2.66 Observers should have no vested interest in, or scientific or management responsibility for, any applications being considered at the meeting. In particular, R&D Directors and R&D managers should not generally be permitted to attend meetings of RECs at which applications for which they have research governance responsibilities are to be reviewed. However, where a NHS body is sponsoring the research, an R&D representative may attend the meeting for that item only alongside the Chief Investigator. In such cases, the R&D representative attends as the research sponsor, in accordance with paragraph 2.27, rather than as an observer.

2.67 Meetings, or parts of meetings, may also be attended from time to time by representatives of appointing authorities, OREC Managers, auditors, and other senior staff from NRES Head Office in accordance with governance arrangements for RECs ("official observers"). Arrangements for attendance should be discussed and agreed beforehand with the Chair.

2.68 If an observer is present, the Chair should verbally inform any investigator who attends the meeting. The investigator should be given the opportunity to object to the presence of any observer. If there is an objection, the observer should be asked to leave the meeting room for that item. The attendance of observers should be recorded in the minutes.

(Back to Contents)

Conduct of business and decision-making

2.69 The Chair is responsible for the conduct of the business and for ensuring that the Committee reaches clearly agreed decisions on all matters. Where the Chair is unavailable, the meeting should normally be chaired by the vice-Chair or, if the vice-Chair is also unavailable, by the alternate vice-Chair. If all three officers are unavailable, the appointing authority for the REC should be invited to appoint another member of the Committee as a temporary vice-Chair. If it is not possible to arrange formal appointment prior to the meeting, or if a temporary vice-chair is appointed at the meeting itself, the appointing authority should be asked to ratify the appointment retrospectively.

2.70 All members present, both expert and lay, should be allowed reasonable opportunity to express relevant views on matters on the agenda.

2.71 The meeting should reach unanimous decisions by consensus wherever possible. Where a consensus is not achievable a formal vote should be taken by a counting of hands. The decision of the Committee should be determined by a simple majority of those members present and entitled to vote.

2.72 Where any member wishes to record his/her formal dissent from the decision of the Committee, this should be recorded in the minutes.

(Back to Contents)

Responsibilities of the Co-ordinator

2.73 The secretary to the meeting will normally be the Committee Co-ordinator or an Assistant Co-ordinator.

2.74 The responsibilities of the Co-ordinator or Assistant Co-ordinator in relation to REC meetings are as follows:

(i) Publishing the schedule of REC meetings.
(ii) Preparing the agenda.
(iii) Allocating lead reviewers (where this is the practice of the REC).
(iv) Distributing the agenda and papers.
(v) Inviting Chief Investigators and, where appropriate, supervisors to attend and making the necessary arrangements.
(vi) Preparing the venue.
(vii) Recording apologies for absence prior to the meeting.
(viii) Raising with the OREC Manager any concern that a meeting may not be quorate.
(ix) Recording attendance by members, deputy members, referees and observers for the discussion of each application for ethical review.
(x) Advising the meeting as necessary on compliance with standard operating procedures.
(xi) Making a written record of the meeting.
(xii) Preparing the minutes of the meeting for review and approval at the following meeting.

(xiii) Notifying applicants of decisions taken at the meeting and taking other follow-up action as necessary.

(Back to Contents)

Minutes

2.75 The minutes of the REC meeting should be prepared by the secretary to the meeting. It is not mandatory for the minutes to be formally approved by the Chair before letters are issued to applicants giving the Committee's decision, though it is good practice for the Co-ordinator to check the drafting of technical or sensitive issues with the Chair and/or other relevant members if in doubt. Local procedures should be agreed.

