
DIRECTIONS

Directions to NHS Trusts and Special Health Authorities in respect of Counter Fraud 2017

The Secretary of State for Health, in exercise of the powers conferred by sections 8 and 272(7) and (8) and 273(1) of the National Health Service Act 2006(a), makes the following Directions:

Application, commencement and interpretation

1.—(1) These Directions apply to NHS bodies in England and come into force on 1st November 2017.

(2) In these Directions—

“accredited” means, in relation to persons appointed or proposed to be appointed as LCFS, accredited by the Counter Fraud Professional Accreditation Board(b) or similar organisation providing counter fraud prevention, detection and investigation accreditation to government departments;

“Director of Finance” includes, in relation to an NHS body in which there is no post of that title, the most senior officer (apart from the Chief Executive) responsible for the financial affairs of the NHS body;

“fraud” means fraud, corruption and other such unlawful activities, but does not include theft;

“LCFS” means a Local Counter Fraud Specialist, responsible for undertaking the work described in paragraph 6;

“NHS body” means a body which is a Special Health Authority (other than the NHS CFA) or an NHS trust;

“the NHS CFA” means the NHS Counter Fraud Authority(c);

“the NHS Counter Fraud Manual” means the manual described in paragraph 2(2)(b);

“staff” in relation to NHS bodies means individuals employed by an NHS body.

General

2.—(1) Each NHS body is directed to take such action as is reasonably necessary for the purpose of preventing, detecting or investigating fraud.

(2) In particular, in discharging the duty under sub-paragraph (1), each NHS body must act in accordance with these Directions, and having regard to—

(a) the Standards for Providers published by the NHS CFA annually in relation to counter fraud activities and updated from time to time(d);

(a) 2006 c. 41. Section 8 was amended by section 55(1) of, and paragraph 5 of Schedule 4 to, the Health and Social Care Act 2012 (c. 7). Other amendments have been made that are not yet in force.

(b) The Counter Fraud Professional Accreditation Board is a non-statutory body financed and run by representatives from, in particular, the Department of Work and Pensions and its agencies, the Department of Health, certain local government bodies, HM Revenue and Customs, and the UK Passport Agency, and hosted by the University of Portsmouth, with the purposes of ensuring the delivery of professional counter fraud training and academic study and that, once qualified, those who are accredited maintain their professional standards.

(c) The NHS Counter Fraud Authority is established by order made under section 28 of the National Health Service Act 2006 (c. 41) (SI 2017/958).

(d) Website available at www.cfa.nhs.uk/counter-fraud-standards.

- (b) Version 4 of the manual entitled “The NHS Anti-Fraud Manual” dated July 2017 issued by the former division maintained within the BSA prior to the 1st November 2017 and known as “NHS Protect”(e);
- (c) any other guidance or advice issued by the NHS CFA, whether generally or to that NHS body.

(3) Sub-paragraph (2) applies without prejudice to any more specific requirement in these Directions in relation to the manual or other guidance mentioned in sub-paragraph (2).

Co-operation with the NHS Counter Fraud Authority

3.—(1) Each NHS body is directed to co-operate with the NHS CFA to enable the NHS CFA efficiently and effectively to carry out its functions(f).

(2) In particular, each NHS body must, subject to sub-paragraph (3)—

- (a) permit and facilitate the NHS CFA’s entry to the NHS body’s premises;
- (b) put in place arrangements to permit or facilitate the NHS CFA’s having access to the NHS body’s staff and to contractors providing services to the body; and
- (c) supply such information including files and other data (whether in electronic or manual form) as the NHS CFA reasonably requires for the purposes of the NHS CFA’s counter fraud functions.

(3) Nothing in these Directions—

- (a) permits or requires contravention of any right a member of staff of an NHS body or a contractor or member of staff of a contractor may otherwise have to refuse to be interviewed;
- (b) permits or requires an NHS body or any individual 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.

