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Integrated care boards

Counter fraud statutory guidance

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About this document

NHS England may update or supplement this document during 2022/23. Elements of this guidance are subject to change.

All fraud, bribery and corruption (collectively referred to as economic crime) in the NHS is unacceptable and should not be tolerated. It directly affects the ability of the NHS to improve health outcomes for people in England, as resources are wrongfully diverted and cannot be used for their intended purpose.

An effective counter fraud function within each NHS body is essential to ensure vital NHS funds are protected from economic crime. Appropriate counter fraud co-ordination between NHS bodies ensures efficient and appropriate use of resources, as well as minimising the risk of duplication of effort.

This document outlines counter fraud requirements for integrated care boards (ICBs). It also describes the interaction and division of responsibilities between the counter fraud functions of ICBs and NHS England.

Key points

- ICBs must comply with the [NHS requirements](#), as published by NHS Counter Fraud Authority (NHSCFA) regarding [Government functional standard GovS 013: Counter fraud](#).
- ICBs are delegated responsibility to commission delivery of primary care services locally, with NHS England retaining overall national accountability.
- NHS England is responsible for ensuring that appropriate counter fraud arrangements are in place and retains the investigative responsibility regarding economic crime allegations in primary care services delegated to ICBs (relating to contractors).
- ICBs are responsible for ensuring that appropriate counter fraud arrangements are in place and will have investigative responsibility for areas not delegated by NHS England.
- Clarification that NHS England commission provider assurance services nationally from NHS Business Services Authority (NHSBSA).

Action required

ICBs should:

- Ensure compliance with the *NHS requirements* set by NHSCFA.
- Co-operate with NHSCFA to enable NHSCFA to efficiently and effectively carry out its functions.
- Note ICB counter fraud responsibilities regarding fraud in the primary care services delegated to ICBs.
- Ensure that any fraud concerns relating to primary care services delegated to ICBs are reported to the [NHS England Counter Fraud team](#) immediately.
- Note ICB counter fraud responsibilities regarding other ICB functions.
- Note that NHS England commission provider assurance services from NHSBSA to support ICBs with their responsibilities regarding assurance of primary care contractors.

Other guidance and resources

- [CCG closedown and ICB establishment due diligence checklist](#) (FutureNHS login required)
- [Tackling fraud, bribery and corruption: Policy and corporate procedures](#)
- [NHS England economic crime strategy](#)
- *Delegation agreement* (once published)
- *Audit committee terms of reference guidance* (once published)
- [Standing financial instructions template](#) (FutureNHS login required)
- [Government functional standard GovS 013: Counter fraud](#)
- [NHS requirements](#) regarding GovS 013
- [NHSCFA local counter fraud specialist guidance](#)
- NHSCFA NHS counter fraud manual (NHSCFA login required)
 - NB: includes a Template Counter Fraud Policy
- [NHSCFA strategy](#)
- [NHSCFA fraud reference guide](#)
- NHSBSA [provider assurance webpage](#)

Government functional standard

GovS013: Counter fraud

The 'functional standard' was launched in 2018 to be implemented across government. It applies to all government departments and their arms-length bodies (ALBs). The Department of Health and Social Care (DHSC) and NHSCFA implemented the functional standard in 2018/19. NHS England and other NHS ALBs did so in 2019/20.

From April 2021 all NHS organisations have been required to provide assurance against the functional standard. Every year NHSCFA is required to provide assurance to Cabinet Office of how the NHS is identifying and mitigating the risk of fraud, bribery and corruption. NHS funded services are required to provide details of their performance against the functional standard annually to the NHSCFA each year.

NHSCFA publish a detailed explanation for each component of the NHS requirements, including an indication of what each organisation needs to do to comply with the requirement. There are currently 12 components:

1. Accountable individual
2. Counter fraud bribery and corruption strategy
3. Fraud bribery and corruption risk assessment
4. Policy and response plan
5. Annual action plan
6. Outcome based metrics
7. Reporting routes for staff, contractors and members of the public
8. Report identified loss
9. Access to trained investigators
10. Undertake detection activity
11. Access to and completion of training
12. Policies and registers for gifts and hospitality and conflicts of interest (COI).

ICBs must comply with the NHS requirements, as published by NHSCFA, regarding the functional standard. This is consistent with all other NHS bodies.

Co-operation with NHSCFA

Consistent with [directions](#) to other NHS bodies, ICBs are expected to co-operate with NHSCFA, to enable NHSCFA to efficiently and effectively to carry out its functions. ICBs should:

- permit and facilitate NHSCFA's entry to ICB premises
- permit or facilitate the NHSCFA's having access to ICB staff and to contractors providing services to the body
- supply such information (including files and other data, whether in electronic or manual form) as the NHSCFA reasonably requires for the purposes of its counter fraud functions.

However, in doing so ICBs are not required or permitted to:

- contravene any right to refuse to be interviewed that a member of ICB staff, a contractor, or member of contractor staff may otherwise have
- 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.

Counter fraud in primary care

Local counter fraud specialists

As described in the functional standard, organisations are required to have access to trained investigators. As per the NHSCFA-issued NHS requirements, in the NHS, this role is called a local counter fraud specialist (LCFS). LCFSs are accredited and nominated to the NHSCFA to undertake the full range of counter fraud, bribery and corruption work, including proactive and reactive activities. This includes investigating allegations where any potential loss relates to the NHS body, ie where the NHS body is the victim.