2.76 In relation to applications for ethical review or notices of substantial amendment, the minutes should contain a record of the following, whether in the main text of the minutes or in attachments:

(i) The members, deputy members, co-opted members, referees and observers present for the review.
(ii) Any interests declared, and the decision of the Committee on the participation of the member or deputy member concerned (see paragraphs 2.57-2.61).
(iii) The submission of written comments by members or deputy members (see paragraph 2.43).
(iv) The substance of any advice given by a referee (see paragraph 2.47(i)).
(v) The decision of the REC on the application (see paragraph 3.6).
(vi) A summary of the main ethical issues considered (see paragraph 3.15).
(vii) The decision of the REC on whether site-specific assessment is required, where the criteria for exemption from SSA may apply to the application (paragraphs 4.19-4.32).
(viii) In the case of a favourable opinion, any special approval conditions (see paragraph 3.18) or additional advice to be given to the applicant.
(ix) In the case of an unfavourable opinion, the reasons for the decision.
(x) In the case of a provisional opinion, the further information requested by the REC and the arrangements for considering the information and issuing the final opinion of the REC (see paragraphs 3.8-3.10 and 3.23-3.31).
(xi) Where no opinion is given, the issues on which further advice is required from a referee (see paragraph 3.38).

(xii) Where an unfavourable opinion is given on a notice of amendment, the reasons for the decision, and any delegation of responsibility for giving the opinion of the REC on a modified amendment (see paragraph 5.48).

(xiii) The outcome of any vote taken.

(xiv) Any formal dissent from the decision of the REC by a named member, with reasons.

2.77 Except where (xiv) applies, the minutes should be presented as the outcome of collective discussion, and should not attribute particular statements to individual members or deputy members attending the meeting.

2.78 The minutes should be submitted to the following meeting of the REC for ratification as a true record. Any necessary revisions should be incorporated in the final version of the minutes. If the revisions are minor, they may be made in manuscript on the face of the minutes, and should be initialled and dated by the Co-ordinator. If not, a revised version of the minutes should be prepared. The final version should be signed and dated by the Chair and by the Co-ordinator or assistant Co-ordinator. Where revisions are made to the minutes, the Chair should consider the need to write to applicants correcting any inaccuracies or clarifying points made in the letter sent after the meeting. However, no substantially new request for information may be made at this point.

2.79 Subject to the provisions of the Freedom of Information Acts, the minutes should be treated as confidential to the REC and not routinely disclosed to applicants, sponsors or care organisations. For the purposes of REC governance, copies of minutes should be made available on request to the appointing authority for the REC, the OREC Manager or auditors undertaking accreditation on behalf of NRES Head Office.

2.80 The opinion of the REC on each application for ethical review should be published in the annual report. Further guidance on annual reports is set out in GAfREC.

(Back to Contents)

Section 3: Giving an ethical opinion

Summary

Under the EU Directive and the Clinical Trials Regulations a REC must give an opinion on a CTIMP within 60 days of receipt of a valid application. Departmental policy is to apply the same process to all other research reviewed by NHS RECs. For some specialised clinical trials, the Clinical Trials Regulations specify different time limits for review.

Where a REC requires further information before confirming its opinion, it may make one request only for further information in writing to the applicant. While the REC waits for the applicant to respond, the 60 day clock stops. When the REC receives all the further information it requested, the clock starts again.

GAfREC defines the ethical issues that need to be considered in the ethical review of research. This section of the SOPs describes the procedures for giving an ethical opinion. The SOPs do not circumscribe the responsibility of RECs for deciding what is ethical.

A REC should reach one of four possible decisions following ethical review:
- Final opinion - this could be favourable or unfavourable
- Provisional opinion - with request for further information, clarification or revision
- No opinion - a referee needs to be consulted before an opinion can be given.

If the committee gives a provisional opinion, it should specify what information is required and agree who is delegated to consider the further information and confirm the final opinion. This could be the Chair or vice-chair (supported by the REC office and in consultation with other members if necessary), a sub-committee meeting, or exceptionally a meeting of the Committee.

If no opinion is given, a suitable referee should be identified as soon as possible. This could be a known specialist in the relevant field, or another REC in the domain. The referee should have no personal interest in the study, and the advice should remain confidential. The 60 day clock does not stop while advice is obtained. On receipt, the application should be re-considered at a sub-committee or Committee meeting.

