



## **LPC BRIEFING**

### **CONTRACTS AND SERVICE LEVEL AGREEMENTS**

#### **INTRODUCTION**

Many services provided by community pharmacists are commissioned locally according to the needs of the area. Primary Care Trusts (PCTs), Social Service Departments, Practice Based Commissioning (PBC) groups and individual GP practices are commissioning services from individual pharmacies, for example:

- NHS Health Check service (vascular risk assessment);
- sexual health services including emergency hormonal contraception (EHC);
- stop smoking services;
- near-patient testing such as cholesterol testing, pregnancy testing or INR monitoring; and
- seasonal influenza vaccination.

As a result of commissioning, a written contract, often incorporating a Service Level Agreement (SLA), will be agreed between the parties.

This LPC Briefing provides basic information on contracts and SLAs including:

- What is a contract?
- What is an SLA?
- When to use an SLA
- Core elements of a standard SLA
- How an SLA is drawn up

To assist LPCs in discussing contracts and SLAs, PSNC has developed generic templates containing the elements which may be considered for inclusion, along with guidance notes. However, PSNC is not authorised or insured to give legal advice, so pharmacy contractors and LPCs may need to seek their own independent legal advice.

It should also be remembered that contracts and SLAs would normally be drawn up by the commissioner of the service, and not the provider. The template documents in the appendices may serve the interests of pharmacy contractors, but there can be no guarantee that PCTs will use them. Including them in this briefing therefore is primarily to guide LPCs on the terms that may appear in contracts and SLAs, but for

some 'simple' services which a PCT wishes to commission quickly, the documents may provide a useful starting point.

The Department of Health has provided substantial guidance to PCTs and has prepared standard contracts for some services, and one standard contract and its associated guidance notes are available on the LPC members' section of the PSNC website at [www.psync.org.uk](http://www.psync.org.uk)

This example, which is a Care services contract includes many terms that are not relevant to pharmacy services, but for those LPCs and contractors who want additional information beyond that provided in this briefing, the Department of Health documents provide a more detailed picture of the requirements for contracts. The contract and guidance are both in excess of 100 pages and are complex documents to read, but Annex A and Annex B of the DH guidance provides a very useful reference to the terms needed in contracts.

Appendix 1 of the DH guidance sets out an example service specification, and this could be useful when developing service level agreements. Documents of this length and complexity are unlikely to be agreed by pharmacy contractors without seeking specific legal advice. As the typical contract of a PCT with major providers may run to well over a hundred pages, PCTs are increasingly seeking to contract with just one or two providers – the prospect of agreeing a 100 page contract with a hundred different pharmacies is unlikely.

PSNC has worked with lawyers to provide a model company template, which may help groups of pharmacy contractors to bid collectively to provide services (details are available in the 'Pharmacy Contract and Services' section of the website).

For the purpose of this briefing, a simple SLA is explained, which may be sufficient for some agreements between PCTs and individual pharmacy contractors.

Appendix 1 describes the terms to be found in a contract.

Appendix 2 describes the terms to be found in an SLA.

Appendix 3 contains a simple SLA.

Further examples of SLAs for different services can be obtained by LPCs from the PSNC Community Pharmacy Services database at [www.psync.org.uk/database](http://www.psync.org.uk/database). (Note: these can be accessed only by LPC members who have signed into the LPC members' section of the PSNC website).

## **WHAT IS A CONTRACT?**

A contract is an agreement, between two parties where one party agrees to do something for an agreed return, and under which both parties intend that the agreement should be legally binding. A contract is usually in writing (for some contracts, a contract is valid only if it is in writing) or it may be made orally. The difficulty with an oral contract is proving the terms if there is a disagreement.

A contract should include all the terms which need to be agreed before the service is provided. It will identify the parties, set out the fundamental conditions that must be complied with, and in some cases refer to one or more annexes that contain the detailed service specification.

A contract will include a start date and an end date (and may include provision for renewal or extension of the contract), set out the procedure for claims and payment, and the process to be followed in case of dispute.

A contract is usually enforceable in the courts, but within the NHS the formality of court proceedings is avoided by providing alternative dispute resolution procedures. Unfortunately, these are not available where one party is not an NHS body and generally, pharmacies are not NHS bodies, but private organisations, so enforcement of contract terms may ultimately have to be by the courts.

Note: Under Local Pharmaceutical Services contracts an LPS provider is able to opt to be treated as an NHS body for the purpose of dispute resolution.

## **WHAT IS AN SLA?**

A Service Level Agreement is an agreement between a provider of a service and the commissioner of that service, setting out the range and level of services to be provided, the responsibilities and priorities, and the fees. As an annex to a contract, this detailed document can be modified quickly and easily, and supplementary SLAs can be introduced without the need to formulate new contracts.

