaints about the Ombudsman.

### **How can I get independent help and advice with the independent review stage?**

Your local NHS Complaints Advocacy Service provider should be able to advise you and may be able to help draft correspondence or accompany you to meetings. To



find your local NHS Complaints Advocacy Service provider please contact your local Healthwatch or telephone NHS Direct on 0845 4647.

The telephone contact details for the Parliamentary and Health Service Ombudsman are:

Helpline: 0345 015 4033

You can also write to them at:

The Parliamentary and Health Service Ombudsman  
Millbank Tower  
Millbank  
London SW1P 4QP

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## **Appendix 4: The Role of the Parliamentary and Health Ombudsman**

### **Background:**

1.1 Whilst the role of Parliamentary and Health Service Commissioner (PHSO) is currently held by a single post holder, it has always had two separate statutory roles namely the Parliamentary Commissioner for Administration and the Health Service Commissioner for England.

1.2 In her role as Health Service Commissioner for England, the Ombudsman investigates complaints about the NHS not resolved at local level. NHS complaints may be made about any function of a provider of NHS-funded care, or a commissioner of that care.

1.3 Examples of the sorts of complaints the PHSO can look into include:

- Failure to provide a service;
- Receiving the wrong or poor treatment;
- Delay that could have been avoided;
- Faulty procedures, or failing to follow correct procedures;
- Rudeness and not apologising for mistakes;
- Not putting things right when something has gone wrong.

1.4 This could include a complaint about lack of choice however; this is not a specific category in either the PHSO or Departmental complaints data.

The NHS Constitution specifies that:

“You have the right to choose the organisation that provides your NHS care when you are referred for your first outpatient appointment with a service led by a consultant.”

1.5 There are certain exceptions to this but any NHS organisation failing to provide a choice could be subject to a complaint on that basis.

1.6 Whilst the role of Parliamentary and Health Service Commissioner is currently held by a single post holder, it has always had two separate statutory roles namely the Parliamentary Commissioner for Administration and the Health Service Commissioner for England.

1.7 In the role of Parliamentary and Health Service Commissioner (also referred to as the Parliamentary and Health Service Ombudsman (PHSO)), she carries out independent investigations into complaints about unfair, improper, or poor service by UK government departments, a range of other public bodies, and the NHS in England. In investigating and making findings on complaints referred to her, the Ombudsman will become involved in health matters at an individual and at a more general, systemic level. In addition, the Ombudsman's unique position affords her an insight and knowledge into the work of the NHS that is valued by both Parliament and Government.

1.8 The Ombudsman's office works to put things right where it can and shares lessons to improve public services. It is a free service open to everyone.

### **What can be looked at:**

1.9 If someone has suffered because of a poor service or not being treated properly or fairly - and the organisation has not put things right where it could have – the Ombudsman may be able to help.

1.10 Before contacting the Ombudsman, the complainant is generally expected to try to make a complaint to the organisation involved. After doing this, and if a satisfactory answer is not received from the organisation, or if there is no response, complainants are advised to contact the PHSO.

Not putting things right when something has gone wrong.

1.12 The Ombudsman can also work jointly with the Local Government Ombudsman in some cases where complaints may cover more than one Ombudsman's jurisdiction.

**What cannot be looked at:**

1.13 Complaints about government policy or the content of legislation – Government makes policy decisions and Parliament decides the law.

1.14 In some cases, the PHSO cannot investigate complaints she does not have the legal power to do so, for example:

- Staff issues - such as recruitment, pay and discipline;
- Most commercial or contractual issues.

1.15 In other cases, there may be another, more appropriate organisations to deal with the complaint; for example, for clinical negligence cases, the best way for the complainant to get the remedy they want may be through going to court.

Approaching the PHSO:

1.16 Under the Parliamentary Commissioner Act 1967, complainants can only submit complaints to the Parliamentary Ombudsman through a Member of Parliament (MP). This process is often referred to as the 'MP filter'.

1.17 This is not the case for the Health Service Commissioner for England, as people with complaints about the NHS have direct access to the Health Service Ombudsman. The 2009 complaints regulations (Regulation 14(2) (d) refers) place a duty on the investigating body in their response to the complainant to advise them of their right to take their complaint to the Health Service Commissioner (Health Ombudsman).

1.18 However, the Ombudsman will normally only take on a complaint after a complainant has tried to resolve the complaint with the trust or NHS provider and has received a response from them. This would mean using the NHS complaints process. The Ombudsman believes that the trust or organisation should be given a chance to respond and, where appropriate, try to put things right before she becomes involved.

1.19 A complainant who remains dissatisfied with the outcome of a complaint at a local level can approach the Health Service Ombudsman and ask them to look at their complaint. The 2009 complaints regulations (Regulation 14(2) (d) refers) require the investigating body in their response to the complainant to advise them of their right to take their complaint to the Health Service Commissioner (Health Ombudsman).

**Contacting the Health Service Ombudsman:**

1.20 The Ombudsman can be contacted by phone (via a helpline), fax and e-mail. PHSO also has a website. In addition, NHS organisations should, in their information on arrangements for handling complaint make available contact information for the Health Service Ombudsman. This information should also be made available through the Patient Advice and Liaison Service (PALS) operating in hospitals. In addition the NHS Complaints Advocacy Service (ICAS), a free to use service to complainants needing help in making a complaint if appropriate will also direct complainants to the Ombudsman.