

# Memorandum of Understanding

## Between Audit Scotland and NHS Scotland Counter Fraud Services



February 2016

# Memorandum of Understanding

For cooperation between the NHS Counter Fraud Services and Audit Scotland, on behalf of the Auditor General for Scotland.

## Introduction

1. This Memorandum of Understanding (MoU) sets out how Audit Scotland and the NHS Counter Fraud Services (CFS) will work together. It describes our respective powers and responsibilities and supports a framework for collaborative working and communication. The framework is designed to optimise the co-operation and collaboration of the parties and avoid duplication of effort on the deterrence, prevention and detection of fraud and other irregularities in the National Health Service Scotland (NHSScotland) and other public bodies where CFS provides counter fraud services.
2. This MoU aims to:
  - secure cooperation and the exchange of information between Audit Scotland and CFS , subject to any legal constraints;
  - foster mutual understanding and effective working relations;
  - ensure Audit Scotland and CFS fulfil their statutory duties in the most effective way whilst minimising the burden of scrutiny on audited bodies;
  - support inter-organisational staff development.
3. This MoU does not affect the statutory responsibilities of Audit Scotland and CFS. It does not imply any transfer of responsibility from one organisation to the other, nor does it imply the sharing of statutory responsibilities. This MoU is not a contract and is not legally enforceable. However, Audit Scotland and CFS agree to adhere to its principles and show proper regard for each other's activities.
4. Each organisation will take steps to ensure that its staff are:
  - aware of the content of this MoU;
  - aware of the responsibilities it places on members of staff; and
  - updated on any changes to the MoU.
5. This MoU does not apply to information held by Audit Scotland where the NHS National Services Scotland is the audited body.

## Prevention and detection of fraud and error

6. Fraud is defined in the Code of Audit Practice as the intentional distortion of financial statements and accounting records and/or misappropriation of assets involving deception to obtain an unjust and illegal financial advantage.
7. For the purposes of this memorandum, fraud and other irregularities refers to cases of suspected fraudulent activity identified in NHS bodies involving fraud, embezzlement,

corruption or theft of assets or cash by fraud. The frauds are likely to have been investigated by the CFS to the extent that:

- the date of the fraud or the period of any overpayment can be identified
  - the value of the fraud can be estimated or calculated
  - evidence of fraudulent intent has been established, 'on the balance of probability' (it is therefore not necessary for the criminal requirement of 'beyond reasonable doubt' to be satisfied)
8. It is not necessary for the police to have been involved or for frauds and other irregularities to have been proved in a court of law for these cases to be reported by NHS bodies to CFS. Audit Scotland and CFS are interested in preventing failures in systems of control in audited bodies that have led to a loss to the public purse, rather than restricting its analysis to cases that have been successfully prosecuted in a court of law.
  9. Public sector organisations are responsible for establishing their own arrangements for the prevention and detection of fraud and irregularities, bribery and corruption.
  10. International Standards on Auditing include certain requirements relating to the auditor's consideration of fraud. The nature of public sector organisations means that there are specific fraud risks which should be considered.

### **Statutory roles of the Auditor General for Scotland (AGS) and Audit Scotland**

11. The AGS is responsible for ensuring propriety and value for money in the spending of public funds. She investigates whether public bodies are achieving the best possible value for money and adhering to the highest standards of financial management. She is independent and not subject to the control of any member of the Scottish Government or the Parliament.
12. The AGS is responsible for securing the audit of the Scottish Government and most other public bodies, except local authorities. In liaison with the Accounts Commission, she also audits joint working arrangements between central and local government bodies, including community planning partnerships.
13. Section 23 of the Public Finance and Accountability (Scotland) Act 2000 gives the AGS specific powers to examine the economy, efficiency and effectiveness with which resources are being used by specified public bodies. This includes the power to examine the arrangements made by these organisations to secure Best Value.
14. All appointed auditors must comply with Audit Scotland's Code of Audit Practice, which includes guidance on the principles of public audit, the statutory and other duties of auditors, and audit requirements relating to financial statements, corporate governance and reporting the audit.
15. Audit Scotland is a statutory body set up in April 2000 under the Public Finance and Accountability (Scotland) Act 2000. It provides services to the AGS and the Accounts

Commission. Audit Scotland provides independent assurance to the people of Scotland that public money is spent properly and provides value for money. It supports improvement in public services by holding to account those responsible for spending public funds. The values of independence and integrity, valuing people, quality, co-operation and effective communication underpin all of its work. Audit Scotland will be responsible for adopting the framework for collaborative working outlined in this Memorandum.

16. Audit Scotland may also undertake planned performance audits and Best Value audits on public bodies involved in the provision or commissioning of housing services or on specific aspects of their work, as requested by the AGS or the Accounts Commission. Performance audits undertaken on behalf of the AGS are reported to the Scottish Parliament, primarily through the Public Audit Committee.
17. Audit Scotland may conduct data matching for the purposes of preventing and detecting fraud. Scottish public bodies are supported in their counter fraud activities through participation in the National Fraud Initiative. This is a data matching exercise which matches data within and between other public bodies to identify potentially fraudulent transactions or claims and errors.
18. Audit work would include reviewing, concluding and reporting on whether the arrangements for the prevention and detection of fraud are appropriate to the risks and are effective. Auditors should also review information about frauds disseminated by Audit Scotland and consider whether any action is required in relation to their own audit appointments.