SLAs aim to implement the agreed priorities contained within the local PCT plans. To ensure this responsibility is discharged the PCT may take into account:

- the standards of service quality expected;
- the relevant national service framework (if any);
- the provision of reliable information on cost and volume of services;
- the Local Delivery Plan (LDP);
- the NHS National Performance Assessment Framework;
- that SLAs build, where appropriate, on existing joint investment plans; and
- that SLAs are based on integrated care pathways.

A good SLA results from discussions between clinicians, users, carers, public health professionals and managers. It reflects knowledge of local needs and inequalities. This requires the Chief Executive to ensure that the PCT works with all partner agencies involved in the delivery and commissioning of the services required. The SLA will apportion responsibility for handling a particular risk to the party or parties in the best position to influence the event; financial arrangements should reflect this. In this way the PCT can jointly manage risk with all interested parties.

## **WHEN TO USE IT**

It is now widely accepted that service provision and receipt should be governed by an agreement. Where an individual pharmacy contractor agrees to provide services to another organisation, or an LPC agrees to broker the provision of such services, it is sensible for all parties involved to formalise that arrangement through the establishment of an SLA. If the PCT or the pharmacy contractors want the agreement to be legally binding, then there should be a contract.

Care should be taken if the service being provided is by an individual pharmacist in circumstances that would normally be considered to be employment and should be covered by an employment contract rather than an SLA. For LPCs, as the representative of the pharmacy contractor, not individual pharmacists, their role and remit means that negotiating or brokering SLAs or contracts should be on behalf of contractors, and not the individuals that are employed or engaged by contractors. When a service is to be delivered by a pharmacist (or other person) and is being provided other than on pharmacy contractor premises, the LPC must take care not to negotiate or broker a deal which excludes the pharmacy contractor.

### **CORE ELEMENTS OF A STANDARD SLA**

SLAs should be well defined, and although the house style and exact content of a service level agreement will vary from one organisation to another, the core elements are likely to be similar, and include the following:

- parties to the agreement - who the agreement is between;
- purpose of the agreement - what services are to be provided by whom, to whom, and subject to any conditions or specification (which may be included as appendices or schedules);
- period of the agreement - including notice periods for termination, and whether the agreement can be renewed; and
- financial terms - fees, method of claiming, and payment terms. It may also be helpful to include the VAT status of the payments.

Other additional elements are often included, depending on the views of the organisations involved and the complexity of the service to be provided. These may include:

- quality and performance management - what standards are expected, how they will be monitored and what action will be taken if performance is unsatisfactory;
- detailed specifications - defining exactly how the service is expected to be provided, what staff qualifications or training are required, recording and other documentation to be used, possible timetables for delivery and periodic performance reviews, respective responsibilities and liabilities of supplier and commissioner, insurance and indemnity arrangements, confidentiality statements, termination conditions, dispute resolution etc.; and
- services not included - there may be circumstances where it is necessary, or desirable, to also define those services which are not included within the agreement, particularly if there is any risk of misinterpretation.

### **HOW ONE IS DRAWN UP**

Prior to entering into an agreement to commission the supply of goods or services, the commissioner will have determined the likely costs, and whether it exceeds a threshold set by the European Union. This is set every two years by the EU, in Euros, but with conversion factors for GBP. If the contract (over its lifetime) exceeds £100,000 it is likely that the PCTs would need to go through a formal tendering process. The obligations are on the PCT to satisfy the EU Directives, so LPCs and pharmacy

contractors need only to be aware that some contracts will only be entered into after a formal tendering process.

The Department of Health has developed NHS Supply2Health ([www.supply2health.nhs.uk](http://www.supply2health.nhs.uk)), the PCT procurement portal for clinical services. NHS Supply2Health provides a single source of information for providers looking for Part B clinical services advertisements<sup>1</sup> where the PCT is the main contracting authority. On 30 September 2008 it became mandatory for all PCTs to use NHS Supply2Health.

Once agreement has been reached that a service is to be commissioned from a pharmacy, or a number of pharmacies, the commissioning organisation is likely to take the lead in drawing up the content of the SLA. This may follow an organisational style used for all their SLAs, or may be more organic, seeking to capture the elements relevant to the particular situation.

Once the service commissioner has drawn up an initial draft of the SLA, the prospective provider of the service should expect to have the opportunity to make comments on its content, because this is an agreement – i.e. not a unilateral imposition of standard terms. Depending on the complexity, and value of the SLA, pharmacy contractors may wish to seek legal or professional advice on the content before agreeing to the terms.

