

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**NHS PROTECT**  
**AND**  
**THE CROWN PROSECUTION SERVICE**

**Introduction**

1. This Memorandum of Understanding (MOU) between NHS Protect<sup>1</sup>, the Crown Prosecution Service (CPS) describes the cooperation arrangements between the Parties in respect of the investigation, the institution and prosecution of proceedings and the recovery of assets in respect of NHS Protect in England and Wales following the assignment of functions relating to NHS Protect. prosecutions by the Attorney General to the Director of Public Prosecutions (DPP).

**Objectives**

2. The aim of this MOU is to ensure that Government and departmental objectives are met with regard to reducing fraud and corruption in the NHS and taking all possible measures to deliver a properly secure environment for all those that work or receive treatment in the NHS by the prosecution of cases, where appropriate, where the Code for Crown Prosecutors is met. Additionally, this MOU seeks to ensure that criminals do not benefit from the proceeds of crime by the appropriate use of restraint and confiscation proceedings.
3. In discharging their responsibilities under this MOU, NHS Protect and the CPS will bear in mind the need to investigate and prosecute cases as efficiently, effectively and expeditiously as possible thereby ensuring the best use of public funds whilst always acting in a manner designed to achieve the overriding objective that criminal cases be dealt with justly.

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<sup>1</sup> NHS :Protect is the operating name of the Counter Fraud and Security Management Service

4. The MOU is a guide to co-operation between the Parties. It also sets out the shared aims of the Parties in respect of the handling of NHS Protect casework, namely:

- a clear understanding of the respective roles, responsibilities and procedures;
- a framework for formal liaison and cooperation at all levels;
- working collaboratively to investigate and prosecute NHS Protect cases effectively and to a high standard always operating under the relevant legislation as well as any applicable case law, guidance and Directions;
- effective and efficient communication, including full and timely exchange of information; and
- supporting each other to improve skills and knowledge.

### **Parties**

5. The Parties to this MOU are:

- NHS Protect & its successors
- The Crown Prosecution Service (CPS)

### **Interpretation**

6. For the purpose of this MOU, NHS Protect. casework means cases referred to the CPS by NHS Protect. for advice on investigation, charging and the conduct of any proceedings.

### **Responsibilities**

7. For the purposes of this MOU,

(a). the NHS Protect's National Investigation Service Manager is responsible for:

- the commencement of and anything undertaken in the course of a criminal investigation;
- the collection of admissible evidence and the recording, retention and revelation to the prosecutor of relevant unused material including the continuing duty to review the material throughout the life of a case and to report changes to the CPS;
- the timely submission of NHS Protect. case papers to the CPS
- The quality of NHS Protect. investigations

(b). the Director of Public Prosecutions is responsible for:

- the provision of appropriate and timely advice in relation to criminal investigations conducted by NHS Protect. and any proceedings instituted in respect of such investigations.
- making independent charging decisions in accordance with the Code for Crown Prosecutors and in a timely fashion in respect of all cases referred to the CPS by NHS Protect..
- fairly and robustly conducting prosecutions and linked proceedings in accordance with the Code for Crown Prosecutors and the DPP's Statement of Ethical Principles for the Public Prosecutor.
- the quality of CPS casework.

8. The respective roles and responsibilities of the CPS and NHS Protect. are set out in Annex A.

#### **Monitoring the MOU**

9. The Head of the CPS Welfare Rural & Health Division (the Head of Division) will update the Head of NHS Protect National Investigation Service. monthly on the progress of NHS Protect. casework.

10. The Head of NHS Protect National Investigation Service. will keep the Head of Division fully informed about the number and weight of criminal investigations in progress and any proposed changes in policy that might have any impact on those numbers.

11. A sensitive case list will be maintained listing cases that may involve any combination of high risk, high impact or potentially high profile. It will be kept up to date by the WRH Division, which will own the Sensitive case list, and shared with NHS Protect..

12. Twice a year from the date of this Memorandum of Understanding there will be a meeting between the Head of the Division, Head of NHS Protect and Annewen Rowe, CPS Head of Whitehall Prosecutor Group Relations to review progress under this Memorandum of Understanding.

