

A photograph of two men in a medical office. The man on the left, wearing a light blue shirt and a purple patterned tie, is looking down at a stack of papers. The man on the right, wearing a white shirt and glasses, is also looking down at a document. The office background includes a desk with a mug, a plant, and a rack of papers.

# Setting up in private practice

A guide for doctors setting-up in private practice

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# Contents

<b>1</b>	<b>Introduction .....</b>	<b>2</b>	<b>6</b>	<b>Appraisal in the independent sector.....</b>	<b>13</b>
<b>2</b>	<b>Considerations before setting up in private practice .....</b>	<b>3</b>	<b>7</b>	<b>Consultants in private practice .....</b>	<b>15</b>
2.1	Indemnity .....	3	7.1	Terms under the 2003 consultant contract .....	15
2.2	Financial and legal considerations.....	3	7.2	Terms under the pre-2003 consultant contract .....	15
2.3	Book keeping.....	3	7.3	Code of conduct for private practice .....	16
2.4	Recognition with private medical insurers .....	3	7.4	Top-up payment for private care .....	16
2.5	Registration with the Care Quality Commission (CQC) .....	4	7.5	Working in private hospitals .....	17
2.6	Registration under the Data Protection Act .....	5	7.6	Conflicts of interest .....	18
2.7	Criminal Records Bureau (CRB) Checks .....	5	<b>8</b>	<b>General Practitioners in private practice .....</b>	<b>20</b>
2.8	Taxation .....	6	8.1	Restrictions on private practice for GPs .....	20
2.9	What to look out for when entering a contract .....	6	8.2	Use of NHS facilities for private practice .....	20
<b>3</b>	<b>Choice of premises and business structures .....</b>	<b>7</b>	8.3	Private GP referrals to the NHS.....	21
3.1	Choice of premises .....	7	8.4	Private prescribing.....	22
3.2	Health and safety at work .....	8	<b>9</b>	<b>Training grades and non-consultant career grade doctors .....</b>	<b>23</b>
3.3	Practice administration .....	8	<b>10</b>	<b>Glossary of terms .....</b>	<b>24</b>
3.4	Purchasing an existing practice .....	8	<b>11</b>	<b>Contacts and resources .....</b>	<b>25</b>
3.5	Business structures .....	9	<b>Appendix 1 – Template terms of engagement .....</b>	<b>27</b>	
<b>4</b>	<b>Advertising private medical services .....</b>	<b>10</b>			
4.1	GMC guidance on advertising .....	10			
4.2	Marketing strategies .....	10			
<b>5</b>	<b>Setting fees and billing arrangements .....</b>	<b>12</b>			



# 1. Introduction

This guidance has been developed by the BMA's Private Practice Committee and aims to provide practical advice to those doctors who want to set up in private medical practice. The guidance also covers the rules that govern how to minimise the risk of conflict between private practice and NHS commitments.

## What is private medical practice?

Private medical practice can be defined as the diagnosis and treatment of patients by private arrangement. A private patient is defined in the NHS Act 1977 as a patient who gives (or for whom is given) an undertaking to pay charges for accommodation and services.

There are many reasons why patients may opt for private healthcare. Key considerations include patient choice and a high level of personal care. For example, private patients can choose a consultant of their choice and are likely to be seen by the same consultant throughout their treatment. In addition, there is peace of mind that treatment will be available without a long waiting list and the facilities will include a private room. In private healthcare, patients have a direct professional and contractual arrangement with their doctor (or team of doctors) and the terms of engagement require informed financial consent of the patient. Private patients may fund their treatment individually, or through claiming on their private medical insurance. The doctor's contract is always with the patient, and it is therefore the patient's responsibility to ensure that the doctor's terms and fees are met.

## Who can undertake private medical practice?

Any doctor fully registered with the General Medical Council (GMC) in accordance with the provisions of the Medical Act 1983, is entitled to set up in private medical practice. Doctors with provisional or limited registration however cannot practise in their own right without supervision. Doctors registered with the GMC do not need to inform them that they will be undertaking private work, but are required to ensure that they fully observe the GMC guidance on '[Duties of a doctor](#)'. This guidance clearly set out the responsibilities and constraints of doctors working in private practice.



## 2. Considerations before setting up in private practice

### 2.1 Indemnity

It is essential, and a GMC requirement, that all private practitioners have an adequate level of indemnity cover from one of the medical defence bodies, as the NHS indemnity schemes do not cover private work. Appropriate cover can be obtained from one of the following organisations:

Medical Defence Union <http://www.themdu.com/>

Medical and Dental Defence Union of Scotland <http://www.mddus.com/>

Medical Protection Society <http://www.medicalprotection.org/uk/>

### 2.2 Financial and legal considerations

There are a host of administrative, financial and legal implications that need to be addressed by doctors interested in setting up in private practice. Doctors will need to seek the specialist advice of accountants and lawyers when setting up a new business, particularly in relation to the more detailed aspects of their business arrangements, such as the application of tax and accounting. In addition, doctors wishing to set up a private practice, may wish to consider the help of other professionals including IT specialists, marketing agents and business consultants or advisers.

It is important to select an accountant and solicitor who is right for the business and has the experience, for example, of dealing with organisations in the same sector and of a similar size. A list of professional associations, which can be contacted when looking for a suitable accountant or solicitor is given below. Alternatively, personal recommendations may be used.

The Law Society [www.lawsociety.org.uk](http://www.lawsociety.org.uk)

The Institute of Chartered Accountants of England and Wales [www.icaew.co.uk](http://www.icaew.co.uk)

Association of Chartered Certified Accountants [www.accaglobal.com](http://www.accaglobal.com)

Chartered Institute of Management Accountants [www.cimaglobal.com](http://www.cimaglobal.com)

### 2.3 Book keeping

In order to keep track of cash flow and taxation, all doctors in private practice will need to set-up a separate business bank account and develop a form of book keeping that is easy to use and well organised. It is advisable to employ an accountant at the end of the year to draw up a profit and loss account, balance sheet and calculate tax.

### 2.4 Recognition with private medical insurers

A substantial number of individuals who receive private treatment do so as a result of private health insurance schemes. Private medical insurers (PMIs) such as BUPA, AXA PPP, WPA and Aviva, will only reimburse their customers (patients) for their specialist's fees if the consultant has been granted specialist recognition with the insurer. Therefore in order to be able to treat patients holding medical insurance, many practitioners choose to apply for specialist recognition. The requirements to obtain specialist recognition vary between the insurers, but most grant recognition to individuals who are on the specialist register and hold, or have held, a substantive NHS consultant appointment. The recognition arrangements of the insurers do differ, however, and some may not require a formal recognition procedure. It is therefore recommended that you contact the health insurers to determine what their recognition criteria are and to decide whether you wish to agree to their individual terms.