The Co-ordinator notifies the Chief Investigator of the decision reached within 10 working days of the meeting. A standard letter for each type of opinion is obtained from RED. A final favourable opinion letter should enclose standard conditions of approval to which the researcher must adhere. The REC may add study-specific approval conditions if appropriate. Reasons for unfavourable opinions should be fully explained.

Before commencing a CTIMP, the sponsor must obtain clinical trial authorisation (CTA) from the Medicines and Healthcare products Regulatory Agency (MHRA). The CTA application may be made in parallel with the REC application. It is not necessary to have a CTA in order to obtain a favourable opinion, but the REC should be provided with evidence of the CTA when available. Similar procedures apply to regulatory approval for medical devices or use of radionuclide materials. Guidance is given on insurance or indemnity arrangements.

Correspondence relating to the ethical opinion should be copied to the sponsor. The local R&D Department should also be kept informed. For a CTIMP the MHRA must be notified of the final opinion. The final opinion is a matter of public record.

Section 3 Giving an ethical opinion

Statutory and policy requirements

3.1 Under the Clinical Trials Regulations, a REC is required to give an ethical opinion on an application relating to a CTIMP (except where paragraph 3.2 applies) within 60 calendar days of the receipt of a valid application. Where the REC considers that further information is required in order to give an opinion, the REC may make one request in writing for further information from the applicant. The period of 60 days will be suspended pending receipt of this information.

3.2 In the case of a clinical trial involving (a) a medicinal product for somatic cell therapy, or (b) a medicinal product containing a genetically modified organism, the normal statutory time limit for review is extended to 90 days. This may be extended by a further 90 days (i.e. to 180 days in total) where the main REC needs to consult a specialist group or committee about the application. Except for this difference in the time limit for review, SOPs apply to such trials in the same way as any other CTIMP.

3.3 Under the Clinical Trials Regulations, the REC has a duty to consider and give an opinion on any issue relating to a CTIMP if it has been asked by the applicant to do so and, in the opinion of the REC, it is relevant to matters the REC is required to consider as part of the ethical review.

3.4 The policy of the Department of Health and the devolved administrations is that these requirements will also apply to all other research reviewed by RECs.

3.5 Guidance on the matters to be considered in the ethical review of research is set out in GAfREC. This section of the SOPs sets out the procedures to be followed in communicating decisions made at meetings, requesting further information from applicants and issuing the REC's opinion. It does not in any way constrain the independence of the REC in considering the ethics of individual research applications and deciding whether or not to give a favourable opinion.

(Back to Contents)

Decisions available to the REC

3.6 A REC should reach one of the following decisions on any application reviewed at a meeting:

(i) *Final opinion.* The Committee may reach a final opinion on the application at the meeting. This opinion may be either:

(a) favourable
(b) unfavourable.

(ii) *Provisional opinion with request for further information.* The Committee may decide that an opinion cannot be issued until further information or clarification has been received from the applicant (see paragraph 3.8-3.9). It should indicate a provisional opinion at the meeting.

(iii) *No opinion.* The Committee may decide that no opinion can be given until a referee has been consulted (see paragraphs 3.34-3.40).

3.7 The Chair should ensure that one of the above decisions is made on every application considered at a REC meeting.

3.8 Where the REC decides that further information or clarification is required, the Chair should ensure that:

- The further information or clarification required is specifically identified at the meeting.
- Delegation of responsibility for considering the further information and issuing the REC's opinion is clearly agreed (see paragraphs 3.23-3.31).

3.9 Requests for further information or clarification may include recommendations for revision of the terms of the application or any of the supporting documentation, for example the participant information sheet and consent form.

3.10 The secretary to the meeting should ensure that the minutes clearly record the decisions taken by the REC, any further information requested from applicants and the agreed procedures for considering that information and issuing the REC's opinion.

