

Health and Social Services Committee

HSS(2)-05-05(p.7)

Date: 13 April 2005

Venue: Committee Room, National Assembly for Wales

Title: Revised Directions to NHS Bodies on Counter Fraud Measures

Purpose

1. The Committee has asked for a discussion on the revised Directions to NHS Bodies on Counter Fraud Measures.

2. It is recommended that the Directions are introduced in accordance with Standing Order 29.3 (iv) as the proposed Directions merely update those already in place to help reduce fraud in the NHS in Wales. The proposed revisions are considered non-contentious.

Summary

3. The revised Directions simplify the language of the Directions issued in July 2001, clarify roles and responsibilities and indicate the key areas the National Assembly for Wales requires NHS Directors of Finance, Chief Executives and Local Counter Fraud Specialists to comply with.

Recommendations

4. The final draft directions are attached at Annex 1 for scrutiny ahead of Health and Social Services Committee on 13 April 2005, as requested at a previous Health and Social Services Committee meeting which tabled the Secondary Legislation in progress.

Background

5. The original Directions issued in July 2001 have provided a successful framework to ensure that NHS bodies in Wales apply a consistent, effective and professional approach to countering fraud and corruption. They allow health bodies to work together on a common basis and provide a mechanism for the integration of all activity to best effect.

6. The revised Directions will:

- Apply a consistent and effective approach to countering fraud in health bodies in Wales;
- Provide a clear and concise legal framework for what is to be done to counter fraud;
- Build upon the success of previously issued Directions as an invaluable tool for countering fraud in the NHS in Wales; and
- Strengthen the national framework required for the successful local delivery of counter fraud work without placing any overall additional bureaucratic burden on the NHS.

Consideration

7. Responsibility for the management and administration of the National Health Service in Wales transferred to the National Assembly for Wales (NAW) on 1 July 2001 by virtue of article 2(1) of, and the relevant entries in Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999.

8. The NAW is committed to the reduction of fraud in the NHS in Wales and ensuring public funds are used appropriately. A number of steps have been taken to date to establish an effective structure to counter fraud in the NHS in Wales. The aim is to reduce fraud and to hold it at the absolute minimum permanently, thereby freeing up resources for the improved delivery of patient care.

9. In April 2000, it was announced that the NAW and the Department of Health would enter into a joint working arrangement between the then NHS Counter Fraud Service and the NAW to counter fraud and corruption within the NHS in Wales. Established on 1 January 2003, the Counter Fraud and Security Management Services (CFSMS) has taken over the role and responsibilities previously provided by the NHS Counter Fraud Service. The Wales Operational Service Team tasked with investigating fraud and corruption in the NHS in Wales and supporting Local Counter Fraud Specialists (LCFSs) has been operational since August 2001.

10. Directions setting out the role of the LCFS and responsibilities of each health body on measures to counter fraud and corruption in the NHS in Wales were issued in July 2001. They included the arrangements by which health bodies in Wales, the CFSMS, the Wales Operational Service Team and the Assembly work together to combat fraud and corruption.

11. It is now considered timely to re-issue the Directions to take account of the restructuring of the NHS in Wales, to simplify the language of the Directions clarify roles and responsibilities and indicate the key areas that the NAW require NHS Directors of Finance, Chief Executives and LCFSs to comply with. The Directions mirror those which were issued in England on 09 November 2004.

12. The key changes to the revised Directions are:

- A simplified nomination process for LCFSs;
- A clearer definition of the suitability of the LCFS to undertake their duties;
- The right to remove an LCFS from their counter fraud duties when they are deemed to be unsuitable because they have consistently failed to meet the requirements of Directions. This will be in accordance with provisions as set out in Employment law;
- A role for non-officer members of Local Health Boards to promote counter fraud measures for which they will be given training; and
- Clarification of the arrangements for the health body to provide the Wales Operational Service Team and CFSMS with the necessary access to staff, premises, files and other data for quality inspection, risk measurement, National Proactive Exercises and fraud prevention reviews, instructions and also for investigative purposes.

