

**NATIONAL HEALTH SERVICE ACT 1977**  
**Directions to Primary Care Trusts regarding counter-fraud measures**

The Secretary of State for Health, in exercise of powers conferred by sections 17 and 126(4) of the National Health Service Act 1977, **and** of all other powers enabling him in that behalf, hereby gives the following directions: -

**Application, commencement and interpretation**

1. (1) These Directions are given to each Primary Care Trust in England.
- (2) These Directions replace previous Directions issued on 27 November 2000 and shall come into force on 02 September 2002.
- (3) In these Directions:
  - “NHS CFS (OS)” means Counter Fraud Service Operational Service for the NHS;
  - “NHS CFS (CU)” means Counter Fraud Service Central Unit for the NHS;
  - “NHS CFS (TS)” means Counter Fraud Service Training Service for the NHS;
  - “HA” means the Health Authority (to be known as a Strategic Health Authority from October 2002) in whose area the PCT is established;
  - “LCFS” means the Local Counter Fraud Specialist for a PCT;
  - “PCT” means a Primary Care Trust.

**Countering fraud and corruption**

2. (1) Each PCT shall require its Chief Executive and its Director of Finance to monitor and ensure compliance with these Directions and with such other instructions on countering fraud and corruption involving the NHS as may be notified by the NHS CFS (CU). Each PCT shall further ensure that action to counter fraud and corruption is taken in accordance with the NHS Counter Fraud and Corruption Manual and in accordance with the Table annexed to these Directions (this “Table” may be amended or replaced from time to time) setting out the respective operational and liaison responsibilities of PCTs, the NHS CFS (CU) and the NHS CFS (OS).
- (2) The PCT shall facilitate, and co-operate with the NHS CFS fraud measurement and quality inspection work, giving prompt access to, and without charge, PCT staff, workplaces and relevant documentation (including investigation files and all material relating to an investigation or allegation of fraud or corruption), information and data.
- (3) Each PCT shall with other PCTs within its HA endeavour to agree a Service Level Statement with the relevant NHS CFS (OS) Team regarding the provision of support by the NHS CFS (OS) in relation to countering fraud and corruption.

### **Appointment of LCFS in each PCT**

3. (1) Each PCT shall, within 6 weeks of the date of these Directions or the date of its establishment, whichever is the later, nominate a suitable officer to act as its LCFS and shall notify the NHS CFS (TS) of that nomination. The PCT shall further ensure that, with effect from the date 3 months after the last date for nomination in its case, a LCFS is in place. Where there is a need to replace a LCFS, the NHS CFS (TS) shall be notified of a suitable replacement within three months of the need for the replacement becoming apparent. Only officers who have been nominated, accredited and had their nomination approved by NHS CFS may undertake the duties of LCFS in the NHS. Approval of nominations will be carried out by the NHS CFS Quality Assurance Team.
- (2) The requirement of suitability shall involve several criteria which shall include:
- (a) the officer concerned being professionally accredited as a counter fraud specialist;
  - (b) the officer concerned having sufficient time allocated to undertake the work;
  - (c) the officer concerned having sufficient organisational support to allow him or her to fulfil the requirements of these Directions.

Where organisations supplying LCFSs to health bodies do not meet these criteria or any other relevant to the quality of the LCFS service, the NHS CFS shall have the right to reject any LCFS nomination, or group of LCFS nominations relating to that organisation, and any health bodies continuing to use such officers will then be in breach of these Directions.

- (3) The NHS CFS shall undertake propriety checks before any nomination is accepted. Once specialist training provided by the NHS CFS (TS) has been completed by the nominee to the satisfaction of the NHS CFS (TS), the nominee shall be accredited and shall assume the role of LCFS in the PCT.
- (4) The PCT shall ensure that only those persons who have had their nomination accepted by the NHS CFS and who have also attained accreditation as a Counter Fraud Specialist, through the NHS CFS (TS), undertake work to counter fraud and corruption.

### **Role of LCFS**

4. The LCFS shall:
- (a) report to the PCT's Director of Finance;
  - (b) provide, at the start of each financial year, a written workplan, which has been agreed with the PCT's Director of Finance, outlining the activity the LCFS and the PCT expect to undertake in the generic areas described in the counter fraud strategy and the NHS Fraud and Corruption Manual, along with the likely level of resources required and agreed to undertake this work. This workplan should also be copied to the relevant NHS CFS (OS) Team and the NHS CFS Quality Inspection Team;

- (c) provide a written report, at least annually, to the PCT outlining activity on counter fraud work within the PCT, in the generic areas described in the counter fraud strategy and the NHS Fraud and Corruption Manual. This report should also be copied to the relevant NHS CFS (OS) Team and the NHS CFS Quality Inspection Team;
- (d) be entitled to attend any Audit Committee meetings and have a right of access to all Audit Committee members and to the Chairman and Chief Executive of the PCT;
- (e) undertake, as specified by the NHS CFS, the PCT's Chief Executive or Director of Finance, proactive work to detect cases of fraud and corruption, particularly where systems weaknesses have been identified. This work shall be carried out so as to complement the detection of potential fraud and corruption by auditors in the course of routine audits;
- (f) proactively seek and report to the NHS CFS (CU) opportunities where details of counter fraud work (involving action on prevention, detection, investigation, sanctions or redress) can be used within presentation or publicity in order to deter fraud and corruption;
- (g) investigate cases of suspected fraud in accordance with the division of work specified in the Table annexed to these Directions as amended or replaced from time to time;
- (h) refer to the relevant NHS CFS (OS) Team, Specialist or National Proactive Team all cases appropriate to them;
- (i) refer to the relevant NHS CFS (OS) Team any cases of suspected fraud and corruption where action may be required that requires authorisation under the Regulation of Investigatory Powers Act 2000, as part of an investigation;
- (j) inform the appropriate NHS CFS (OS) Team of all cases of suspected fraud investigated by the PCT, using the approved fraud and corruption reporting system.