### **Statutory role of the NHS Counter Fraud Services**

19. The National Health Service (Functions of the Common Services Agency) (Scotland) Amendment Order 2000 gave the Common Services Agency (commonly known as NHS National Services Scotland) the function of preventing, detecting and investigating fraud and other irregularities in relation to primary care services in Scotland.
20. NHSScotland Counter Fraud Services (CFS) was established on the 1 July 2000 to provide these functions within NHSScotland. The functions were extended to all NHS services by the National Health Service (Functions of the Common Services Agency) (Scotland) Amendment (No 2) Order 2003. In 2014 CFS were permitted to provide counter fraud services to other public bodies by Part 2 (Section 62) of the Public Bodies (Joint Working) (Scotland) Act 2014.
21. CFS exists to contribute to the improvement of health and healthcare in Scotland, by providing the best possible counter fraud service to NHSScotland through the provision of a professionally accredited team undertaking pro-active fraud and other investigations in a nationally consistent and accountable manner. As part of its remit, CFS will promote an anti-fraud culture within the Service to change the perception of NHS fraud as a victimless crime, thereby reducing the losses to NHSScotland.

22. The role of CFS is to provide NHSScotland with a comprehensive counter fraud service by delivering:

- annual recording and reporting of instances of fraud, embezzlement, corruption, major thefts and attempts to perpetrate any of these.
- pro-active detection of fraud and other financial crime against NHSScotland
- full and fair investigations into alleged fraud and other financial crime by patients, staff, contractors or suppliers
- open access to those wishing to report fraud and other financial crime
- surveillance and covert human intelligence source management under the Regulation of Investigatory Powers (Scotland) Act 2000
- advice and cooperation to assist Police Scotland and others agencies in the recovery of cash or items fraudulently or corruptly obtained from NHSScotland
- specialist advice to assist in the formulation of counter fraud policy and regulations
- a range of fraud prevention services aimed at increasing fraud resilience and developing an anti-fraud culture.
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#### **A framework for collaborative working**

23. The Auditor General and CFS are committed to ensuring that our work contributes to providing assurance that public sector services in Scotland are operating efficiently and effectively and delivering Best Value; and that our recommendations and actions lead to demonstrable improvements. We will also work to ensure that our work is risk-based and proportionate and delivered efficiently and effectively.

24. In cooperating, we are committed to:

- sharing relevant information, subject to any legal constraints;
- respecting confidentiality of shared information;
- maintaining effective communication and liaison;
- working together where appropriate; and
- sharing knowledge, skills, expertise and experience

25. *Sharing relevant information.* Audit Scotland and CFS will operate an open and transparent approach to sharing relevant information. The types of information which will be shared on work of relevant mutual interest includes strategic developments relating to health services, performance and financial information and reports. Both organisations will provide notification to the other when it publishes relevant reports. Mechanisms for this will be agreed and reviewed as part of the liaison arrangements.

26. We will respect the confidential nature of the information we share between us. This will include, for example, draft reports, commercially sensitive information and confidential

documents. Any information passed between our organisations will not be disclosed to a third party without prior discussion. This MoU may be supplemented by a separate information sharing handling agreement for specific information or projects.

27. *Maintaining effective communication and liaison.* Audit Scotland and CFS staff will meet regularly to ensure effective communication between the two organisations. Audit Scotland will attend and participate in the NHS Counter Fraud Services Steering Group on a quarterly basis. It is also envisaged there will be on-going informal communication at all levels.
28. *Working together where appropriate.* The Auditor General and CFS have different statutory responsibilities and different reporting arrangements. We therefore, do not anticipate many joint reports. However, we are committed to making the best use of our collective skills and expertise in our work.
29. We will consider the potential for joint working, short-term secondments or placements to deliver specific work, and will provide mutual advice and support as required.
30. *Sharing knowledge, skills, expertise and experience.* We believe there is much to be gained by both organisations in sharing our respective knowledge, skills and expertise. We will be open to different approaches for doing this, for example, through training, work shadowing and temporary secondments.

### **Criminal Offence**

31. If it is believed that a criminal offence has been identified, Audit Scotland and CFS will liaise with the Crown Office and Procurator Fiscal Service both jointly and separately in relation to their own responsibilities.

### **Dispute resolution**

32. Both Audit Scotland and the CFS are committed to working together in an environment of mutual trust and respect and promoting a culture of openness. This approach should minimise the risk of a dispute arising. Should disputes arise, they should be resolved amicably between the staff concerned and failing that, through discussions between relevant senior managers.

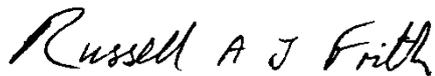
### **Reviewing the Memorandum of Understanding**

33. Named contacts will be responsible for monitoring on an on-going basis, through liaison activity, whether the MoU is working effectively and if any changes need to be made. The named contacts for this MoU are:
  - Neil Cameron- Audit Scotland
  - Iain Macmillan - CFS
34. We will formally review this Memorandum every three years to ensure both organisations are working within the agreed framework, and consider whether the

framework needs to be revised to meet changing circumstances. A formal review can also be started at the request of either organisation. In addition, the MoU will be reviewed in the event of any significant changes to the legislative framework for Audit Scotland or CFS.

35. This MoU came into effect on 1 February 2016.

Signed:



**Russell A J Frith**  
**Assistant Auditor General**

Signed:



**Gordon Young**  
**Head of Counter Fraud**  
**Services**  
**NHS Counter Fraud Services**