3.11 The decision taken on each application at the meeting should be entered on RED.

(Back to Contents)

Notification of the decision to the Chief Investigator

3.12 The Co-ordinator should ensure that notification of the decision is sent to the Chief Investigator in writing within 10 working days of the meeting. All letters should be in the name of the Chair, who has ultimate responsibility for the content. It is acceptable for the letter to be signed by a vice-chair or member of the REC office acting under delegated authority from the Chair. Local procedures should be agreed (see also paragraph 2.75). One of the following letters should be used:

SL5 Favourable opinion
SL6 Unfavourable opinion
SL7 Provisional opinion with request for further information
SL8 No opinion pending consultation with a referee.

3.13 The following information should in all cases be included in the letter or in enclosures:

- A summary of the ethical issues considered by the REC.
- A list of all documents reviewed at the meeting, giving version numbers and dates.
- A list of the members who were present for the discussion of the application or who submitted written comments on the application prior to the meeting. The list should indicate lay members and give the profession in the case of expert members.
- Any interests declared by members who were present for the discussion of the application.
- The names of any observers present at the meeting.

3.14 The letter should also include the REC's opinion on any relevant issue on which the applicant has specifically asked for its opinion (see paragraph 3.3).

3.15 The summary of ethical issues should set out the main issues considered by the REC in deciding on its opinion. It is not necessary to include all the questions raised at the meeting, such as requests by lay members for explanation of technical points. However, it is important to record for future reference any ethical issues that the REC collectively discussed and resolved with the Chief Investigator at the meeting, and any clarifications given orally of the information contained in the application. It should not then be essential for the Chief Investigator to provide written confirmation on these points, unless the REC considers that further information, clarification or revision of the documentation is required after the meeting.

3.16 The letter should not attribute particular comments or questions to individual members of the Committee.

(Back to Contents)

Final opinion letters

3.17 All letters issuing the REC's final opinion should be in the name of the Chair. It is acceptable for the letter to be signed by a vice-chair or member of the REC office acting under delegated authority from the Chair. (The Chair has ultimate responsibility for the content.) The letter should be posted to the applicant no later than 60 calendar days from the validation date.

3.18 Where the final opinion is favourable, the applicant should also be sent the standard conditions for research approved by a REC. The Co-ordinator should enclose either SL-AC1 (clinical trials of investigational medicinal products) or SL-AC2 (all other research). Any additional approval conditions specified by the REC for a particular application, for example a requirement for more frequent progress reports, should be included in the letter. In addition to the approval conditions, the REC may give advice that is not binding on the applicant.

3.19 In the case of studies requiring site-specific assessment (SSA), the REC reviewing the application ("the main REC") is also required to confirm approval of each site as

part of the ethical opinion. The Co-ordinator should enclose form SF1 listing the approved sites (see paragraph 4.64) with the favourable opinion letter.

3.20 Where the main REC is not an local REC for one of the research sites, there may be occasions when it is in a position to issue a favourable opinion but no SSA has yet been carried out. In such cases, the Co-ordinator should issue the favourable opinion without delay (see paragraph 4.65). Form SF1 does not need to be raised at this point.

3.21 Where the final opinion is unfavourable, the applicant should be given a full explanation of the REC's reasons. The applicant should also be informed of the options available for further review (see paragraph 3.59 and Section 7).

3.22 The opinion of the REC should be entered on RED. The date of the opinion is the date on which the final opinion letter is sent.

(Back to Contents)

Provisional opinion and request for further information

Delegation of responsibility by the REC

3.23 Where the REC requests further information from the applicant, it should decide at the meeting the procedures for considering that information and for issuing the REC's final opinion. These responsibilities should normally be delegated to one of the following:

(i) Chair alone, with support from REC office staff;

(ii) Chair, in oral or written consultation with one or more named members or deputy members that were present at the meeting or who submitted written comments on the application, or with a Scientific Officer;

(iii) Sub-committee meeting.