## 2.5 Registration with the Care Quality Commission (CQC)

The Care Quality Commission was established by the Health and Social Care Act 2008 and its role includes regulation of the independent healthcare sector in England. Any service provider who carries out a regulated activity must register with the CQC, however, there are certain exemptions that apply to independent medical practitioners which means that some of them do not have to register.

From October 2013, to be exempt, an individual medical practitioner (or all those in a group of medical practitioners), must be a service provider (or employed by a service provider) that is registered with CQC for carrying out a [regulated activity](#). The exemption for a group of doctors only applies to a practice of doctors not a body that employs a range of staff including doctors.

In addition, that employing service provider must be a 'designated body' or the individual medical practitioner must be on the medical performers list of a designated body. A 'designated body' means a body prescribed by [Regulation 4 of the Medical Profession \(Responsible Officers\) Regulations 2010](#). Furthermore, the provision of treatment must be carried out in a surgery or consulting room by the service provider.

Finally, the provision of treatment must not include any of the following:

1. treatment carried out under anaesthesia or intravenously administered sedation, other than:
  - a. nail surgery and nail bed procedures on the foot and which are carried out using local anaesthesia.
  - b. surgical procedures involving curettage (scraping), cautery (burning) or cryocautery (freezing) of warts, verrucae or other skin lesions carried out using local anaesthesia.

2. medical services provided in connection with childbirth;
3. the termination of pregnancies;
4. cosmetic surgery, with the exception of the following:
  - a. the piercing of any part of the human body or tattooing
  - b. subcutaneous injections to enhance appearance
5. removal of hair or minor skin blemishes by application of heat using an electric current; haemodialysis or peritoneal dialysis;
6. endoscopy other than using a device which does not have a lumen or other channel for the purpose or design of passing fluid or instruments through, or removing body tissue or fluid or any other item from, a person's body;
7. the provision of hyperbaric therapy, being the administration of oxygen (whether or not combined with one or more other gases) to a person who is in a sealed chamber which is gradually pressurised with compressed air, where such therapy is carried out by or under the supervision or direction of a medical practitioner;
8. intravenous, intrathecal or epidural administration of medicines or diagnostic agents;
  - a. the therapeutic or diagnostic use of x-rays, radiation, protons or magnetic resonance imaging;
  - b. invasive cardiac physiology tests.

Further information can be found in the CQC guidance '[Scope of registration: Independent medical practitioners working in private practice \(changes from October 2013\)](#)'. We advise that you check this guidance carefully.

To find out whether or not you will be required to register with the CQC, please contact them on 03000 616161 or go to their website at <http://www.cqc.org.uk/>.



Private doctors in Scotland should contact the Scottish Commission for the regulation of care:

[www.carecommission.com](http://www.carecommission.com)

Private doctors in Wales should contact the Health Inspectorate Wales (HIW):

[www.hiw.org.uk](http://www.hiw.org.uk)

Private doctors in Northern Ireland should contact the Regulation and Quality Improvement Authority (RQIA):

[www.rqia.org.uk](http://www.rqia.org.uk)

## 2.6 Registration under the Data Protection Act

Doctors who carry out private practice are required to have registered under the Data Protection Act 1998. This covers private doctors in the processing of all personal data relating to any private treatment. It is highly unlikely that a private doctor will be a salaried member of the private hospital staff and therefore it is hard to imagine a scenario in which private hospital's registration would cover the private doctor's work.

Notification with the Information Commission is a statutory obligation for every organisation or individual who processes personal information electronically unless they can rely on any of the exemptions in the Data Protection Act 1998. Notification can be made by completing the on-line application form, together with a statutory annual fee, on the Information Commission website ([www.ico.gov.uk](http://www.ico.gov.uk)) or by contacting their helpline on 0303 123 1113. A register of data controllers is available for public inspection on the ICO's website.

## 2.7 Disclosure and Barring Service (formally Criminal Records Bureau (CRB) Checks)

The Disclosure and Barring Service (DBS) was established under the Protection of Freedoms Act (2012) and merges the functions previously carried out by the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA). The services provided by the DBS have not changed from those provided by the CRB and ISA, they are now provided by one instead of two organisations.

With DBS's introduction, however, there has been a change to the definition of 'regulated activity' in relation to safeguarding adults as defined in the Safeguarding Vulnerable Groups Act 2006.<sup>1</sup> In this context 'regulated activity' does not have the same meaning as it does in the Health and Social Care Act of 2008. Instead for disclosure and barring purposes a regulated activity is one involving close work with vulnerable groups including children.

In June 2013 the DBS introduced the Update Service to reduce the number of applications individuals have to make for a DBS check. The DBS Update Services means that applicants will only have to apply for a DBS check once. Once this first registration has happened it is possible with the Update Service for applicants to re-use their certificate if they require a further check of the same type. The organisation the candidate is applying to would, with the applicant's consent, be able to check online to see whether the applicant's certificate was still up to date. To do this the applicant would have to subscribe to the Service and pay an annual subscription fee. Further information is available [here](#).

<sup>1</sup> The Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Provisions) Regulations 2012 can be accessed here: <http://www.legislation.gov.uk/ukSI/2012/2112/made>



## 2.8 Taxation

It is important to register the fact that you are entering a fee charging practice with Her Majesty's Revenue and Customs (HMRC) within 3 months of starting practice otherwise you will be subjected to a fine.

More information is available at the HMRC website at: [www.hmrc.gov.uk](http://www.hmrc.gov.uk).

## 2.9 What to look out for when entering a contract

Doctors working in private practice are not employees and as such are not covered by employment law. It is therefore extremely important that due diligence is given to any contract for the provision of services, practising privileges policy, or any other commercial agreement, before signing. It should be remembered that contract terms can often be negotiated and amended and that it might be worth seeking independent advice from an expert to highlight any pitfalls and serious risks that might be a result of signing the contract. For further details, please refer to the BMA's guidance 'What to look out for when entering into a contract'.