### **Cooperation with investigations**

5. The PCT shall ensure that either the LCFS or relevant NHS CFS (OS) Team, Specialist or National Proactive Team are given access as soon as is reasonably practicable and in any event not later than 7 days from the date of the request to:
- (a) all premises, records or data owned or controlled by the PCT, without charge, relevant to the detection and investigation of cases of fraud and corruption, including investigation files, reports concerning allegations or suspicions of fraud and any material relating to these;
  - (b) all staff who may have information to provide which is relevant to the detection and investigation of cases of fraud and corruption.

The PCT shall require its Chief Executive and its Director of Finance to be responsible for ensuring that such access is given.

## **Cases of fraud or corruption**

6. (1) The LCFS shall send full reports of all cases where the PCT's Director of Finance believes fraud or corruption to be present to the NHS CFS (CU) and the relevant NHS CFS (OS) Team in like manner as is provided for in HSC 1999/062, using the approved reporting system, so that advice on the most appropriate sanction can be provided. The PCT's Director of Finance and LCFS shall consider further action in accordance with the NHS Counter Fraud and Corruption Manual. These reports shall also be sent to the body responsible for Internal Audit, the Audit Committee, the relevant HA, and to the External Auditor.
- (2) The PCT's Director of Finance shall liaise and reach agreement with the relevant NHS CFS (OS) Team, Specialist or National Proactive Team leader where the appropriate sanction is felt to be prosecution action before any further action is taken by either the PCT or the NHS CFS (OS).
- (3) The PCT's Director of Finance shall liaise and reach agreement with the relevant NHS CFS (OS) Team, Specialist or National Proactive Team leader before any decision is reached on the referral of a case of fraud or corruption to the Police or any other body for investigative action.
- (4) Any information relevant to an investigation of suspected fraud or corruption shall not be disclosed except for the purposes of the investigation or subsequent proceedings. No information relating to the investigation shall be disclosed to any person who might possibly be implicated in the case of potential fraud or corruption.
- (5) The LCFS shall report to Internal Auditors details of systems weaknesses identified as allowing proven fraud to take place. Internal and External Auditors shall be asked to report to the LCFS systems weaknesses detected in the course of their work which may have allowed fraud to take place.
- (6) The LCFS shall ensure that all investigations of cases of suspected fraud take proper account of the need to obtain information relevant to the recovery of funds obtained through fraud and to the provision of this information so that redress can be sought. The PCT's Director of Finance is responsible for ensuring that the PCT seeks financial redress in respect of such losses.

Signed by authority of the Secretary of State for Health

02 September 2002

Jim Gee – Director of the NHS CFS

Annex to SofS Directions on fraud and corruption – Investigation of suspicions of fraud and corruption: Operational and Liaison Responsibilities

	<u>Operational responsibilities</u>	<u>Liaison responsibilities</u>
<p>PRIMARY CARE TRUST LOCAL COUNTER FRAUD SPECIALIST</p>	<p>A. To investigate cases involving the LCFS's own PCT where:</p> <ol style="list-style-type: none"> <li>1. General Dental Services Fraud is not involved;</li> <li>2. Prescription/Pharmaceutical Services Fraud is not involved;</li> <li>3. it is clear that not more than £15,000 is involved;</li> <li>4. there is no evidence that the fraud extends beyond the PCT;</li> <li>5. there is no evidence of corruption involving a public official (ie. someone either employed by or holding an official position on behalf of the PCT) who is using their public influence for private gain.</li> </ol> <p>B. To investigate cases outside these parameters with the agreement of the relevant NHS CFS (OS) Team or Specialist or National Proactive Team Leader and to do so where the PCT Director of Finance is in agreement.</p> <p>C. To provide assistance involving cases under investigation by the relevant NHS CFS (OS) Team or Specialist or National Proactive Team involving the LCFS's own PCT.</p>	<ul style="list-style-type: none"> <li>• To inform the NHS CFS (OS) Team of every case which is investigated.</li> <li>• To refer cases under A.1. or A.2. to the relevant Specialist team and to assist as required.</li> <li>• To refer cases outside operational responsibilities defined in A.3., A.4., A.5. to the NHS CFS (OS) Team and to assist as required.</li> <li>• To ensure a full report is provided on each case to the NHS CFS (CU) and the relevant NHS CFS (OS) Team, Internal and External Auditors, and the Audit Committee, where fraud is present, and an assessment of the systems weakness that allowed the fraud to be perpetrated (HSC 1999/062).</li> <li>• In conjunction with the NHS CFS (CU) to identify suitable cases, or other key events, for proactive publicity.</li> </ul>