NHS Counter Fraud Manual requirements

4. Each NHS body is directed to follow such guidance as may be specified in the NHS Counter Fraud Manual in relation to an NHS body of its type (that is, in relation to NHS Trusts or Special Health Authorities as the case may be) concerning—

- (a) arrangements for reporting fraud cases to the LCFS and to the NHS body’s audit committee and auditors;
- (b) arrangements in respect of the undertaking of a criminal prosecution and referrals to the Crown Prosecution Service;
- (c) confidentiality of information relevant to the investigation of suspected fraud;
- (d) arrangements for the LCFS to report weaknesses in fraud-related systems to the NHS CFA and the NHS body’s audit committee and auditors; and
- (e) arrangements for gathering information to enable the Director of Finance of the NHS body concerned to seek recovery of assets or other property lost through fraud.

(e) This document may be updated from time to time: these directions will be amended to reflect this. NHS bodies may also like to note that the current version is the version prepared by NHS Protect, and that the NHS CFA will be developing an updated version which they will issue in the near future, at which point these Directions will be amended to describe the new version. NHS bodies should (via their staff or contractors having authorised access) consult the NHS CFA’s secure intranet to see the latest version of the Manual.

(f) The functions of the NHS Counter Fraud Authority are provided for in SI 2017/958 (see: <http://www.legislation.gov.uk/uksi/2017/958/contents/made>) and in directions having effect on 1st November 2017, which may be found on the following website: www.gov.uk. The NHS CFA’s duties are, broadly, to discharge the counter fraud functions of the Secretary of State (within the meaning given in section 195 of the National Health Service Act 2006 (c. 41)) See also SI 2017/960 which makes provision for certain investigative powers and other statutory functions to be conferred on the NHS CFA.

Accredited Local Counter Fraud Specialist

5.—(1) The direction in sub-paragraph (2) applies where an NHS body does not already have an accredited person appointed as an LCFS pursuant to the Directions to NHS Bodies on Counter Fraud Measures 2004(g) who would meet the requirements for appointment in this paragraph.

(2) Each NHS body is directed to appoint at least one accredited person whom it proposes to appoint as the body's LCFS within six weeks of the date on which these Directions come into force.

(3) A person appointed under sub-paragraph (2) may be a member of staff of an NHS body or may be a person, or a member of staff of a person or body, who supplies services to that NHS body.

(4) Where an NHS body proposes to appoint a person who is not a member of its staff, it must, before making the appointment, satisfy itself that if appointed, that person will be able to carry out the duties of LCFS effectively and efficiently, and will, in particular, be able to devote sufficient time to that NHS body.

(5) Before making an appointment, each NHS body must have regard to any guidance issued by the NHS CFA from time to time about—

- (a) the criteria for suitability for the post of LCFS;
- (b) the process for appointment (including meeting the prerequisites set out in this paragraph);
- (c) where an LCFS is to be employed by the NHS body, the terms on which an LCFS is to be employed; and
- (d) where the services of an LCFS are to be provided to the NHS body by a person or body who supplies services to that NHS body, the terms on which those services are to be provided.

(6) The NHS body must notify the NHS CFA of the name of the person appointed or proposed to be appointed as LCFS, and provide the NHS CFA with evidence of that person's accreditation.

(7) A further appointment 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 for appointment in this paragraph also apply to a person nominated under sub-paragraph (7).

The work of the Local Counter Fraud Specialist

6.—(1) Each NHS body is directed to make arrangements as required in this paragraph in respect of the work of its LCFS.

(2) The job description of the LCFS must include requirements to work proactively to prevent and deter fraud as well as to respond to incidences of fraud.

(3) Responding to incidences of fraud may include advising the NHS body about taking legal or regulatory action, or on the NHS body's behalf, taking such action or causing it to be taken, against those who commit or are reasonably believed to have committed fraud.