## 3. Choice of premises and business structure

### 3.1 Choice of premises

One of the major issues to be addressed by practitioners creating a new practice is location. There are essentially three main options as to where consultants can practise privately: in rooms provided in a private or NHS hospital; in dedicated consulting rooms; or in a part of their own home. Similarly, for private GPs, they may choose to practice at home, in a purpose built surgery, in rented rooms, or sometimes private GPs can also practise in consulting rooms in private hospitals.

#### a) Consulting in a private hospital

There may be several advantages to practising in a private hospital. For example, the rental or lease may include the use of skilled ancillary staff, such as receptionists, secretaries and nurses, and usually includes most of the furniture and equipment. Easy access to on-site facilities, such as pathology and radiology may also be a considerable advantage. It is worth researching the average cost per session for consulting in private hospitals in different regions, and if the decision is made to consult in a private hospital then an application for practising privileges at the hospital will need to be made (See section 7.5). It should also be borne in mind that the GMC states that where a doctor has a financial interest they must disclose this information to the patient before making the arrangements for admission or treatment, and this includes any financial interest in a private hospital.

#### b) NHS hospital consulting rooms

In order to use rooms in NHS hospitals to carry out private practice, formal approval is needed from the hospital authorities. The advantages include the use of furniture and equipment, but it is important to note that ancillary NHS staff cannot be used for free, and NHS secretaries or receptionists should not be asked to work privately without payment. Such activities are not part of those

individuals' NHS duties, and any work which involves assisting with a doctor's private patients should be undertaken outside the hours during which the secretary or receptionist works for the NHS and with management permission if NHS facilities are to be used.

#### c) Private consulting rooms

The use of dedicated private consulting rooms is an attractive option for many private doctors, but can be costly. Purchasing the freehold of a property will require a substantial capital outlay and is therefore best achieved by practitioners coming together to form a company. In this way, they may purchase the freehold or lease, together with the necessary equipment, and employ staff used by the practitioners, on a shared basis. In larger cities, however, fully equipped consulting rooms are often available by lease or license.

#### d) Practising at home

Practising from home is another popular option for doctors in private practice. Practising from home will cut down travelling costs and bring entitlement to tax relief in respect of heating, lighting, décor etc, but may also be disruptive to the home routine. Some specialities will clearly be more suited to practising at home, whereas for others it will not be practical. Any doctor thinking of practising at home will need to consult their accountant in order to determine what tax advantages are available. It is also worth checking with a solicitor that there are no restrictions on the use of the property for business purposes.





### 3.2 Health and safety at work

It is important to remember that doctors setting up a practice will need to be responsible for the use of their premises as a business. Doctors who choose to employ staff in their practice will have a responsibility to ensure that certain standards of health and safety are maintained. In addition, by inviting patients onto the premises for consultations doctors could be held liable for any injury sustained as a result of inadequate premises or equipment. With regard to practice premises, the local authority will be able to advise on any planning restrictions or Health and Safety regulations that apply. Doctors should be aware of, and seek advice on the following:

The Occupiers Liability Acts:

[http://www.opsi.gov.uk/acts/acts1984/pdf/ukpga\\_19840003\\_en.pdf](http://www.opsi.gov.uk/acts/acts1984/pdf/ukpga_19840003_en.pdf)

The Health and Safety at Work Act:

<http://www.hse.gov.uk/legislation/hswa.htm>

The control of Substances Hazardous to Health Regulations:

<http://www.hse.gov.uk/cosh/>

### 3.3 Practice administration

Once private practice premises have been established, it is necessary to make arrangements for the appropriate stationary and equipment. The documentation, storage and retrieval of information relating to private patients should be of a high standard and certainly comparable to that provided in the NHS. Stationary requisites to consider include: good quality headed paper, account forms, consultation patient note pads, folders, and possibly visiting cards. If working from a facility that is not equipped then basic office furnishings and specialty equipment will also be needed. Once established in a new premises, it is perfectly acceptable to circulate an introduction letter to doctors in the area.

### 3.4 Purchasing an existing practice

One way to establish a private practice is to buy an existing practice, for example from a retiring specialist or GP. This would include purchasing not just the equipment, facilities and the lease or freehold of a property, but also the 'goodwill' attached to an existing client base. This may be an advantageous way of starting out in private practice as the client base and reputation of the practice has already been established. An accountant should be consulted to calculate the value of the goodwill attached to a practice. The general factors to be considered by the valuer would include: the nature and history of the practice, current economic outlook, earning capacity of the practice and comparative sales figures.

It is important to note, however, that there are some restrictions on the sale of goodwill for GPs who also hold an NHS contract. Although the GMS contract (2003) stated a ban on the sale of goodwill would remain, in 2004 there was a change to Regulations 'The Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004 [si.2004/906]. These changes deliver the following:



- a) a relaxation of the ban in relation to enhanced, out-of-hours and additional services, but not in relation to essential services; and
- b) a relaxation that applies to all providers, including GMS and PMS practices, while retaining the ban in relation to the provision of essential services by GMS contractors or, in the case of PMS, where the provider has a registered patient list or such a list is being held on its behalf.

Further details on the sale of goodwill relating to the restrictions on GPs is available [here](#).

### 3.5 Business structures

There are a number of different types of business structures that doctors may wish to consider as a basis for their working arrangements, including:

- Partnerships
- Limited Liability Partnership
- Sole trader
- Private Company Limited by shares
- Public Limited Company
- Company Limited by Guarantee
- Community Interest Company
- Setting up in Chambers

The suitability of these arrangements will depend on the individual aims and needs of the individuals and organisation. Given the range of services and varied approaches of doctors to delivering those services, there is no one-size-fits-all business structure.



## 4. Advertising private medical services

### 4.1 GMC guidance on advertising

Doctors may advertise their services, for example on the internet, in formal advertisements in newspapers or magazines, a practice leaflet, or an editorial or news piece in a newspaper. However, all advertising must follow the guidelines set out by the General Medical Council.

The GMC guidance states that any information provided about medical services:

- Must comply with the law and guidance issues by the Advertising Standards Authority
- Must be factual and verifiable
- Must not make unjustifiable claims about the quality of service
- Must not offer guarantees of cures or exploit patients' vulnerability or lack of medical knowledge
- Must not put pressure on people to use the service, for example, by arousing ill founded fear for their future health or by visiting or telephoning prospective patients

This guidance applies to all advertising, irrespective of the medium used. Provided that the material fulfils these broad criteria, it would not breach the GMC's guidance. Advertising material, such as business cards, however, should not be given to the doctor's NHS patients, as this could be perceived as using NHS patients to promote private practice.