13. The opportunity has been taken to make the Directions less prescriptive to allow for more locally devolved decision making and, therefore, the following has been removed:

- The requirement that NHS bodies must produce an annual report summarising counter fraud activity;
- The table of responsibilities, previously annexed to Directions has now been incorporated within guidance;
- The 3 month timescale specifying, that after nomination an NHS body must have an LCFS in place;
- That each NHS body shall agree a Service Level Agreement with the Wales Operational Service Team regarding the provision of support by the Team in relation to countering fraud and corruption;
- That where the NHS body's Director of Finance believes fraud or corruption to be present to notify the CFSMS so that advice on the most appropriate sanction can be provided.

Action for Subject Committee

14. Committee members are asked to note these directions and consider any implication for the National Assembly.

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NATIONAL HEALTH SERVICE ACT 1977

Directions to NHS bodies on Counter Fraud Measures 2005

The National Assembly for Wales, in exercise of the powers conferred by sections 16BB(4), 17 and 126(4) of the National Health Service Act 1977 ⁽¹⁾ hereby gives the following Directions:

Commencement, interpretation and application

1.—(1) These Directions will come into force on [insert date] 2005 and are given to NHS bodies in Wales.

(2) In these Directions—

“the CFPAB” means the Counter Fraud Professional Accreditation Board⁽²⁾;

“the CFSMS” means the Counter Fraud and Security Management Service⁽³⁾;

“the NHS Counter Fraud and Corruption Manual” means the NHS Counter Fraud and Corruption Manual published by the CFSMS

“LCFS” means a Local Counter Fraud Specialist appointed in accordance with direction 5;

“NHS body” means an NHS Trust or a Local Health Board;

“NHS body’s staff” means any person who is employed by or engaged to provide services to an NHS body;

“Chief Executive” means either the Chief Executive of an NHS Trust or the Chief Officer of a Local Health Board;

“Director of Finance” means either the Director of Finance of an NHS Trust or the Finance Officer of a Local Health Board and

“the Order” means the Counter Fraud and Security Management Service (Establishment and Constitution) Order 2002⁽⁴⁾.

(3) These Directions apply in relation to Wales only.

⁽¹⁾ 1977 c.49 (“the 1977 Act”); section 16BB(4) was inserted by the National Health Service Reform and Health Care Professions Act 2002 (c.17) (“the 2002 Act”), section 6(1). Date in force 10.10.02; see SI 2002/2532 and was amended by section 184 of and paragraphs 7 and 10 of Schedule 11 to the Health and Social Care (Community Health and Standards Act 2003 (c.43) (“the 2003 Act”).

Section 17 was substituted by section 12(1) of the Health Act 1999 (c.8) and amended by section 67(1) of and paragraphs 5(1) and (3) of Schedule 5 to the Health and Social Care Act 2001 (c.15) (“the 2001 Act”).

Section 126(4) was amended by section 65(2) of the National Health Service and Community Care Act 1990 (c.19) and by paragraph 37(6) of Schedule 4 to the 1999 Act; by paragraph 5 (1) and (13)(b) of Schedule 5 to the 2001 Act; by the 2002 Act, sections 6(3)(c) and 37(1) and paragraphs (1) and (10a) of Schedule 8 and by the 2003 Act, section 196 and Schedule 14.

The functions of the Secretary of State under sections 17 and 126(4) are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2(a) of the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 as amended by section 66(4) of the 1999 Act.

⁽²⁾ The Counter Fraud Professional Accreditation Board is a regulatory body financed and run by representatives from the Department of Work and Pensions and its agencies, the Department of Health, the Inland Revenue, the Local Government Association, Abbey National, HM Customs and Excise, UK Passport Agency and the Charity Commission. Its purposes are to ensure the delivery of professional, accredited counter fraud training and academic study and that, once qualified, those who are accredited maintain their professional standards.

⁽³⁾ A Special Health Authority established by the Counter Fraud and Security Management Service (Establishment and Constitution) Order 2002 SI 2002/3039 (“the Order”).

⁽⁴⁾ SI 2002/3029.