Historic counter fraud arrangements in primary care

The responsibility relating to primary care investigations (general practice, dental, pharmaceutical and ophthalmic services) is complex. This is due to the dynamic between the contractual relationships and budgetary responsibility regarding primary care contractors, as well as also considering the impact of delegated and devolved arrangements.

The *NHS England economic crime strategy* (first published in 2016) includes a guide to describe the investigative responsibility in the different areas of primary care, including the interaction between NHS England and clinical commissioning groups (CCGs).

Regarding commissioning responsibility, with reference to counter fraud:

- A CCG may have been delegated commissioning responsibility for primary medical services (general practice), but NHS England may have retained accountability for these services. Therefore, NHS England would retain the investigative responsibility in relation to fraud. No other primary care services were delegated to CCGs.
- A CCG may have commissioned certain enhanced services directly from primary care contractors. As the CCG held these contracts in their own right (ie not a delegated function), the investigative responsibility in relation to fraud would sit with the CCG.

However, it should be noted that in certain circumstances, investigations within primary care are even more complex, due to multiple allegations or in relation to employees of contractors. Therefore, as experience has shown, consideration of individual cases between relevant LCFs may be required, to agree who would investigate.

NHS England had responsibility for proactive activities, such as fraud risk assessments (FRAs), relating to services which are consistent at, or arranged at a national level, eg a nationally agreed contract or service specification.

NHS England and ICB counter fraud responsibilities in primary care

The delegation of the commissioning of primary care services to ICBs is enhanced when compared to CCGs. However, as NHS England retains accountability for these services, NHS England is responsible for ensuring that appropriate counter

fraud arrangements are in place and retains investigative responsibility for allegations of economic crime. As such, any fraud concerns identified in relation to delegated services should be reported immediately to the NHS England Counter Fraud team. This should be reported as per the published document *Tackling fraud, bribery and corruption: Policy and corporate procedures*.

For primary care services that are commissioned directly by ICBs, and for which ICBs are accountable (ie not a delegated function, such as local enhanced services), it is the responsibility of ICBs to investigate and ensure appropriate counter fraud arrangements are in place in relation to these services (in compliance with NHSCFA issued *NHS requirements* and guidance). However, as described above, certain circumstances may require additional consideration and agreement.

Primary care contractor investigations require specialist knowledge and experience. Retaining responsibility for these investigations (and some other activities) at a national level enhances consistency, efficiency and maintains independence.

NHS England retains the responsibility for certain proactive activities, such as FRAs, where the services are consistent, standard, or agreed at a national level, eg a national contract or service specification. ICBs are responsible for any services specific to, or commissioned directly by the ICB, where the ICB is accountable. Other proactive activities such as fraud awareness may require co-ordination and ongoing liaison between ICB and NHS England counter fraud teams.

ICB counter fraud responsibilities in other areas

The ICB investigative responsibility in certain areas, particularly corporate, are more straightforward. An ICB is responsible for ensuring appropriate counter fraud arrangements are in place in these areas (in compliance with NHSCFA-issued standards and guidance).

For example, a payroll fraud relating to an ICB employee (directly employed, seconded or off-payroll worker), a procurement fraud relating to an ICB held contract, patient fraud, a continuing healthcare or personal health budget fraud. In all these examples, the potential loss and investigative responsibility would sit with the ICB LCFS unless the circumstances satisfy the case acceptance criteria of NHSCFA.

There may be certain circumstances where potential loss related to economic crime relates to several organisations within the integrated care system (ICS). It would be up to the relevant NHS stakeholders to agree which NHS organisation in the ICS will be the lead investigator. All other counter fraud activities relevant to the ICB, as per the NHS requirements relating to the functional standard, are the responsibility of the ICB.

In accordance with the NHS requirements, ICBs should ensure they have their own counter fraud, bribery and corruption policy. ICBs should also conduct prevention, detection and investigative activities, recovering losses wherever possible. This would also include local fraud risk assessments.

Provider assurance activities

ICBs are responsible for monitoring and managing the performance of primary care contractors. To support ICBs, NHSBSA provider assurance services are commissioned nationally by NHS England. This will continue to support ICBs in ensuring their legal and regulatory responsibilities are met regarding the management of commissioned primary care contracts (dental, primary medical, ophthalmic and pharmaceutical services).

Commissioners (eg NHS England/ICBs) will be the decision makers with full oversight and engage with NHSBSA provider assurance to support the effective running of commissioned primary care contracts.

NHSBSA provider assurance functions include:

- Contract compliance and performance management service, using a consistent, transparent, proportionate and evidence-based approach, to ensure compliance with contractual requirements and delivery of quality and value for money.
- Providing direct support to commissioners and providers and working collaboratively to implement tangible corrective and preventative intervention.
- Working with ICBs and the NHS England Counter Fraud team to reduce loss and fraud through a proactive identification of suspected loss in the system through error or fraud. Any suspicions of economic crime identified by NHSBSA are reported immediately to the NHS England Counter Fraud team.

Priorities and requirements for NHSBSA provider assurance work is set nationally by NHS England in consultation with ICBs to ensure assurance activities focus on areas of highest risk and importance nationally and are delivered consistently across the country.

This centralised approach is essential to allow a greater breadth of comparative analysis and a more transparent, evidence based and consistent approach to commissioning, policy and contractual decision making, limiting the opportunities for challenge. It also frees up local commissioning capacity.

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