In addition, the BMA believes that specialists should as a general rule make it clear to members of the public that they usually do not accept patients without a referral from a GP or other practitioner. The BMA believes that it is important for

one doctor, usually the patient's GP, to have a complete record of the individual's healthcare and that patients should be encouraged to discuss their healthcare needs and wishes with their GP. The GMC reminds all specialists that, if they accept patients without referral, they should inform the patient's GP before providing treatment unless the patient objects. If the GP is not informed, the specialist is responsible for providing or arranging all necessary aftercare until another doctor agrees to take over.

### 4.2 Marketing strategies

As with any business, it is important to be aware of the target audience and how to reach them. Doctors need to clearly define their service and demonstrate the benefit of using their service, and the added value and enhancements offered over and above competitors. When looking to pay for private healthcare services, patients look for personalised medical care and therefore aspects that may be considered for promotion include:

- Easy or same day access to expert medical care
- Availability and ability to choose timings and location
- Choice of a named consultant and the same consultant at each visit
- One-stop investigation and specialised examination
- Access to innovative diagnostics, drugs, procedures
- Impeccable personal attention
- 24-hour cover
- Independence of system and choice, not state determined
- Adequate time spent with doctors
- Centres of excellence with sub-specialist expertise



- Individually tailored, fixed price, end-to-end care packages aimed at conditions not well catered for in the NHS
- Faster diagnosis and treatment
- Hotel services (e.g. wider menus, WIFI, Sky, complimentary gifts)

There are many forms of marketing, with social networking and professional websites becoming the norm. There are a number of organisations that specialise in managing marketing and media for private healthcare, and such organisations can be contacted for further guidance.



## 5. Setting fees & billing arrangements

Consultants are free to set their own charges for private medical procedures. Charges should be representative of what is fair remuneration for their services, based on the individual's circumstances such as experience, effort, skills and resources applied. It should be noted that due to restraints under competition law, the BMA is unable to recommend fee rates for private medical practice.

It is advisable that all fees are agreed in writing prior to treatment. This will help to avoid any misunderstanding at a later date. Occasionally doctors may find themselves in a position where payment of fees cannot be achieved amicably and in these circumstances it may be possible to pursue the debt through a Small Claims Court, or debt collection agency.

When consultants treat patients who have private medical insurance they are not obliged to set their fee based on the level of benefit that the provider offers their customer (the patient). Two exceptions to this are the healthcare insurers AXA PPP and BUPA.

In July 2008, AXA PPP introduced new terms of recognition for approved specialists. These terms of recognition state that specialists must charge at the rates outlined in the AXA PPP fee schedule. Doctors seeking recognition with AXA PPP therefore need to be fully aware that they will only be able to charge at the AXA PPP fee rates when treating patients with AXA PPP insurance, and that charging above these rates will result in de-recognition.

Similarly, all consultants applying for recognition with BUPA from June 2010, are required to sign up to the [Terms for Recognised consultants](#) (newly recognised from 2010). These Terms include a clause that the consultant must agree consultation fees as part of the recognition process and that all other fees must

not exceed [BUPA's Benefit Maxima](#). If charges are made above these values then the consultant will be de-recognised.

The BMA's Private Practice Committee has produced guidance to highlight the key principles of good billing practice in the independent sector. The guidance outlines the importance of maintaining the direct professional and contractual relationship between consultant and private patient, as the involvement of third parties in setting and controlling fee arrangements undermines the key principle of the independence of consultant practice. For further information on fee arrangements, please refer to the '[Guidance on good billing practice: a guide for private practitioners](#)'. It is recommended that all doctors in private practice have terms of engagement with their patients. These are important for setting out the organisational and financial arrangements in place, and also highlight that doctors have a professional and contractual arrangement with their patients, rather than another third party. A template terms of engagement document that can be individually adapted is in Appendix 1.



## 6. Appraisal in the independent sector

Independent practice, whether consultant or general practice, consists of a variety of different working arrangements and as such the nature of the appraisal process is also varied. For example, doctors may work wholly in private practice and hold practising privileges with one or more providers; work wholly in private practice but with no practising privileges; or they may hold an NHS contract and carry out part-time private practice. In all cases, however, it is the responsibility of individual doctors to ensure that they are appraised annually. The appraisal system is central to revalidation and must be quality assured, follow defined frameworks set down by the GMC and include the principles outlined in the Good Medical Practice module. Good Medical Practice requires that information be provided in relation to: activity, complaints, incidents and issues of health, probity.

### Doctors with an NHS contract and practising privileges

Doctors undertaking private practice, who also hold an NHS contract, will need to participate in whole practice appraisal within their NHS appraisal, to cover all elements of their practice. Appraisal of this nature takes place in the NHS using NHS appraisal forms together with relevant data provided from the independent sector provider and a certificate to confirm the renewal of practising privileges. Where a doctor has practising privileges with more than one independent provider, this information will need to be provided from each independent hospital. On completion of the annual appraisal, a copy of the Form 4, or a letter from the employing NHS Trust's medical director confirming satisfactory appraisal, should be sent to the Chief Executive of the NHS Employer and the Registered Manager of the Independent Hospital.

### Doctors who work in the independent sector, and who do not hold an NHS contract

Many doctors do not hold an NHS contract, and work purely in the independent sector, either with practising privileges at one or more independent hospitals, on a self-employed basis with no practising privileges; or are employed by an independent hospital. All these doctors, regardless of their working arrangements, are required to participate in appraisal in order to revalidate with the GMC. In addition, independent providers have responsibility through the National Minimum Standards from the Care Standards Act 2000 to ensure clinicians are appropriately appraised. Doctors in this category can participate in an appraisal process via: the independent sector organisation in which they work, the relevant Royal College, the Independent Doctors Federation, or an independent appraiser. The Doctors Responsible Officer (RO) is required to ensure that they are satisfied that the appraiser and appraisal process meet the standards required for revalidation. In every case, the appraiser needs to be a registered medical practitioner who has been trained and approved through a quality approved scheme.

### Appraisal documentation

The Independent Healthcare Advisory Services and the BMA have produced guidance on whole practice appraisal requirements for doctors working in the independent sector. This is available [here](#).

### Revalidation

Doctors identify their Responsible Officer for the purposes of revalidation through their prescribed connection to a designated body. For doctors working in the NHS and undertaking any amount of private practice, even if this constitutes the majority of their work, their designated body will be their main NHS



employer. For doctors working wholly in private practice their designated body will usually be the private hospital provider that they have practising privileges with and they undertake the majority of their work from. For doctors working in the independent sector with no practising privileges, there are a number of options available to them, although this will depend on the nature of the work they undertake and their relationship with other recognised designated bodies. Further information about identifying a RO is available on the [GMC website](#).