Ideally the SLA documentation should be concluded before the pharmacy contractor starts to provide the service. On rare occasions however this is not possible and the commencement of the service by agreement of both parties may come first, particularly if the funding to initiate a service is time-limited. But, PSNC has received expressions of concern from pharmacy contractors and LPCs that, where this has happened, disagreements have occurred about the nature of contracts or service specifications, and many of those concerns are about payment terms – so there is a need to be cautious before beginning to provide a service which has no agreed and signed SLA.

If you have any queries about this LPC Briefing please contact Barbara Parsons, Head of Pharmacy Practice (01296 438404 or [barbara.parsons@psnc.org.uk](mailto:barbara.parsons@psnc.org.uk)).

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<sup>1</sup> Part B means Part B of the European Union (EU) Public Procurement Directives and UK regulations (together, the 'procurement rules'). Part B includes health services, which are not subject to the full procurement rules regime, but which nevertheless may require some form of competitive tender to be undertaken.

## **Appendix 1**

### **Terms to be found in a simple contract**

#### **Audit**

The arrangements for the commissioner to audit the service being provided should be specified. This may include access to records and completion of declarations. See also 'Records'.

#### **Change in ownership**

If a pharmacy ownership changes, the contract would come to an end, because the parties have changed. In these cases, the commissioner may be willing to continue the contract with the new owner, but the process of documenting that must be included in the contract.

#### **Child/Vulnerable Adult Protection and Chaperones**

Increasingly important – commissioners have duties to ensure that Child Protection legislation and local policies are complied with. If the service is to be provided to Children and / or Vulnerable Adults, there may need to be arrangements for a chaperone.

#### **Commencement, duration and review**

A contract is usually for a fixed period, but may include provision for it to be extended. There may also be break clauses, allowing either party to terminate the contract on giving notice. At review, if the service has been found not to be popular, the service may be terminated – usually with notice.

#### **Complaints**

The pharmacy may be required to have arrangements for dealing with complaints about the service. Unlike the arrangements for the Essential Services, the contract requirements could include an obligation to inform the PCT if a complaint is made, together with the steps taken resolve the complaint.

#### **Compliance with the law**

A 'catch-all' clause requiring compliance with the law may be included. This may be important because if the service being commissioned cannot be provided lawfully in some circumstances, the commissioner would wish to protect itself from being an accomplice, in the event of a breach.

#### **Confidentiality**

The terms of the agreement between the commissioner and pharmacy may be confidential, and discussions between the two parties should not be disclosed to third parties without the consent of the other party. The arrangements for maintaining confidentiality of the contract, and the extent to which details may be disclosed, will be set out in the contract. See also data protection and freedom of information.

#### **Consent**

Persons using the service must give their consent to the service being provided. Consent is not always required to be in writing, but it is becoming common to record consent. Usually, the consent to treatment will include a requirement for the person to consent to information being passed to another party, such as the GP, or the PCT for monitoring or payment purposes.

### **Data protection & freedom of information**

Every NHS service involves the use of public funds, and so the Freedom of Information Act is likely to apply. The Data Protection Act which provides safeguards against the inappropriate release of confidential information may also apply. The contract may set out how data is to be protected and how FoI requests are to be handled.

### **Definitions and interpretation**

In complex contracts, especially where wording is not to be given its ordinary meaning, certain words will be specifically defined. 'Pharmaceutical Services', and 'Pharmacist', often need to be defined, so that these words and phrases are read in context.

### **Dispute resolution**

As the complexity of the contract and the services provided increase, there is greater scope for misunderstandings or disagreements. In contracts between NHS bodies, these will be resolved using the NHS disputes resolution procedure. This is not generally available to pharmacies. There must, however, be certainty, by including in the contract, the method of resolving disputes.

### **Equipment**

The detailed specification of equipment may be in the Schedule or a separate service level agreement setting out the service specification, but the contract itself may impose a requirement that all equipment is fit for purpose and properly maintained.

### **Equity and non-discrimination**

It is important that no potential users of the service are denied access through discrimination. Standard clauses requiring equality of access are likely.

### **Force Majeure**

Whilst a contract must be complied with, there are circumstances which are completely beyond the control of the parties which may prevent the parties from fulfilling the terms of the contract. This clause allows a failure to comply with the contract not to be treated as a breach of contract.

### **Governing law and jurisdiction**

It is usual to see contract clauses stating that the contract is to be governed by English law. The clause becomes more important where parties to contracts are based in different countries.

### **Indemnity insurance**

A commissioner will require there to be indemnity arrangements for the service being provided so that its own liability is minimised. There may be a specific clause stating that the provider indemnifies the commissioner from liability. Indemnity insurers should be contacted to ensure there is full cover.