(4) The job description must include a requirement that the LCFS must accept and adhere to the standards of business conduct policy set out by the Board(h) for its own staff from time to

(g) These Directions were signed on 8th November 2004, and have been amended in 2005, 2006 and 2007. A full description of the amending directions is given in paragraph 7, which relates to revocations of previous directions.

(h) "The Board" is defined in section 275(1) of the National Health Service Act 2006 (c. 41) and refers to the National Health Service Commissioning Board, established by section 1H of that Act. It is widely known by its operational title "NHS England".

time and published on the Board’s website(i) as if such standards were addressed to the LCFS.

(5) The LCFS must report directly to the Director of Finance of the NHS body.

(6) At the beginning of the financial year, the LCFS and the Director of Finance must agree a written work plan for the LCFS.

(7) The NHS body must enable its LCFS to attend the body's audit committee meetings and any other meetings at which matters concerning fraud and or the prevention, detection or prosecution of fraud are likely to be considered.

(8) The NHS body must require its LCFS to keep full and accurate records of any instances of fraud or suspected fraud.

(9) The NHS body must require its LCFS to report to the NHS CFA any weaknesses in administrative or operational processes, systems or activities of the NHS body intended to prevent or detect fraud, or that may have implications for fraud in relation to the NHS body, and generally, to report to the NHS CFA about any other matters of which the LCFS becomes aware and which the LCFS considers may have fraud-related implications for the NHS body or the health service more generally.

(10) The NHS body must ensure that its LCFS has appropriate support, including access to the NHS CFA’s secure intranet site(j), to enable the LCFS efficiently and effectively to carry out the responsibilities of LCFS.

(11) The NHS body must require that, subject to any contractual or other legal constraints that may apply, including any obligations as to the handling of personal data,—

- (a) all of its staff and contractors providing services to the body co-operate with the LCFS when requested by the LCFS;
- (b) those responsible for human resources (“HR professionals”) disclose to the LCFS such information that they become aware of arising in connection with any matters (including disciplinary matters) which they consider may have implications in relation to the investigation, prevention or detection of fraud;
- (c) HR professionals provide such further information helpful or otherwise pertinent to the investigation, prevention or detection of fraud as the LCFS may request.

(12) The NHS body must enable its LCFS to receive ongoing appropriate training and development provided by the Counter Fraud Professional Accreditation Board(k) or similar organisation providing counter fraud prevention, detection and investigation accreditation to government departments.

(13) The NHS body must 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 such guidance and advice on media handling of counter fraud matters as may be issued by the NHS CFA.

(14) The NHS body must enable its LCFS to work in conditions of sufficient security and privacy as to protect the confidentiality of the work the LCFS undertakes.

(15) The NHS body must enable its LCFS generally to perform the functions of LCFS effectively, efficiently and promptly.

(16) In this paragraph “counter fraud work” means the activities mentioned in paragraph 2(1) of the NHS body appointing the LCFS.

(i) Available at <https://www.england.nhs.uk/wp-content/uploads/2017/07/standards-business-conduct-policy-nhs-england.pdf>.
(j) The address to this secure intranet site can be accessed via the secure intranet site address used by the NHS Business Services Authority’s former division known as “NHS Protect” prior to 1st November 2017. Further information can be obtained directly from the NHS Counter Fraud Authority.
(k) see footnote (b) to paragraph 1 of these Directions.

Revocation

7. The following Directions are revoked—

- (a) the Directions to NHS Bodies on Counter Fraud Measures 2004 signed on 8th November 2004;
- (b) the Directions to NHS Bodies on Counter Fraud Measures (Amendment) Directions 2005 signed on 17th February 2005;
- (c) the Directions to NHS Bodies on Counter Fraud Measures (Amendment) Directions 2006 signed on 31st March 2006;
- (d) the Directions to NHS Bodies on Counter Fraud Measures 2004 (Amendment) Directions 2007 signed on 4th October 2007.

Signed by authority of the Secretary of State for Health

Date of signing:

Dermid McCausland
an official of the Department of Health
and member of the Senior Civil Service