## 7. Consultants in private practice

### 7.1 Terms under the 2003 Consultant Contract

The right to undertake private practice is an essential part of the flexibility and freedom built into the national consultant contract. The 2003 Terms and Conditions of Service for Consultants (the Consultants Contract) therefore does not limit consultants from undertaking Private Practice, where those services are defined as 'Private Professional Services', including:

- The diagnosis or treatment of patients by private arrangement (including such diagnosis or treatment under Sector 65 (2) of the National Service Act 1977), excluding fee paying services as described in Schedule 10 of the Terms and Conditions.
- Work in the General Medical, Dental or Ophthalmic Services under Part 2 of the National Health Service Act 1977 (except in respect of patients for whom a hospital medical officer is allowed a limited 'list' e.g. members of the hospital staff).

Although there is no obligation for a consultant to undertake Programmed Activities (PAs) in excess of 10 per week, one of the criteria for achieving progression through the pay thresholds is that consultants should accept an extra paid PA in the NHS, if offered, before doing private work. Any additional PAs must be offered equitably between all consultants in the specialty, and if a colleague takes up those sessions there would be no detriment to pay progression for other consultants. If the employing organisation offers the option of undertaking an extra PA per week and the consultant chooses to reject the offer, then pay progression can be withheld for that year only. If consultants are already working 11 PAs (or equivalent) then there is no requirement to undertake any additional work. Consultants should discuss any private practice

commitments with their clinical manager and, where possible, the offer of additional PAs should be made at the annual job plan review. There should be a three-month minimum notice period for starting or terminating additional PAs on both sides.

### 7.2 Terms under the pre-2003 Consultants Contract

Under the pre-2003 national terms of service, there are certain contractual restrictions on whole-time consultants, including a limitation on private practice income. The gross earnings from private practice of whole-time consultants for any financial year beginning 6 April must not exceed 10 per cent of gross NHS salary. Gross NHS salary is taken to include any discretionary points, distinction award or CEA payable, but not other NHS earnings such as fees for domiciliary visits or category 2 work.

Whole-time consultants must certify to their employer at the end of each financial year that they have not exceeded the 10 per cent limit. Exceeding the limit in two consecutive years, and a failure to show that effective steps have been taken to reduce private earnings by the following April, will result in consultants losing their whole-time status. They will then be regraded as maximum part time and paid at 10/11ths of the gross whole-time salary. After such compulsory regrading, consultants may then return to whole-time status only after a further two years in which their private earnings do not exceed the 10 per cent limit.

In some exceptional circumstances, employers have offered whole-time contracts with no limit on private practice earnings, sometimes with a condition that private work will take place on NHS premises. Maximum part-time consultants





can do unlimited private practice, subject to the requirement that they devote substantially the whole of their professional time to their NHS duties, but only receive 10/11ths of whole-time NHS salary.

### 7.3 Code of conduct for private practice

As part of the 2003 contract negotiations, a Code of Conduct for private practice was drawn up to minimise the risk of a conflict between a consultant's private practice and their NHS commitments. The 2003 terms and conditions of service also contain contractual provisions dealing with the relationship between NHS and private activity. The terms and conditions cover very similar points to those in the Code of Conduct, which sets out the standards of best practice. These include:

#### Disclosure of information about private practice

Consultants should declare any private practice to their employer, including details of timing, location and broad type of activity.

#### Scheduling of work and on-call duties

Programmed NHS commitments should take precedence over private work and private commitments should not be scheduled during times that a consultant is scheduled to be working for the NHS. Consultants should not undertake private work while on call for the NHS apart from in cases of emergency or, with agreement from the employer, when on a high frequency and low intensity rota.

#### Information for NHS patients about private treatment

In the course of their NHS duties, consultants should not initiate discussions about providing private services for NHS patients nor ask other NHS staff to initiate such discussions.

#### Referral of private patients to NHS lists

Patients who choose to be treated privately are still entitled to NHS services on exactly the same basis of clinical need as any other patient. This means that when a patient is scheduled for surgery from a private consulting session they should be given the same date that they would have been given had they been seen in an NHS clinic that day.

#### Private care in the NHS

Consultants may see patients privately within NHS facilities with the explicit agreement of the responsible NHS organisation. There must be no disruption to NHS services.

For further information on the standards of best practice, the Code of Conduct is available [here](#).

### 7.4 Top-up payments for private care

The rules governing the interface between the NHS and private sectors have often been applied inconsistently, leading to some confusion about patient entitlement to NHS care. As a result, the Department of Health published guidance which states that NHS provision should not be withdrawn for those wanting to top up single episodes of care with private treatment, but any private additions to NHS care will only be allowed when they can be delivered at a separate time and place. Patients may therefore pay for additional private health care while continuing to receive care from the NHS, or may have a private consultation for investigations and diagnosis, but then transfer to the NHS for any subsequent treatment for example.



It is important to highlight that the guidance applies to all secondary and specialist healthcare in England and supersedes paragraph 2.13, bullet point 1 of the Code of Conduct for Private Practice (2004) and previous guidance on the subject which states that 'a patient cannot be both a private and a NHS patient for the treatment of one condition during a single visit to the NHS organisation'.

The key principles are as follows:

- NHS organisations should not withdraw NHS care simply because a patient chooses to buy additional private care.
- Any additional private care must be delivered separately from NHS care.
- The NHS must never charge for NHS care (except where there is specific legislation in place to allow charges) and the NHS should never subsidise private care.
- The NHS should continue to provide free of charge all care that the patient would have been entitled to had he or she not chosen to have additional private care.
- NHS Trusts and Foundation Trusts should have clear policies in place, including protocols for working with other NHS or private providers where the NHS Trust or Foundation Trust has chosen not to provide additional private care

Full details of the Department of Health document 'Guidance on NHS patients who wish to pay for additional care' is available [here](#).