### **Intellectual property**

The development of innovative services and the provision of services may generate information which could have commercial value. The contract may set out who the owner of the data is, and the circumstances in which the information may be shared with others.

### **Location**

In most cases, the service will be provided at the pharmacy contractor's premises, but it may be provided elsewhere.

## **NHS branding, marketing and promotion**

The Code of Practice on promotion of NHS services will apply to many contracts. The commissioner may be keen to promote the service widely, but it may also wish to restrict the marketing (for example if self-referral is not appropriate).

## **Parties to the Contract**

This will specify the two parties. In a community pharmacy, it is likely to be the pharmacy owner, not the individual pharmacist who provides the service. The person signing the contract must be authorised by the contractor to sign on behalf of the contractor.

## **Patient Safety incidents**

The commissioner will often require there to be a process for dealing with and recording incidents, such as errors, or harm being caused to persons using the service.

## **Premises**

There may be a need to set out where the service is provided, and to specify the standards of those premises, for example, the criteria applying to a consultation area, although detailed specifications are more likely to be included in an SLA.

## **Prices and payment**

A contract for one service may include prices for elements of that service, but where several services are to be contracted, under different SLAs, the prices may be in the service specification. The method of claiming and the payment schedule may be set out in the contract. It is vital to both parties to agree the frequency and mechanics of making claims, and the arrangements for payment. Delays in making claims may result in non payment, and delays in payment could cause serious difficulties for pharmacy contractors. It would be appropriate therefore for the pharmacy to be required to submit claims no less frequently than quarterly and for commissioners to make payment by the end of the month following the month of claim.

## **Procedures and protocols**

Inevitably, commissioners will be keen to ensure that the service is provided consistently, so may require detailed SOPs, and in some cases, these may be required to be agreed by the commissioner before the service commences.

## **Protection**

Especially relevant to services provided to vulnerable persons, including children, commissioners will want to see appropriate safeguards to protect vulnerable groups. This may involve chaperones (see above) and vetting and barring (the terms used in the Safeguarding Vulnerable Groups Act due to come into force in autumn 2009) requiring specified workers to be vetted.

## **Provisions surviving termination**

When a contract ends, the terms of the contract are no longer enforceable. However, some terms must live on for a short time – such as the right to invoice and receive payment for the services provided immediately before termination. The confidentiality of the data generated during the contract would also continue indefinitely.

## **Quality & Monitoring**

The contract may set out the right of the commissioner to audit the volume of service provided and the quality achieved (see audit), as well as monitoring compliance with the service specifications. This may include visits, but could also include a requirement

to complete and return a self assessment. The assessment of compliance would be against the service specification in the SLA.

### **Records**

Records (which can be audited) of the delivery of the service will be required, and in some services, patient records may be generated. A clause in the contract may set out how the records are to be maintained and protected. Where these records are required to be produced to the commissioner for the purpose of audit, the patient's consent for the disclosure must be obtained.

### **Remedies**

Where there has been a dispute or a breach of the terms of the contract, several remedies may be available – which may include a requirement to put right the consequences of the breach, or to fund the commissioner's costs in putting right the consequences of the breach.

### **Services to be provided**

The contract may specify the services being commissioned, but the detail of the services will not be in the body of the contract, but in a schedule or a related SLA.

### **Service targets**

There may be targets to be achieved, for example the number of patients seen or a target of measurable outcomes. Where there are targets, the pharmacy would be expected to submit reports or data, and the extent of reporting should be set out in the contract or SLA. Arrangements for audit or monitoring should be included in the contract.

### **Staff**

The contract may stipulate requirements as to staff, for example, the qualifications and accreditation requirements and whether sub-contracting is allowed.

There will sometimes be clauses dealing with rights under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE), as commissioners will be keen to ensure that they carry no obligation under TUPE if a service is discontinued in one location and transferred to another provider.

### **Sub-contracting**

In some cases, the pharmacy contractor may wish to sub-contract some parts of the service, for example, by asking another pharmacy to provide the service if a problem causes temporary interruption of the service. The contract may say whether or not sub-contracting is permitted (where it is permitted, it would be usual to require the advance consent of the commissioner).

### **Suspension & Termination (other than at expiry)**

The commissioner will want to include rights to suspend the service if quality or other service standards are not met. In the event of serious breach of the terms of the contract, there will usually be a right to terminate.

### **Third Party Rights**

These tend to be fairly standard terms designed to ensure that a third party, who is not a party to the contract, does not gain the right to enforce the terms of the contract. For example, a member of the public would have no legal right to require performance of a stop smoking service, where this is commissioned by a PCT with a pharmacy.