3.24 In deciding the procedures to be followed, the REC should consider the significance of the further information and the expertise necessary to assess it. Where the

information is straightforward, it is acceptable for the matter to be delegated to the Chair alone. (If the information is purely administrative or very straightforward, for example minor corrections to the participant information sheet, it is acceptable for the Chair to delegate his/her responsibility to REC office staff.) Where the information is technical or any questions of judgement are likely to arise, the Chair should personally review the information. Consideration should be given to involving other members, such as the lead reviewer or a relevant expert member, or a Scientific Officer to the Committee. Where these questions are likely to be significant, a sub-committee meeting should be arranged so that they can be fully discussed.

3.25 Where responsibilities for review of information are delegated to REC office staff, the Chair remains ultimately accountable for the opinion of the Committee.

3.26 Exceptionally, the REC may decide that the information should be considered at a further meeting of the REC. When taking this course, the REC should take careful account of the 60 day time limit and the fact that the applicant is under no obligation to provide the information by a specified date, provided that it is received within a period of four months. If the information is received following the closing date for submitting papers to a scheduled meeting of the REC, it could therefore be necessary to arrange an additional meeting.

(Back to Contents)

Suspension of 60 day time period

3.27 The 60 day time period should be suspended from the date on which the request for further information was sent to the applicant. It should be re-started on the date when a complete response is received ("the re-start date").

3.28 Where the response arrives piecemeal, the re-start date is the date on which the final part of the response is received.

3.29 The re-start date is the date on which a complete response is received in the REC office, not the date on which the information is considered by the REC and judged to be acceptable or otherwise.

(Back to Contents)

Requirement for a complete response

3.30 If the applicant's response is incomplete or does not appear to fully address the matters raised, the REC is entitled to insist on a complete response before issuing its final opinion. The Co-ordinator should write to the applicant using SL11, setting out the further information or clarification still required. (SL11 may be issued more than once if the response continues to be incomplete.) The REC is not entitled to raise any new issues or concerns at this stage of the process. The 60 day time period should remain suspended until a complete response is received.

3.31 The applicant should be allowed a period of four months to respond to the request for further information. If the applicant has not responded within three months of the date of the request, a reminder letter should be sent using SL12. If no response is received within one further month, the Co-ordinator should send SL13 advising that the REC considers the application to have been withdrawn. The applicant would then be required to submit a new application in order to obtain an ethical opinion.

3.32 The response to the Committee's request for further information should be provided personally by the Chief Investigator. It may include information supplied by a representative of the sponsor, or by other key investigators or collaborators, but should always be assured by the Chief Investigator. Responses by e-mail are generally acceptable but the REC has the discretion to require a signed letter.

(Back to Contents)

Final opinion following consideration of the information

3.33 On receipt of a complete response from the applicant, the REC should issue its final opinion on the application, which may be favourable or unfavourable. The procedures set out in paragraph 3.17-3.22 should be followed. One of the following letters should be used:

SL14	Favourable opinion following consideration of further information
SL15	Unfavourable opinion following consideration of further information

(Back to Contents)

Further advice from a referee

3.34 Where a REC decides that it cannot give an opinion until it has obtained further advice from a referee, the following procedures should be adopted.

3.35 Letter SL8 should be sent to the applicant following the meeting, explaining that no opinion has been given on the application pending consultation with a referee. The letter may notify the applicant of the issues of concern to the REC, but should not at this point request further information or clarification.

3.36 In some cases, the REC may decide at the meeting who it wishes to consult, and if so this should be recorded in the minutes. If not, either the Chair or the Co-ordinator should be appointed to identify a suitable referee urgently following the meeting. The REC may wish to seek advice from the OREC Manager, who may be aware of REC members elsewhere in the domain with the relevant expertise, or from senior operational management at NRES Head Office. The referee may be another REC or specialist body.

3.37 The Chair or Co-ordinator should initially contact the prospective referee by phone or e-mail to establish whether he/she is willing and able to provide expert advice within the required timescale. It should be established that the prospective referee has no connection with the research that might give rise to a conflict of interest. Advice should be given about confidentiality (see paragraph 3.40).