General

2.—(1) Each NHS body must take all necessary steps to counter fraud in the National Health Service in accordance with these Directions and in accordance with—

- (a) the NHS Counter Fraud and Corruption Manual⁽⁵⁾; and
- (b) the policy statement “Applying appropriate sanctions consistently” published by the CFSMS⁽⁶⁾,

and having regard to guidance or advice issued by the CFSMS or the National Assembly for Wales.

(2) Each NHS body must require its Chief Executive and Director of Finance to monitor and ensure compliance with these Directions.

Co-operation with the Counter Fraud and Security Management Service

3.—(1) Each NHS body must co-operate with the CFSMS efficiently and effectively to enable the CFSMS to carry out its counter fraud functions⁽⁷⁾ and in particular each NHS body must, subject to the following paragraphs of this direction—

- (a) enable the CFSMS to have access to premises under its control;
- (b) put in place arrangements which will enable the CFSMS to have access, as appropriate, to the NHS body’s staff; and
- (c) supply such information including files and other data (whether in electronic or manual form) as the CFSMS requires,

for the purposes of the CFSMS’s counter fraud functions.

(2) In the case of information required under paragraph (1)(c) for the purposes of investigations relating to the responsibility of the CFSMS for quality inspection, fraud measurement, National Proactive Exercises (NPEs)⁽⁸⁾ and fraud prevention reviews, inspections and instructions, an NHS body must respond to any request from the CFSMS as soon as reasonably practicable.

(3) In the case of information required under paragraph (1)(c) for the purposes of investigations relating to the counter-fraud functions of the CFSMS, an NHS body must respond to a request as soon as reasonably practicable and in any event within seven days from the date the request was made.

(4) Nothing in paragraph (1)(b) contravenes any right a member of staff may otherwise have to refuse to be interviewed.

(5) Nothing in paragraph (1)(c) or direction 8(f) obliges or permits an NHS body to supply information which is prohibited from disclosure by or under any enactment, rule of law, or ruling of a court of competent jurisdiction or is protected by the common law.

(6) Without prejudice to the generality of direction 2(1)(a), each NHS body must comply with the requirements specified in the NHS Counter Fraud and Corruption Manual concerning—

- (a) the arrangements for reporting fraud cases to the LCFS and to the NHS body’s audit committee and auditors;
- (b) the arrangements for agreeing to undertake a criminal prosecution and to refer a matter to the police;
- (c) the confidentiality of information relevant to the investigation of suspected fraud;
- (d) the arrangements for the LCFS to report weaknesses in fraud related systems to the CFSMS and to the NHS body’s audit committee and auditors; and

⁽⁵⁾ This manual is updated from time to time and is issued to NHS bodies.

⁽⁶⁾ The statement is available on the CFSMS’s web site at www.cfsms.nhs.uk

⁽⁷⁾ For the functions of CFSMS in relation to counter fraud in Wales see the Arrangement between the National Assembly for Wales and the CFSMS made in accordance with section 41 of the Government of Wales Act 1998.

⁽⁸⁾ National Proactive Exercises (NPEs) are a series of exercises initiated by the CFSMS for LCFSs for the purpose of uncovering or preventing fraud and corruption within current systems or highlighting policy weaknesses.

- (e) the arrangements for gathering information to enable the Director of Finance to seek recovery of money lost through fraud.

Co-operation with the Operational Team (Wales)

4.—(1) Each NHS body shall co-operate with the Operational Team (Wales)⁽⁹⁾ to facilitate compliance with these Directions.

(2) The duty imposed upon each NHS body by direction 3 to co-operate with requests made by CFSMS for access to its staff and to premises and information under its control shall extend to such requests that are made by the Operational Team (Wales).

Appointment of Local Counter Fraud Specialists

5.—(1) Each NHS body must nominate at least one person whom it proposes to appoint as that body's LCFS within six weeks of the date upon which these Directions come into force. In the case of Local Health Boards, this nomination must be discussed and agreed with the Business Service Centre within Powys Local Health Board.

(2) A person nominated under paragraph (1) may be either employed by the NHS body or a person whose services are supplied to it by an outside organisation.