**Variation**

Contracts are not fixed in stone, and they may need to be varied (for example if the law changes, or if the needs of either party change). Variation is usually by agreement, but in some circumstances, for example where the law has changed, the variation may be imposed.

**Warranties**

The contract may be based on a number of presumptions – such as where there is a requirement for a pharmacist – that the pharmacist is registered, and able to provide the service. The pharmacy may need to give a warranty that the pharmacists used are registered and able to provide the service.

## **Appendix 2**

### **Terms to be found in a simple Service Level Agreement**

Many of the terms set out in a contract may also be found in an SLA, particularly if the SLA is to form the main written evidence of a contractual arrangement.

#### **Background**

The background of any policies or strategic objectives of the PCT which are addressed by the SLA. This may, for example, state that the PCT has identified a need to reduce the incidence of smoking in a particular locality.

#### **Purpose**

This will set out the overall purpose of the agreement, for example, to ensure that persons resident in the locality will have access to advice, referral and products from the pharmacies providing the service.

#### **Period of Service**

This will set the commencement date of the service and the date on which the service will be terminated (if any).

#### **Availability of the service**

##### *Geographical area*

The extent of the provision of the service. Sometimes the PCT may want to provide the service to persons resident in all its area, or it may limit the area to smaller localities, for example defined areas of deprivation.

##### *Eligibility*

The service may be for only specified sectors of the community, for example, an emergency hormonal contraception service may be provided only for persons under 21 years old.

##### *Criteria for inclusion*

This section may describe a sub-group of those persons who would fall broadly into the eligibility criteria. For example, the provision of nicotine patches in a stop smoking service may be limited to persons who have not had treatment under the service in the last six months. This section may refer to signposting, if a person who does not meet the criteria seeks treatment.

#### **Pre-requisites for providing the service**

##### *Premises Standards*

One of the most common requirements is the availability of a confidential consultation area. This may be of the same specification as the MUR consultation area or may require more specialised facilities – such as a couch, hand-washing facilities etc. In cases where diagnostic testing is required, the premises standards may be supplemented with hygiene requirements, particularly infection control measures.

##### *Equipment*

Some services require the use of equipment. If so, the SLA will identify what equipment must be available, and may require contracts for maintenance or testing of the equipment.

Arrangements for disposal of any waste that arises from provision of the service should be included.

#### *Accreditation of the pharmacist and / or staff*

Some services require no additional training, but accreditation may be needed to ensure the pharmacist or other members of staff understand the detailed requirements of the commissioner.

Some services may require bespoke training provided by the PCT or training from a recognised national provider. PCTs are reducing the training that they provide, preferring to leave it to providers to arrange for suitable training.

For staff that may come into contact with body fluids, there may be a requirement for immunisation before they are able to provide the service.

For services provided on a one to one basis, especially those provided to children and vulnerable adults, there may be a requirement for the pharmacist to have undergone an Enhanced Criminal Records Bureau check, and in due course, be subject to the vetting and barring provisions of the Safeguarding Vulnerable Groups Act 2006.

#### *Patient consent*

If a patient visits a pharmacy and seeks treatment, it can generally be assumed that they consent to receiving that service, but in some services the SLA may require written consent to be obtained.

Written consent may also be needed if patient sensitive data is to be passed to the PCT or the person's GP.

#### *Arrangements for Chaperones*

In some services, or for some patients, the availability of a chaperone may be desirable.

### **Service description**

#### *Detail of the service*

This is the most critical section of the agreement as it describes the services and the manner in which those services are to be delivered. The information on the services must be accurate and contain detailed specifications of exactly what is being delivered, which can be included as an Appendix if preferred.

#### *Staff to provide the service*

The service specification may set out which members of staff provide which elements of the service. Full use of skill mix ensures an efficient and cost effective service.

#### *Screening*

The PCT may require all persons seeking the provision of the service, to be screened, and this may include use of a questionnaire. Although the screening may be used to determine eligibility (see above) it may also be used to determine which elements of the service are appropriate.

#### *Diagnostic tests*

Some services may require diagnostic tests to be carried out.

### *Signposting*

As a result of the screening or diagnostic tests, some people may be excluded from the service. The SLA should set out the signposting requirements for ineligible persons.

### *Payment*

If the service includes the provision of drugs or appliances, the NHS Charges regulations may apply. The SLA should state whether this is the case, and describe how the pharmacy will account to the PCT for the charges collected.

### *Follow up*

Some services may be provided to a person on a number of occasions, for example supplies of stop smoking products, or a regular check with repeats of diagnostic tests may be required.