3.38 Once a suitable referee has been identified, the Co-ordinator should write to the referee, using SL9. This should be as specific as possible about the issues of concern to the REC and the expert advice required. A copy of the application form should be provided, together with any supporting documentation required by the referee. Where possible, the letter should be sent within 5 working days of the meeting. The referee should be asked to respond in writing within a further 10 days.

3.39 Once the referee's advice has been received, it should be considered at a meeting of the sub-committee (see Section 6), or at a further meeting of the REC if time allows. The REC should either decide to give an opinion on the application at this point, or request further information from the applicant. Where a favourable or unfavourable opinion is given, SL5 or SL6 should be used and the procedures set out in

paragraphs 3.17-3.22 apply. Where further information is requested, SL10 should be used and the procedures set out in paragraphs 3.23-3.32 apply.

3.40 The REC should not disclose the nature of the referee's advice to the applicant. The opinion it reaches on the application is its own. It may not disclose the identity of the referee except with his/her express permission.

(Back to Contents)

Regulatory approval

3.41 It is the responsibility of the sponsor to ensure where necessary that a research study has appropriate regulatory approval as well as a favourable ethical opinion before it starts. Applications for regulatory approval may proceed in parallel with the ethical review. It is not necessary for evidence of regulatory approval to be provided to the REC before it confirms the final ethical opinion. The Chief Investigator is requested to provide evidence of regulatory approval for the REC's records as soon as this is available, but it is not the responsibility of the REC to follow this up proactively.

(Back to Contents)

Clinical trials of investigational medicinal products

3.42 Before commencing a CTIMP, the sponsor(s) is required by the Clinical Trials Regulations to have clinical trial authorisation (CTA) as well as a favourable ethical opinion. An application for CTA should be made to the licensing authority, which is the Medicines and Healthcare products Regulatory Agency (MHRA). The requirement for CTA replaces the previous statutory requirements under the Medicines Act 1968 to obtain a Clinical Trials Certificate (CTC), a Clinical Trials Exemption (CTX), a Doctor and Dentists Exemption (DDX) or approval to conduct a Clinical Trial of a Marketed Product (CTMP).

3.43 The application for CTA may be made either in parallel or in sequence with the application for the ethical opinion. It is not essential to have the CTA in order to make a valid application to the REC or to obtain a favourable ethical opinion. The REC should be provided with evidence of the CTA when available, either in the course of the ethical review or following the issue of the ethical opinion.

3.44 Where a favourable ethical opinion is given before the CTA, and the MHRA attaches conditions to the CTA requiring significant changes to be made to the terms of the REC application or the supporting documentation, a notice of amendment form should be submitted to the REC for review (see Section 5).

3.45 Where the MHRA rejects the application for CTA, it will require the sponsor to notify the main REC.

(Back to Contents)

Medical devices

3.46 For a study involving a CE Marked device being used for its intended purpose, the sponsor does not need prior regulatory approval from the MHRA (which is the UK competent authority both for medicines and devices).

3.47 For a clinical investigation involving a non-CE Marked medical device (i.e. a new or substantially modified device, or an existing device with new function, feature or material) or a CE Marked device being used for a new intended purpose, the sponsor is required by the Medical Devices Regulations 2002 to obtain a Notice of No Objection from the MHRA prior to commencing a study (see Part B Section 2 of the REC application form).

3.48 The application for MHRA review of the clinical investigation may be made either in parallel or in sequence with the application for the ethical opinion. It is not essential to have the Notice of No Objection in order to make a valid application to the REC or to obtain a favourable ethical opinion. The REC should be provided with a copy of the Notice of No Objection when available, either in the course of the ethical review or following the issue of a favourable opinion.

3.49 Where a favourable opinion is given before a Notice of No Objection is issued, and the sponsor has agreed amendments to the study with MHRA that require significant changes to be made to the terms of the REC application or the supporting documentation, a notice of amendment form should be submitted to the REC for review (see Section 5).

