Guidance on redemption of NHS optical vouchers

This guidance describes the arrangements for requesting information about optical vouchers and redemption of optical vouchers following the introduction of the National Health Service (Optical Charges and Payments) Amendment (No 2) Regulations 2008 and the issue of the NHS (Redemption of Optical Vouchers) Determination 2008.

This note is not a substitute for reading the Regulations and Determination.
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Guidance on redemption of optical vouchers

1. This guidance describes the arrangements for requesting information about optical vouchers and redemption of optical vouchers following the introduction of the National Health Service (Optical Charges and Payments) Amendment (No 2) Regulations 2008 and the issue of the NHS (Redemption of Optical Vouchers) Determination 2008. This note is not a substitute for reading the Regulations and Determination.

2. The Determination and Regulations work hand in hand and are intended to provide PCTs with the means to strengthen control of redemption of optical vouchers to ensure that public funds are properly spent and potential fraud is reduced. The Regulations and the determination apply to England only.

3. The requirements that are being introduced apply to any supplier who wishes to redeem optical vouchers, regardless of whether they are GOS contractors or otherwise in the business of dispensing.

NHS (Redemption of Optical Vouchers) Determination 2008

4. The Determination specifies that any requirements in the Regulations (the National Health Service (Optical Charges and Payment) Regulations 1997) must be met for vouchers to be redeemed. This obviously includes the amendments now being made by the 2008 Regulations and any subsequent amendments. The requirements apply to anybody who wishes to redeem NHS optical vouchers, whether they are GOS contractors or otherwise in the business of dispensing.

5. They make a new requirement that a supplier must produce relevant records to the PCT within 14 days of a request being made in respect of
   (a) any specific voucher (or vouchers), or
   (b) all vouchers,
   which the supplier is seeking to redeem or has redeemed in the two years prior to the request being made to see those records.

6. It is important to note that this obligation takes effect from the date that the Determination comes into force. This means that whilst a PCT could request records from a time before the Determination comes into force the supplier may not have retained such records as there was no duty to do so. The duty will therefore exist in relation to any documents that may exist but, if the supplier had not kept records before commencement, then the PCT would have no ground for complaint.

7. The PCT must make the request in writing. The PCT has discretion to allow more than 14 days for records to be made available if it wishes.

8. The Determination defines “relevant records” as any record –
   (a) which the Regulations require to be kept, or
   (b) is reasonably required to prove that the requirements of the Regulations in relation to vouchers have been complied with.
   If records were kept prior to the making of the Regulations (which many businesses will have done for their own purposes), then the PCT is entitled to have them produced, but,
obviously, cannot insist on records that do not exist and there was no duty to make or keep before the Determination came into force.

9. It is essential to recognise that the power to request records is a discretionary power. It does not support a general policy of pre-payment verification before suppliers are paid claims. It also does not support a general policy of requesting records from all suppliers all the time. Having any such general policy would be an abuse of the discretionary power and suppliers would have the right to challenge any PCT, which sought to impose such a policy without a reason for such an approach.

10. Decisions on which suppliers to make requests of under powers in this Determination are for PCTs but we would anticipate that they would want to take a proportionate, risk-based approach with requests normally being targeted at suppliers who they have concerns about, especially once they have information on which to base such an approach.

11. This does not exclude the PCT making checks of records of other suppliers just as they are able to inspect records of GOS contractors should they wish and subject to the required notice. However, in making requests of suppliers as good practice to check standards, it would not be appropriate to ask for old records and this should only be done where a request has shown that there are grounds for concern.

12. As stated above these requirements apply to anybody who wishes to redeem NHS optical vouchers, whether they are GOS contractors or otherwise in the business of dispensing.

National Health Service (Optical Charges and Payments) Amendment (No 2) Regulations 2008

13. Building on the Determination the Regulations empower PCTs to exclude a supplier from the right to redeem vouchers. Anyone who supplies optical appliances is permitted to redeem vouchers in respect of optical appliances which they have lawfully supplied to NHS patients to whom the vouchers were issued, unless and until the PCT judges that they are unsuitable to do so and serves a notice as to cessation of payments ("a notice") on them - in effect, this is a 'blacklist' power. Where the PCT judges a supplier unsuitable, then they would issue a notice that no further payments be made to that supplier from a specific date. PCTs have to give a month's notice to suppliers, who would be able to appeal against the decision if they wished. In doing this PCTs will be, pursuant to directions, performing the function of the Secretary of State (the regulations refer to the Secretary of State giving notice but the PCT is required to exercise the Secretary of State’s functions under the Regulations).

14. The Regulations refer to “suitable person” and this includes corporate bodies as well as individuals. The Regulations also refer to the secretary of a corporate supplier and this is to be taken specifically as being the person who holds the formal position of, in the case of a limited company, “Company secretary” and not to encompass any employed secretary.
15. The Regulations make refusal to make records available for inspection or to comply with other conditions mandatory grounds for disqualification from redeeming optical vouchers as long as the refusal continues. The PCT would have discretion to make payments in cases where records had not been produced within 14 days until such time as a notice was issued.

16. If a supplier, who is a GOS contractor or an individual included on an ophthalmic performers list, has their contract terminated or is removed from an ophthalmic performers list, on the grounds of fraud, a notice should be issued that no further payments for redemption of optical vouchers will be made to them from a specific date. This is a mandatory notice and PCTs do not have discretion in this area. This power does not apply when a person has been suspended – they must have actually have had their contract terminated or been removed from an ophthalmic performers list and would not apply to someone who has been suspended.

17. If a contractor should be disqualified from providing General Ophthalmic Services for reasons other than fraud, the PCT would have discretion to disqualify them from redeeming vouchers if they thought it justified and there would be a right of appeal for the contractor.

18. PCTs are also able to apply to the FHSAA for a national disqualification (called a “stop order”) of anyone to whom a notice has been issued in the same way as they can in respect of any person who is rejected for inclusion in or removed from a list. The “Stop Order” would be in relation to the particular supplier and, in such a case, the PCT shall notify that supplier that he has so applied.

19. There is a right of appeal to the FHSAA in any case where the PCT decided to notify a supplier that they were no longer acceptable. This right of appeal would need to be exercised within 28 days of the notice being served. If a supplier makes an appeal to the FHSAA they are able to continue redeeming vouchers until their appeal has been determined (this is consistent with the approach taken within GOS when an appeal is being considered).

20. The Regulations also allow for review of a notice issued and of stop orders issued. Reviews of notices issued are carried out by the PCT and reviews of stop orders issued by the FHSAA.

21. As with the requirements under the “List Regulations”, Directions from the Secretary of State make it a requirement for PCTs to notify the NHSLA when they issue a “stop notice” and to inform the NHSLA and other PCTs when the FHSAA issue a stop order.

22. The Regulations also amend existing Regulations to make it clear that in the case of optical appliances supplied by post or courier the PCT where the voucher was issued is responsible for redeeming the voucher.