The BMA Medical Ethics Department has also published guidance which aims to address the issue of managing the interaction between NHS and private treatment at a practical level:

- [Interface between NHS and private treatment: a practical guide for doctors in England, Wales and Northern Ireland](#)
- [Interface between NHS and private treatment: a practical guide for doctors in Scotland](#)

### 7.5 Working in private hospitals

Many consultants in private practice choose to work in a private hospital. Admitting rights at a private hospital are a matter between the consultant and the hospital concerned, and are generally approved through the hospital's Medical Advisory Committee (MAC). The criteria and conditions under which consultants may be granted authorisation to undertake the treatment of patients in a private hospital are outlined in the hospitals practising privileges policy. Therefore a licence to use the facilities of a private hospital are known as practising privileges, and consultants are independent contractors of the hospital.

Although the criteria for granting practising privileges vary between hospitals, eligibility normally requires that a consultant:

- Is on the GMC's specialist register
- Can provide evidence to demonstrate relevant clinical experience of a nature appropriate to practice in an independent hospital/clinic, normally with evidence of direct patient responsibility.
- Evidence of all procedures to be performed under practising privileges, demonstrating adequate numbers performed in each procedure over the previous two years.
- Hold, or have held in the last five years, a substantive consultant post within the NHS or a Defence Medical Services hospital. If a consultant has not held a substantive consultant post, then they must be able to demonstrate



experience of independent practice over a sustained period applicable to working in the independent sector.

- Doctors on the GMC specialist register who hold a locum consultant post, may be granted practising privileges limited to the duration of their locum appointment.

Hospitals are required to review the practising privileges of each practitioner, every two years. In order to maintain practising privileges there is a requirement for a satisfactory appraisal process and the collection of 'whole practice' clinical data.

When agreeing to the conditions set out in the practising privileges policy, it is important that consultants are aware of the circumstances under which the hospital may restrict, suspend, withdraw or vary their practising privileges. For example, this may occur for reasons of health; fitness to practise; commercial conflict of interest; failure to comply with the hospitals policies.

Consultants may hold practising privileges at more than one hospital. In this situation, one hospital is required to lead the process and should be named in the practitioner's personal file. The formal application process is required for each hospital applied to, and a record of the number of practising privileges should be held at each hospital. Once passed by the MAC the documents can be copied and passed to the next hospital MAC for approval.

For more information please see the [Guidance of the Development of a Practising Privileges Policy for Consultant Medical & Dental Staff](#).

## 7.6 Conflicts of interest

Consultants working in the NHS are free to carry out private practice work in their non-NHS time, provided they are not viewed as competing with their main NHS employer. In today's NHS, non-NHS bodies are increasingly competing for NHS work and therefore it is possible that a consultant could be in a position where they are carrying out work for an organisation that competes with their NHS employer for NHS work. This has resulted in confusion over the extent to which a consultant's implied 'duty of fidelity' to their NHS employer might restrict them.

The Consultant contract defines private professional services to include 'the diagnosis or treatment of patients by private arrangement (including such diagnosis or treatment under section 65 (2) of the National Health Service Act 1977), excluding fee paying services as described in Schedule 10 of the Terms and Condition'. The consultant contract does not limit consultants from undertaking private practice on behalf of other parties, and the BMA legal opinion has interpreted the contract as restricting Private Practice work that could diminish overall NHS services, rather than those of a single employer. In addition, the contract explicitly anticipates that there may be a conflict with the employer's business activities but it does not attempt to limit the Private Practice work that the consultant can undertake. Therefore it is arguable that as there is no explicit restriction on carrying out Private Practice work, even if the work could be perceived as competing with the consultants NHS employer this is permissible. However, the BMA is aware that there is a contrary legal opinion and some Trusts have argued that the implied duty of fidelity applies in this situation.



Consultants finding themselves in this situation should follow the following steps:

1. They should provide their employer with a full written declaration of outside business interests in accordance with Paragraph 1 of Schedule 12 of the consultant contract, and should be updated as appropriate.
2. Contact their local BMA Industrial Relations Officer (IRO) if their employer is seeking to restrict their non-NHS work, and inform their Local Negotiating Committee (LNC).

For further advice on this issue, please see guidance on the BMA website titled 'consultants working in competition with NHS employers':

[http://www.bma.org.uk/healthcare\\_policy/nhs\\_system\\_reform/compnhsemployers.jsp](http://www.bma.org.uk/healthcare_policy/nhs_system_reform/compnhsemployers.jsp)

In addition, a review of the restrictions on consultants in relation to NHS work during non-contracted hours, by the Co-operation and Competition panel, has concluded that unmanageable conflicts of interest would include:

- 1) Holding strategic management positions (at the level of Clinical Director and above) in more than one organisation;
- 2) Holding a strategic management position in one organisation while assisting another organisation to tender for NHS-funded services;
- 3) Assisting more than one organisation to respond to the same tender for NHS-funded services.



## 8. General Practitioners in private practice

### 8.1 Restrictions on private practice for GPs

Private practice is significantly restricted in terms of NHS Registered patients for GMS and PMS contractors. Schedule 5 of the NHS (GMS contract) regulations 2004 (which are replicated in any PMS contract), indicates when a fee may be charged for services to an NHS registered patient. Neither GMS or PMS contracts preclude accepting private patients for care, but they cannot simultaneously be NHS registered patients with the practice holding the GMS or PMS contract under which they are cared for.

#### Charging patients for services through private companies

Some GPs choose to have shares in private companies providing medical services, and in these situations the question arises as to whether the private company can charge the GPs' NHS patients for private services. The BMA has sought legal advice on this issue and has been advised that the ability of any GP to charge patients through a private company hinges on the nature and definition of the 'contractor'. For the purpose of GMS, a contractor is defined as a person or entity that can hold a GMS contract. Part 2, paragraph 4 of the GMS regulations, defines who can hold a GMS contract as:

1. A single medical GP
2. Two or more individuals practising as a partnership
3. A company limited by shares

Therefore, the regulations are seeking to prohibit these entities or groups of people from charging their NHS patients for private services. It therefore follows that any one or more individuals falling outside of these groups could arguably be entitled to charge a fee or remuneration for the provision of any treatment. Essentially GPs would therefore have to be or set up a different entity from the

one that holds the contract (i.e. a single handed doctors could arguable set up a company or partnership which could charge patients). It is recommended that GPs inform their Area Team Director if they are providing private services to patients via private companies. This is particularly important if the GP can refer his NHS patients to such a private service, because there is then a potential conflict of interest (as noted in section 7.6), and there is the need to disclose to patients the financial interest the GP has in the organisation to which the patient is being referred, as detailed in the GMCs 'Good Medical Practice'.