## **Pharmacy Performance and Monitoring**

### *Performance Management*

A key part of a Service Level Agreement deals with monitoring and measuring performance. Essentially, every service must be capable of being measured and the results analysed and reported. The benchmarks, targets and metrics to be utilised must be specified in the agreement itself. The service performance level must be reviewed regularly by the two parties. Details may include:

#### *Patient satisfaction/outcomes*

The service may include auditing patient experience, either at the end of the provision of the service, or through a questionnaire to be completed later. Some services now measure patient reported outcome measures (PROMs).

#### *Volume measurements*

The service specification may include a minimum number of units of activity. This may be used for volume band payments and incentives, or may be to ensure the pharmacy is committed to providing the service.

The PCT may also impose a maximum number of units of activity – but, care should be taken to avoid SLAs which allow the commissioner to terminate immediately, agreements where financial or other thresholds are reached. A pharmacy should be able to provide a service and expect to be paid for that service, until such time that the commissioner's decision to cease providing the service is communicated to the pharmacy.

#### *Quality measurements*

The SLA may set out a number of quality indicators that could cover the premises, equipment, staff, or the service delivery itself.

Infection control measures are likely to be included particularly if the service includes any breach of the skin.

#### *PCT monitoring*

The PCT may require that on demand, the pharmacy co-operates with any reasonable request for information about any aspect of the provision of the service.

#### *Sanctions*

The SLA may include the steps to be taken if the service volumes fall outside agreed levels, or if the quality measured proves to be substandard. This may include

termination (although this would normally be included in contract terms), retraining/reaccreditation, remedial action to improve premises or equipment or encouragement to engage better in promoting the service.

#### *Incident Management*

The purpose of problem management is to minimise the adverse impact of incidents and problems. This usually specifies that there must be an adequate process to handle and resolve unplanned incidents and that there must also be preventative activity to reduce occurrence of unplanned incidents. Formal records and logs must be maintained of all incidents and problems.

#### *Disaster Recovery*

Disaster recovery and business continuity can be of critical importance and should be reflected within the SLA. This will typically state that there must be adequate provision for disaster recovery and business continuity planning to protect the continuity of the services being delivered.

### **Claims for Payment**

#### *Amount*

The agreed amount for the delivery of the service should be stated along with any uplift arrangements if applicable.

#### *Frequency*

The claims for payment should be made regularly so that the pharmacy receives payment promptly, but this needs to be balanced by the administrative overhead.

PSNC suggests that claims made no less frequently than quarterly would be reasonable, as it allows ongoing monitoring of volume of service delivery (and so allows plotting for budgetary purposes). There should be facility made for late submission, where late submission has occurred through no fault of the provider.

Claims should usually be made within the financial year in which the service is provided, (other than items of service provided during the last few weeks of the financial year which may need to be claimed after the year-end), because allocating funds across financial years introduces complexity. A deadline for making a claim of a set period after the date of service delivery may be included in the SLA and should be noted carefully by the provider as it may prevent late claims being accepted.

#### *Method of claiming / documentary evidence*

The PCT may be satisfied with a simple invoice setting out the period in which the service has been available, or require a volume based claim for items of service. Evidence of service delivery may be required – but remember that disclosure of patient sensitive information would require patient consent.

The PCT may expect claims to be made electronically, for example through web based software, or may be content with written invoices. The method of claiming should be part of the contract or SLA.

#### *Payment period*

The period within which payment should be expected should be a key part of the contract or SLA. The PCT may make payments by cheque or by electronic banking, and it may be made to the pharmacy premises or to a head office account. Large companies in particular, may find it difficult to reconcile payments, so there should be

suitable internal reporting mechanisms, as well as the PCT using appropriate references when making centralised payments.

As many of the complaints which PSNC receive concern allegations of 'late payment' it is essential that agreed payment terms are set out clearly so that there is certainty about the terms. Many PCTs and LPCs / contractors have agreed monthly payment cycles, but where possible the payment should follow the recommendation made by the Prime Minister that government departments should make payment within 10 days to small businesses (and endorsed in respect of payments by PCTs in the letter from David Nicholson 21 October 2008, Gateway Reference 10753. ([www.dh.gov.uk](http://www.dh.gov.uk))).

## **Marketing and Communications**

### *Promotion of the service*

For most services to succeed, the public must know that there is a service available and where the service can be accessed. Sometimes the PCT will expect the pharmacy to display a notice. Sometimes, however, the service may be provided on referral only – and in this case there may be no local promotion of the service.

### *Communications*

Sometimes the PCT may encourage local media campaigns, but these will generally be led by the PCT. If there is to be a requirement to co-operate with media campaigns (or to refrain from discussing with the media) this should be set out clearly.