(3) The name of the nominee must be notified to the National Assembly for Wales and the CFSMS together with the information specified in the NHS Counter Fraud and Corruption Manual within seven days of the nomination.

(4) Without prejudice to the generality of direction 2(1), before making a nomination each NHS body must take into account any guidance issued by the CFSMS on the suitability criteria for an LCFS.

(5) After a nominee has—

- (a) been approved by the CFSMS as a person suitable for appointment;
- (b) successfully completed any training required by the CFSMS; and
- (c) been accredited by the CFPAB,

the NHS body is able to appoint the person as its LCFS.

(6) Where an NHS body nominates a person whose services are provided to it by an outside organisation, it must—

- (a) comply with the requirements of the CFSMS as to the suitability of the organisation in question;
- (b) satisfy itself and the CFSMS that the terms on which those services are provided are such as to enable such a person to carry out the functions of a LCFS effectively and efficiently and in particular that such a person will be able to devote sufficient time to that NHS body; and
- (c) give to the CFSMS a copy of the contract under which the services of the LCFS are supplied to it.

(7) A further nomination must be made within three months of the date on which an NHS body learns that there is to be a vacancy for an LCFS.

(8) The procedures described in paragraphs (3) to (6) also apply to a person nominated in accordance with paragraph (7).

Responsibilities and functions of the Local Counter Fraud Specialist

6.—(1) Each NHS body must specify a job description for its LCFS which includes the operational and liaison responsibilities specified by the CFSMS.

(2) The job description under paragraph (1) must include a requirement that the CFSMS must adhere to the CFPAB Principles of Professional Conduct as set out in the NHS Counter Fraud and Corruption Manual.

(3) An LCFS must report directly to the NHS body's Director of Finance.

⁽⁹⁾ The Operational Team (Wales) is a body of staff employed by Powys Local Health Board but which is accountable to the Director of Operations of the CFSMS for the implementation of operational counter fraud activities in Wales.

Responsibilities of NHS bodies in relation to the Local Counter Fraud Specialist

7.—(1) Each NHS body must—

- (a) require that in addition to the job description mentioned in direction 7(1), the LCFS and the Director of Finance agree, at the beginning of each financial year, a written work plan which outlines the projected work of the LCFS for that financial year by reference to the seven generic areas of counter fraud activity as set out in the NHS Counter Fraud and Corruption Manual;
- (b) enable its LCFS to attend the meetings of that NHS body's audit committee;
- (c) require its LCFS to keep full and accurate records of any instances of fraud or suspected fraud;
- (d) require its LCFS to report to the CFSMS any weaknesses in fraud related systems of the NHS body and any other matters which may have fraud related implications for the NHS;
- (e) ensure that its LCFS has all necessary support including access to the CFSMS's secure intranet site to enable the LCFS efficiently and effectively to carry out his or her responsibilities;
- (f) subject to any contractual or legal constraint, require all its staff to co-operate with the LCFS and in particular that those responsible for human resources disclose information which arises in connection with any matters (including disciplinary matters) which may have implications in relation to the investigation, prevention or detection of fraud;
- (g) enable its LCFS to receive any training recommended by the CFSMS;
- (h) require its LCFS, its other employees and any persons whose services are provided to the NHS body in connection with counter fraud work to have regard to guidance and advice which may be issued by the CFSMS on media handling of counter fraud measures;
- (i) enable its LCFS to participate in activities in which the CFSMS is engaged, including national anti-fraud measures, where the LCFS is requested to do so by the CFSMS;
- (j) enable its LCFS to work in conditions of sufficient security and privacy to protect the confidentiality of his or her work; and
- (k) enable its LCFS generally to perform his or her functions effectively, efficiently and promptly.

Revocation

8. The following directions are hereby revoked—

- (a) Directions to Health Authorities regarding counter-fraud measures dated **[31 July 2001]**;
- (b) Directions to NHS Trusts regarding counter-fraud measures dated **[31 July 2001]**.

Signed by authority of the National Assembly for Wales

[A member of the Senior Civil Service]