In the case of PMS agreements, NHS England normally contracts with individual practitioners, even if they operate as part of a partnership. It is therefore arguable under PMS that the contractor is the individual GP or GPs and therefore under PMS it may be more difficult to take advantage of the manner in which regulation 24 is written.

The considerations on setting up in private practice outlined in section 1 apply to both private consultants and general practitioners.

### 8.2 Use of NHS facilities for Private Practice

NHS practice premises can be used for the provision of medical services to private patients. However, in order to do so there are a number of considerations that need to be taken into account in relation to the NHS Regulations. For example, if practices receive over 10% of their income privately then the appropriate rent abatement needs to be made. For clarity, practice premises are associated with the provision of medical services if there is any connection or association between the provision of medical services and the practice premises (for example, contact and billing arrangements), even if the medical services are provided elsewhere.



Where NHS premises are used for the provision of private work, there needs to be a clear definition of income to the different accounts with NHS and private fees being clearly identified and an accountant should be consulted to ensure that the correct proportion of practice expenses are accounted for. If working in a partnership then the partnership agreement would need to be consulted to check that there are no objections.

The table below show the appropriate rent abatement that needs to be made with the percentage of private practice income. It is important that NHS England is kept informed of any changes in the provision of medical services.

Appropriate Abatement Percentage	Private Income Percentage
0%	Up to 10%
10%	Between 10 and 20%
20%	Between 20 and 30%
30%	Between 30 and 40%
40%	Between 40 and 50%
50%	Between 50 and 60%
60%	Between 60 and 70%
70%	Between 70 and 80%
80%	Between 80 and 90%
90%	Above 90%

### 8.3 Private GP referrals to the NHS

Private GPs are free to refer their patients to the NHS in the same way as NHS GPs can refer their patients to the private sector. Referral by a private GP, for an NHS diagnostic test for example, should not be any different from an NHS GP referral. The 1986 handbook *“Management of private practice in health service hospitals in England and Wales”* which sets out the key principles that govern private practice in the NHS clearly states “all fully registered general medical practitioners may refer patients to NHS hospitals irrespective of whether they are treating them under the NHS or privately.” This principle is also underpinned in paragraph 4 of the handbook, that patients wishing to be treated privately are entitled to the same NHS services as any other patient with the same clinical need. However, it should remain clear at all times whether the patient is receiving private or NHS care.

#### Private GPs

- can refer to NHS consultants for in-patient, out-patient and diagnostic services
- can charge patients for consultation and referral
- cannot be charged for notification of results of NHS tests or treatments.

#### NHS GPs

- can refer NHS patients for private treatment but cannot charge (except for validation if required)
- can charge private patients (not on their NHS list) for referral



#### 8.4 Private prescribing

Wholly private GPs cannot issue NHS prescriptions but can only provide private prescriptions. NHS GPs on the other hand, cannot charge NHS patients for prescriptions but can charge private patients who are not on their NHS list for prescriptions. Additionally, NHS GPs cannot issue NHS prescriptions to private patients. However, it should be noted that there are certain prescriptions which NHS GPs can charge their registered NHS patients for. These are covered under schedule 5 of the NHS (GMS contract) regulations 2004 and include, for example, malarial chemoprophylaxis and medicines that may be required to treat an illness once the patient is abroad.

Patients who are on a course of treatment requiring an expensive course of drugs are more likely to opt for NHS prescriptions. As such some patients might have two GPs – an NHS and a Private GP to keep the management of their care cost effective.



## 9. Training grades and non-consultant career grade doctors

Training grade doctors may undertake additional duties outside their contractual hours if they wish, which may include assisting in private cases either in the NHS or in a private hospital.

While many consultants offer training grade doctors payment for such work, training grade doctors should seek advice from a medical defence organisation about the indemnity position for undertaking fee paid work outside the NHS.

Practitioners, such as associate specialists, who do not have their own beds, may treat the private patients of a consultant on a private basis, but only by special arrangement when the consultant concerned, the practitioner's supervising consultant and the private patient have agreed. In practice there are difficulties for non-consultant medical staff to establish their own practices, as private insurance companies providing private medical insurance are unlikely to recognise them, and it may be difficult to obtain practising privileges at a private hospital, as both these of these generally require the practitioner to be on the specialist register and hold, or have held, a substantive NHS appointment.





## 10. Glossary of terms

BMA British Medical Association

CEA Clinical Excellence Awards

CQC Care Quality Commission

DBS Disclosure and Barring Service

GMC General Medical Council

HIW Health Inspectorate Wales

ICO Information Commissioner's Office

IHAS Independent Healthcare Advisory Services

IRO Industrial Relations Officer

LNC Local Negotiating Committee

MAC Medical Advisory Committee

PAs Programmed Activities

PMI Private Medical Insurer

PMS Personal Medical Services

RQIA Regulation and Quality Improvement Authority



## 11. Resources

### Medical Defence Organisations

Medical Defence Union (MDU)  
230 Blackfriars Road  
London  
SE1 8PJ

Tel: 0800 716 376  
[www.themdu.com](http://www.themdu.com)

### Medical and Dental Defence Union of Scotland (MDDUS)

Mackintosh House  
120 Blythswood Street  
Glasgow  
G2 4EA

Tel: 0845 270 2034  
[www.mddus.com](http://www.mddus.com)

### Legal and Accounting Organisations

The Law Society  
The Law Society's Hall  
113 Chancery Lane  
London  
WC2A 1PL

Tel: 020 7242 1222  
[www.lawsociety.org.uk](http://www.lawsociety.org.uk)

### The Institute of Chartered Accountants in England and Wales

Chartered Accountants' Hall  
Morgate Place  
PO Box 433  
London EC2R 6EA

Tel: 01908 248 250  
[www.icaew.com](http://www.icaew.com)

### Medical Protection Society (MPS)

33 Cavendish Square  
London  
W1G 0PS

Tel: 0845 605 4000  
<http://www.mps.org.uk>

### Association of Chartered Certified Accountants

29 Lincoln's Inn Fields  
London  
WC2A 3EE

Tel: 020 7059 5000  
[www.accaglobal.com](http://www.accaglobal.com)



### **Chartered Institute of Management Accountants**

26 Chapter Street  
London  
SW1P 4NP

Tel: 020 8849 2251

[www.cimaglobal.com](http://www.cimaglobal.com)

### **Regulators of independent healthcare**

Care Quality Commission (CQC)  
Finsbury Tower  
103 - 105 Bunhill Row  
London  
EC1Y 8TG

Tel: 03000 616161

[www.cqc.org.uk](http://www.cqc.org.uk)