3.50 Further information about the system of regulatory approval for devices is at Annex G.

(Back to Contents)

ARSAC certificates

3.51 Where the study involves the use of radionuclide materials, this must be covered in the certificate held by the ARSAC certificate holder. If the study involves additional radiation from a current technique, a new agent, or a novel use of an existing agent, a further certificate must be obtained (see Part B Section 3 of the application form). It should be assumed that this will be obtained before the study commences. It is not essential to provide a copy of the ARSAC certificate in order to obtain a favourable ethical opinion.

(Back to Contents)

Insurance, indemnity and compensation

3.52 The REC is required by the Clinical Trials Regulations to consider provision for indemnity or compensation in the event of injury or death attributable to a CTIMP, and any insurance or indemnity to cover the liability of the investigator and sponsor(s). Schedule 3 to the Regulations puts the onus on the applicant to provide information about the financial arrangements for the trial, including any provision for compensation, details of any insurance or indemnity, and summary details of any financial arrangements between the sponsor (or funder) and the investigator and the trial site.

3.52A GAfREC requires NHS RECs, in the case of any research study they review, to be reassured about the insurance and indemnity arrangements and to consider provision in proportion to the risk for compensation or treatment in the event of injury, disability or death attributable to participation in the research.

(Back to Contents)

Insurance or indemnity to cover potential legal liability

3.53 Before confirming a favourable opinion on any research (including both CTIMPs and non-CTIMPs), the main REC should assure itself that the sponsor and investigators will have appropriate insurance or indemnity cover for the potential legal liability arising from the research. Applicants must provide information to the main REC to show that there are adequate insurance or indemnity arrangements to cover potential legal liability arising from the management, design and conduct of the research. In particular, applicants must show that:

- the financial arrangements, including insurance or indemnity, cover the research study concerned
- the sponsor, protocol authors, investigators/collaborators and, where applicable, Site Management Organisations will all be protected by insurance or indemnity arrangements
- the arrangements will provide adequate cover to meet the potential liability assessed by the sponsor.

3.53A The sponsor should sign the declaration in the application form to confirm that any necessary insurance or indemnity arrangements will be in place before the research starts (see paragraph 1.48(e)).

3.53B RECs are not expected to undertake detailed expert scrutiny of insurance policies. The responsibility for ensuring that cover is adequate lies with sponsors themselves. Committees should expect the application to include coherent written assurances about the financial arrangements that the committee can reasonably rely on. Where the committee has any reason to be concerned about the information provided, it is encouraged to seek a further explanatory statement from the sponsor clarifying what exactly any insurance policies or indemnities provide when taken together, the basis on which the quantum of cover has been determined, and the relevant arrangements between the parties.

3.53C RECs should note that, for CTIMPs, it is not acceptable for the sponsor to provide an undertaking to "self-insure" against the potential liability from its own funds. The insurance or indemnity must be provided by another legal entity. It is acceptable for

the insurer to be another company within the same corporate group provided it is a separate legal entity.

3.54 RECs should bear in mind that NHS organisations acting as sponsors or co-sponsors of research, and Chief Investigators, Principal Investigators and other staff involved in designing or conducting research within the terms of substantive NHS employment contracts, will normally have access to the NHS indemnity schemes. Provision of indemnity through NHS schemes will be ensured when final management permission is given for the research by the care organisation. The REC system may rely on the NHS research governance process for this purpose and it is not necessary for the applicant to provide documentary evidence of NHS indemnity with the application to the main REC. However, the application should make clear the extent to which NHS indemnity will apply to the research. For example, in a commercially sponsored study at a mix of NHS and non-NHS sites, investigators employed by the NHS would be covered by NHS indemnity but separate insurance or indemnity cover would be required for the sponsor and any investigator who is conducting the research at a non-NHS site, including independent practitioners recruiting private patients. (For guidance on independent practitioners recruiting NHS patients, see paragraph 3.58E below.)

