

# Memorandum of Understanding

## Between Audit Scotland and NHSScotland Counter Fraud Services



August 2019



# Memorandum of Understanding

## For cooperation between NHSScotland 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 NHSScotland 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 co-operation and collaboration, 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 tactical, technical and procedural 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 public 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 NHS National Services Scotland (NHS NSS) is the audited body. CFS is part of NHS NSS.

## Prevention and detection of fraud and error

6. Public sector organisations are responsible for establishing their own arrangements for the prevention and detection of fraud and irregularities, bribery and corruption.
7. Fraud is defined in Audit Scotland's [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. 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.
8. For the purposes of this memorandum, fraud and other irregularities refer 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).
9. 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 public 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.

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

### Auditor General for Scotland

10. The Auditor General for Scotland (AGS) is responsible for the audit of all public bodies except local authorities where the Accounts Commission secures the audit.
11. 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.
12. In liaison with the Accounts Commission, the AGS also audits joint working arrangements between public bodies, including integration joint boards (IJBs). The AGS is independent and not subject to the control of any member of the Scottish Government or the Parliament.
13. 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.

### **Audit Scotland**

14. 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, efficiently and effectively.
15. 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 and Post Legislative Scrutiny Committee.
16. 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.
17. 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.
18. More information about Audit Scotland's counter-fraud activity can be found on its website at <http://www.audit-scotland.gov.uk/our-work/counter-fraud>.
19. Audit Scotland will be responsible for adopting the framework for collaborative working outlined in this Memorandum.

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

20. 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.
21. NHSScotland Counter Fraud Services (CFS) was established on 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 was permitted to provide counter-fraud services to other public bodies by Part 2 (Section 62) of the Public Bodies (Joint Working) (Scotland) Act 2014.
22. 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.

23. The role of CFS is to provide NHSScotland with a comprehensive counter-fraud service by delivering:
- 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 other 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 reducing losses, increasing fraud resilience and developing an anti-fraud culture.

### A framework for collaborative working

24. Audit Scotland and CFS are committed to ensuring that our work contributes to providing assurance that public 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.
25. In collaborating, we are committed to:
- sharing knowledge, skills and experience
  - sharing views on relevant emerging trends and innovations
  - respecting the confidentiality of our planning, priorities and tactics
  - maintaining effective communication and liaison
  - working together where appropriate.
26. **Sharing knowledge, skills and experience.** Audit Scotland and CFS will operate an open and transparent approach to sharing knowledge, skills, and experience. The types of knowledge which will be shared on work of relevant mutual interest includes strategic developments relating to health services, counter fraud and corruption and reports relating to financial crime capable of affecting the public sector in Scotland. 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.
27. This MoU does not facilitate the sharing of Patient Identifiable Data. Any initiative requiring the sharing of personal data will be assessed separately from this MoU and require an

information sharing agreement. We will respect the nature of the discussions that take place between us to ensure that no personal identifiable or commercial information is shared without having a specific data sharing agreement. Any information discussed between our organisations will not be disclosed to a third party without the appropriate arrangements such as information sharing agreements, privacy notices etc being in place.

28. We believe there is much to be gained by both organisations in sharing our respective knowledge, skills and experience. We will be open to different approaches for doing this, for example, through training, work shadowing and secondments.
29. **Sharing views on relevant emerging trends and innovations.** Audit Scotland and CFS will share knowledge and intelligence of emerging trends and tactics used by perpetrators trying to defraud public bodies. This will be done with a view to helping to identify trends and then sharing good practice and learning in order to help prevent future attacks on public bodies.
30. **Respecting the confidentiality of our planning, priorities and tactics.** Audit Scotland and CFS staff will respect the confidential nature of information and material shared on the planning, priorities and tactics adopted by both organisations in their counter fraud work.
31. **Maintaining effective communication and liaison.** Audit Scotland and CFS staff will meet regularly to ensure effective communication between the two organisations. It is envisaged there will be ongoing informal communication at all levels.
32. **Working together where appropriate.** Audit Scotland 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.
33. 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.

## Criminal offence

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

## Dispute resolution

35. 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

36. 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:
- Anne Cairns - Audit Scotland
  - Iain Macmillan - CFS
37. 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.
38. This MoU came into effect on 1 August 2019.

Signed:



Angela Canning  
Audit Director  
Audit Scotland

Signed:



Gordon Young  
Head of Counter Fraud Services  
NHS Counter Fraud Services