### **Care Inspectorate (Scotland)**

Compass House  
11 Riverside Drive  
Dundee  
DD1 4NY

Tel: 0845 600 9527

<http://www.careinspectorate.com>

### **Health Inspectorate Wales (HIW)**

Bevan House  
Caerphilly Business Park  
Van Road  
Caerphilly, CF83 3ED

Tel: 029 2092 8850

[www.hiw.org.uk](http://www.hiw.org.uk)

### **Regulation and Quality Improvement Authority (RQIA)**

9th Floor Riverside Tower  
5 Lanyon Place  
BELFAST  
BT1 3BT

Tel: 028 9051 7500

[www.rqia.org.uk](http://www.rqia.org.uk)



# Terms of engagement (Appendix 1)

## 1 Parties

- 1.1 ..... "the Patient"
- 1.2 ..... "the Surgeon"
- 1.3 ..... "the Anaesthetist"

## 2 The Agreement

- 2.1 By this agreement dated .....
- 2.2 the Surgeon agrees to perform the surgical procedure(s) detailed below;
- 2.3 the Anaesthetist agrees to provide the anaesthetic described below; and
- 2.4 the Patient agrees to
  - Comply with pre-admission instructions relating to pre-operative starvation and regular medication, arrival at the hospital, discharge arrangements and travel.
  - Pay the fees listed below. It is understood that if the procedure proves to be more complicated than anticipated the fees described will vary accordingly.

2.5 The scheduled surgical procedures are  
.....  
.....  
.....

2.6 The anaesthetic that is proposed to be used will be a  
  
Local anaesthetic  
Regional anaesthetic  
General anaesthetic  
Intravenous sedation  
Other ..... (*Delete as appropriate*)

## 3 The Fees Payable

- 3.1 The Surgeon's fee is expected to be approximately £.....
- 3.2 The Anaesthetist's fee is expected to be approximately £.....
- 3.3 By way of illustration only if it is necessary to do the following additional procedures the following additional fees will be payable to the Anaesthetist:  
  
Nerve block to include spinal or epidural injection  
£.....



Continuous nerve block

£.....

Invasive monitoring, e.g. central venous line

£.....

Echocardiography

£.....

3.4 Other consultants detailed below may charge fees for services provided in relation to the procedure:

Consultant radiologist

£.....

Consultant histopathologist

£.....

.....

£.....

.....

£.....

3.5 If it is necessary for the Patient to be admitted to either an intensive care unit or a high dependency unit postoperatively, then there will be further fees payable to the Anaesthetist and possibly to another doctor. The medical fees for managing a patient in such a unit are approximately £..... per day.

#### 4 Declaration of financial interests

### 5 Payment Arrangements

5.1 The Anaesthetist, Surgeon and other consultants involved in your care as detailed above will send the patient a fee note within two weeks of the date when the Patient is discharged from hospital. The Patient undertakes to pay the invoice in full.

5.2 The Patient acknowledges and agrees that the fact that he or she has the benefit of private medical insurance cover does not in any way absolve or diminish the Patient's responsibility under this agreement to meet the fees payable in full. The Patient is personally liable for payment of these fees payable in full, irrespective of whether the Patient has any right to claim payment of those fees from private medical insurers.

5.3 The Patient further acknowledges that it is common for private medical insurers to impose limits on the amounts that they are prepared to reimburse so that there is often a shortfall between the fees charged by the Surgeon, the Anaesthetist and other consultants, and the amount reimbursed by the private medical insurer.

#### 5.4 Late payment

If the fees due under Clause 3 above are not paid within 30 days of the invoice being received, the Patient agrees to pay interest at a rate of 5% above bank minimum base rate for the time being.



**Signed**

..... Patient

..... Surgeon

..... Anaesthetist



Dear <<patient's name>>,

### Re: Operation on <<date of surgery>>

I write to set out the organisational and financial arrangements relating to your forthcoming operation.

#### Your own preparations

You are scheduled to undergo surgery at the <<hospital name>>. You should not eat solid food after <<solid starvation time>> and only drink water until <<water starvation time>>, after which you should neither eat nor drink. Please come to the hospital before <<admission time>> and go to the <<location of patient admission office>>. Please continue to take all your usual medications on the day unless you have been instructed otherwise. We expect you to be discharged from the hospital on <<planned day of discharge>>. You will need to make practical arrangements for transport home and we advise that you should not attempt to drive.

#### Financial arrangements

You are scheduled to undergo the following procedures:  
 <<procedure narrative 1>> (CCSD code <<CCSD code 1>>)  
 <<procedure narrative 2>> (CCSD code <<CCSD code 2>>)  
 <<procedure narrative 3>> (CCSD code <<CCSD code 3>>)

Mr <<surgeon's name>>, Consultant Surgeon, will perform the operation for which the expected fee will be £<<surgeon's fee>>, and Dr <<anaesthetist's name>>, Consultant Anaesthetist, will provide the anaesthetic care for which the expected fee will be £<<anaesthetist's fee>>. There will also be a fee of approximately <<radiologist's fee>> for the consultant radiologist involved in your care and approximately <<pathology fee>> for the consultant histopathologist. As recommended by professional medical bodies, your surgeon, your anaesthetist and other consultants involved in your care maintain a direct professional and contractual arrangement with you. You may of course be able to recoup some or all of the fees and hospital charges that you incur from a Private Medical Insurer (PMI) such as BUPA, AXA-PPP, WPA, CIGNA, AVIVA or Standard Life if you are in contract with them, but your arrangements with your insurer have nothing to do with your doctors. You will therefore receive an account from your surgeon, anaesthetist and other consultants as detailed above within two weeks of your discharge from hospital after the operation, and you should pay these in full by cheque or bank transfer within 30 days of receipt of the accounts unless you have made some other arrangement with us. You will be sent receipts that you can forward to your PMI for partial or full reimbursement.



You are advised to check with your PMI the level of benefits to which you are entitled under the terms of your policy with them. Some PMI policies allow for reimbursement of the consultant surgeon's and consultant anaesthetist's fees in full, but in many cases the policy has an excess or is restricted in some way, and as a result of these policy restrictions, there may be a shortfall. If you are unsure about whether your policy will cover the consultants' fees in full, you may wish to send a copy of this letter to your PMI and to ask them what they will cover.

If you have any questions about the arrangements for your operation, please do not hesitate to contact me.

Yours sincerely,

<<name of surgeon's secretary>>