The use of the NHS logo in promotion should comply with the terms of use for the NHS identity ([www.nhsidentity.nhs.uk](http://www.nhsidentity.nhs.uk)).

## **Termination**

There is a need to consider how the agreement is going to end in the event of either or both parties wishing to terminate and in the event of due cause by either party.

The following termination issues may need to be considered:

- Termination at end of initial term
- Termination for convenience
- Termination for cause
- Payments on termination

The following may also be included within the SLA but are covered under Appendix 1:

### Compliance and Resolution

This typically covers the following key topics:

- Indemnities
- Exclusions
- Third part claims
- Force majeure
- Remedies for breaches



## **2 PERIOD OF AGREEMENT**

### *If Permanent*

This Agreement shall commence with effect from XXX and the contractual relationship will be of a permanent nature and will automatically roll over from year to year. The SLA shall continue subject to either party at any time giving not less than xxx month's written notice to the other party to terminate this Agreement without penalty, or in the event of termination for serious breach (see Termination on breach)

### *If for a defined period*

This Agreement shall commence with effect from XXX and shall continue until XXX. This SLA may also be terminated by either party at any time giving not less than xxx month's written notice to the other party to terminate this Agreement without penalty, or in the event of termination for breach (see Termination on breach)

### *If for a defined period and renewable*

This Agreement shall commence with effect from XXX and shall continue for the XXX subject to either party at any time giving not less than xxx month's written notice to the other party to terminate this Agreement without penalty, or in the event of termination for breach (see Termination on breach). This Agreement may be renewed on one or more occasions, if both parties agree, not less than XXX months before the date of termination, that it shall be renewed and a review date should be set.

## **3. SERVICE SPECIFICATION**

A copy of the Service Specification is set out as Annex 1

## **4. STANDARD OF SERVICE**

Both parties are committed to securing the provision of high quality, cost-effective care in a safe and congenial environment.

## **5. PROVIDER**

This service may only be provided by an accredited pharmacist / pharmacy staff, who has / have completed the training detailed in section XXX. The accredited staff will normally be available XXX days a week.

The Provider will ensure that all members of pharmacy staff are trained in the operation of the scheme and full details will be made available to locum pharmacists to ensure continuity of provision of the service.

For the purpose of this Agreement, 'staff' includes persons employed or engaged by the provider, to provide the services in this Agreement.

The accreditation requirements are:

[pharmacist accreditation requirements (which may include Enhanced CRB checks)]

[other specified categories of staff accreditation requirements]

The provider will furnish on demand, a list of the staff available to provide the services.

Where required, arrangements must be made for a suitable chaperone, acceptable to the person accessing the service, to be present. The cost of the chaperone will be borne by [the provider / the commissioner]

## **6. NOTICES**

Any notice required to be given by either party to the other under this SLA shall be in writing and served by sending the notice by pre-paid post to the address of the party as set out in Part 1 of this SLA or such other address as each party may notify to the other, and shall be deemed to have been duly served on the third working day following the date of posting to the agreed address.

## **7. CONFIDENTIAL INFORMATION AND DATA PROTECTION**

The Provider shall not, and the Provider shall procure that any Named Person shall not, whether during or after their appointment, disclose or allow to be disclosed to any person (except on a confidential basis to their professional advisers) any information of a confidential nature acquired by the Provider or any Named Person in the course of carrying out their duties under this Agreement, except as may be required by law or as directed by the Commissioner.

The Provider must protect personal data in accordance with the provisions and principles of Data Protection Act and the Confidentiality: NHS Code of Practice, and must ensure that all staff that have access to such data are informed of, and comply with this requirement.

The Provider shall at all times ensure that appropriate technical and organisational security measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

The Provider must be aware that the any information held by the commissioner may be subject to disclosure under the Freedom of Information Act.

## **8 AUTHORISED OFFICER**

The Commissioner hereby nominates XXX as the authorised officer empowered to act on its behalf, and will inform The Provider immediately, in writing, of any change in the nomination of authorised officer.

Any notice, information or communication given or made by the authorised officer shall be deemed to have been given or made by The Commissioner.

## **9. SLA MANAGER**

The Provider nominates XXX as the authorised manager empowered to act on its behalf, and will inform The Commissioner immediately, in writing, of any change in the nomination of SLA manager.

Any notice, information or communication given or made by the SLA manager shall be deemed to have been given or made by The Provider.

## **10. CONCILIATION AND ARBITRATION**

In the event of any dispute, difference, or failure to agree on any matter in relation to this SLA, The Commissioner and Provider will in the first instance refer the dispute for conciliation.