Compensation for harm where liability does not arise

3.57 In the case of commercially sponsored CTIMPs or medical device studies, compensation to participants where liability does not arise ("no fault compensation") will normally be available under the Association of British Pharmaceutical Industry (ABPI) or Association of British Healthcare Industry (ABHI) schemes. Where this applies, the applicant should provide the main REC with a clear statement of the policy for the trial on the application form, confirming that the ABPI/ABHI guidelines will be followed, and a copy of the model form of indemnity to be used.

3.58 It is not necessary for the main REC to be provided with a copy of each signed form of indemnity produced under the ABPI or ABHI schemes as part of the Clinical Trial Agreement between the sponsor(s) and the relevant care organisation. This process will generally be finalised shortly before final management permission for the research is given by the care organisation. Nor, in the case of multi-site studies, is it necessary for SSA ~~RECs~~ to check that this documentation is in place as part of the site-specific assessment, except for non-NHS sites (see paragraph 3.58B).

3.58A For research other than CTIMPs and clinical investigations of medical devices, there are no guidelines on whether provision for no-fault compensation should be in place. It is an ethical issue for the sponsor and the REC to consider on a case by case basis, taking into account the potential risk to participants and whether or not the sponsor is in a position, legally and financially, to make such an undertaking. RECs should bear in mind that it is ultra vires for NHS organisations to offer advance compensation to participants for harm where no liability arises. The possibility of no-fault compensation should not be mentioned in information sheets unless the sponsor has a formal scheme in place backed by adequate insurance or indemnity arrangements.

(Back to Contents)

Site-specific assessment at non-NHS sites

3.58B Evidence of insurance or indemnity cover should be provided with the application for site-specific assessment in the case of a CTIMP or clinical investigation of a medical device involving:

- Contract Research Organisations (CRO) or Site Management Organisations SMO) responsible for conduct of the trial at a non-NHS site
- Principal Investigators at non-NHS sites, including any GP or other independent practitioner recruiting private patients (see paragraph 3.58F).

(Back to Contents)

The position of independent practitioners

3.58C GPs are usually independent practitioners who provide services under contract with the primary care organisation (i.e. they are not salaried employees). As such, they are not covered by NHS indemnity and must have their own personal indemnity arrangements. Other independent practitioners to whom this applies include dentists, optometrists and community pharmacists. Independent practitioners will normally arrange indemnity cover for their clinical practice through their professional bodies or mutual defence organisations such as the Medical Defence Union. Cover will normally extend to private practice as well as NHS practice. NHS staff employed by

independent practitioners (for example, practice nurses) are not covered by NHS indemnity but will normally be covered by the practitioner's professional indemnity arrangements.

3.58D Some GPs are salaried employees of NHS care organisations. They will be covered by NHS indemnity when the care organisation gives management permission for the research.

3.58E Where independent practitioners conduct research involving *NHS patients*, the NHS care organisation will ensure that appropriate indemnity arrangements are in place for independent practitioners before giving management permission. The REC system may rely on the research governance process for this purpose. RECs undertaking main ethical reviews or SSAs are not therefore required to seek separate evidence of insurance or indemnity cover for independent practitioners who are participating in research involving NHS patients.

3.58F Where the research involves private patients (and is therefore not subject to NHS research governance), the REC is responsible for ensuring that appropriate indemnity arrangements are in place. RECs undertaking the main ethical review or SSA involving patients in private practice should seek the following:

- A copy of the indemnity policy for the Chief/Principal Investigator (as applicable), and
- A written assurance from the practitioner that the policy provides cover for the research or, if not, written confirmation from the indemnity provider that the cover will be extended.

3.58G Professional indemnity will normally provide adequate cover for research procedures which are equivalent to services normally offered by the practitioner to their NHS patients, for example:

- assessing patients against defined inclusion/exclusion criteria
- referring or recruiting patients to research
- screening patients and taking informed consent
- initiating or undertaking specified tests or investigations that form part of routine clinical practice