Any matter which cannot be resolved by negotiation between the parties or by conciliation shall be resolved if possible by arbitration. The Arbiter shall be agreed between the parties.

## **11. TERMINATION OF SLA**

Either party can terminate this agreement by giving three months notice in writing. Variation to the agreement can be made at any time as long as they occur in writing and are agreed by both parties.

Termination without notice may occur if there is serious breach of the terms of the SLA.

## **12. FORCE MAJEURE**

The terms and conditions of this SLA shall apply at all times within the period of operation of the SLA and in all circumstances and conditions unless prevented by Force Majeure.

Force Majeure shall include a major accident or disaster, a major outbreak of infectious disease, outbreak of war, or similar circumstance.

## **13. INDEMNITY**

The service provider will operate in accordance with all Acts of Parliament, statutory regulations or other such laws, recommendations, guidance or practices as may affect the provision of services specified under the Agreement.

Any litigation resulting from an accident or negligence on behalf of the Provider is the responsibility of the Provider who will meet the costs and any claims for compensation, at no cost to the PCT. The pharmacist must ensure that their professional indemnity insurance provider has confirmed that this activity will be included in their policy.

## **Annex 1**

### **SERVICE SPECIFICATION**

#### *Description of the service*

The service shall consist of:

[service description]

#### *Geographical area*

The service will be available to all persons resident in [or visiting] [area].

#### *Inclusion criteria*

Persons will be eligible to receive the service if they:

[inclusion criteria]

#### *Screening*

Persons referred to the pharmacy or self presenting to the pharmacy for the service, shall be screened for eligibility to receive the service, as set out in the inclusion criteria above. The screening shall consist of:

[screening process]

#### *Signposting*

Where persons referred to or self referring for the service are ineligible, they will be signposted as follows:

[signposting arrangements / referral forms etc]

#### *Premises*

The service will be made available in the premises identified on page 1 of this agreement.

The following facilities must be available before commencement of the service:

[premises facilities]

#### *Equipment*

The following equipment must be available in the premises and maintained in accordance with any manufacturer recommendations:

[equipment]

#### *Consent*

The services will be provided only to those persons that consent to:

[the disclosure of information to their general practitioner, for the purpose of assuring patient care]

[disclosure to the Primary Care Trust for the purpose of audit and performance monitoring]

Consent will be recorded for each person who is provided the service.

#### *Claim for payment*

Claims for payment shall be made by submitting a claim form in an approved format to the commissioner, within [one month / three months] of the provision of the service. The claim form must be accompanied by [appropriate auditable records]. Claims beyond this period may, at the sole discretion of the commissioner, be allowed for good cause.

#### *Payment*

Claims submitted in accordance with the requirements of this agreement will be paid by [method of payment] by [timescale for payment].

#### *Patient satisfaction*

The provider is required to [distribute questionnaires to persons using the service, on the occasion of their last contact for provision of the services under this Agreement. Where a person using the service does not attend the premises for the purpose of the last consultation for this service, the provider shall send to that person a copy of the questionnaire and a self addressed envelope, inviting completion and return. The questionnaire feedback is to be collated and analysed on a [half yearly / annual] basis, and a summary provided to the PCT.

Changes needed to the service as a result of analysis of the questionnaire shall be discussed with the PCT.

#### *Volume measurements*

The provider shall maintain records, in a form acceptable to the commissioner, which allow measurement of the units of activity. A summary shall be sent to the commissioner every [month / three months].

[The service is to be provided until first of the following arise – the service has been provided on XXX occasions during the [calendar / financial] year, or the commissioner has notified the provider that the service has reached the volume threshold beyond which the service is no longer to be provided].

[The provider shall undertake to provide at least XXX units of activity during the [calendar / financial] year. If having considered the report above, the commissioner believes that the provider is not expected to achieve the minimum threshold, the commissioner and provider will discuss whether termination of the Agreement is appropriate.

#### *Quality measurements*

The provider agrees that the commissioner may assess the quality of the service provided by:

[details of quality measurement].

If having carried out this assessment, the commissioner believes that the provider is failing to meet the quality requirements, the commissioner and provider will discuss remedial action or termination of the Agreement.

The commissioner may terminate the Agreement immediately, if in its reasonable opinion, the quality of the service is such that there is a serious risk to the health of persons using the service.

*Promotion of the service*

[The provider undertakes to participate, in the manner reasonably requested by the commissioner, in promoting the service to users of the pharmacy premises or the provider will not promote the service to the public without the prior approval of the commissioner.]

The use of the NHS logo in promotional materials must comply with the NHS brand identity guidelines.