13. The CPS will provide briefings on specific cases as requested by NHS Protect..

#### **NHS Protect .Policy and enforcement policy**

14. The NHS Protect .will consult with the CPS early in the consideration of any policy or legislative changes in connection with its policy or enforcement policy including the use of out of court disposals, administrative penalties and alternatives to prosecution.

15. The CPS will take appropriate account of NHS Protect .policy followed by its investigators when, making review and charging decisions.

#### **Casework Management**

16. NHS Protect. casework will be handled by prosecutors based in a Central Casework Division unless there are good reasons to do otherwise.

17. NHS Protect. will notify the CPS of all major investigations, which are in its view likely to require the input of a prosecutor at an early stage. The CPS will appoint prosecutors to provide advice to NHS Protect. on criminal investigations.

18. NHS Protect. will inform the CPS of any intended operational activity that may result in the arrest of a number of suspects potentially requiring the consideration of an immediate charging decision.

19. The arrangements in respect of the specific discharge of both NHS Protect. and CPS duties in relation to the disclosure of unused material in criminal cases are set out in Annex B – Disclosure.

#### **Charging Decisions/instituting proceedings**

20. The CPS will make independent charging decisions and provide advice on charge in accordance with the Code for Crown Prosecutors, taking appropriate account of NHS Protect enforcement strategy and the relevant public interest considerations.

21. A charging decision includes any decision on whether to institute or terminate criminal proceedings and any decision on whether to accept guilty pleas to a lesser charge.

22. Where the decision is taken to prosecute, the CPS will lay the information(s) or issue the written charge and requisition. Proceedings will therefore be brought in the name of the DPP.
23. Prosecutors who are required to give advice on charge and criminal investigations will have the appropriate level of experience and expertise to deal with NHS Protect. casework.
24. NHS Protect. recognise that the decision to terminate criminal proceedings rests solely with the CPS. However, where possible, the CPS will consult with NHS Protect. and the Investigator before such decisions are made, and will explain its decisions when charges are dropped or added, or it accepts a plea to a lesser offence.
25. When the Investigator refers a NHS Protect. case to the CPS for pre charge advice all the necessary information will be provided to the CPS within a reasonable period (being at least 10 days) before the expiry of any time limit for the investigation of proceedings. In complex cases, the investigator will consult with the CPS when consideration is being given to the commencement of an investigation.
26. In all cases where the Secretary of State may be asked to issue a PII certificate these must be referred to the Head of Division in advance of certification

### **Disputes & Escalation Process**

27. Any dispute in relation to the conduct and handling of NHS Protect. casework, or the failure of any of the Parties to adhere to this Memorandum of Understanding, which cannot be resolved locally shall be escalated to the Head of Division dealing with NHS Protect. Casework and the Head of NHS Protect/ in accordance with agreed local procedures.

### **Resources**

28. The Parties will consult with each other regularly about predicted case numbers and types, investigation and prosecution priorities, and other issues relevant to the efficient and effective management of the Parties' resources.
29. NHS Protect. will ensure that sufficient resources are available for the effective and efficient conduct of investigations. The CPS will ensure that there are sufficient resources available for the effective and efficient prosecution of NHS Protect. casework in England and Wales. Unless there are good reasons to do otherwise, such casework will be reviewed and prosecuted by CPS staff with specialist expertise in the relevant legal frameworks and who are located in a new Central Casework Division at CPS Headquarters at Rose Court, London, and also at the CPS offices in Birmingham, Liverpool, Cardiff and Leeds.
30. The Parties recognise the importance of early and regular consultation to facilitate the efficient management of investigation and prosecution resources.

### **Training**

31. NHS Protect. will ensure that its investigators are trained and have the appropriate level of experience to deal effectively with all aspects of its criminal investigatory work. The CPS will ensure that their prosecutors are trained and have the appropriate level of experience and expertise to deal with all aspects of NHS Protect. casework
32. The Parties will support each other's training initiatives and will endeavour to undertake this whenever possible.

### **Exchange of Information**

33. All exchanges of management information between the Parties will be dealt with in accordance with the law.
34. The Parties will have a joint de-briefing meeting when it is believed that useful lessons can be learned about particular completed cases or types of cases. Where lessons are identified, the Parties will disseminate them across their organisations as appropriate.

35. NHS Protect. will provide the CPS with management information on the volumes and types of cases being investigated by NHS Protect. in order to assist the CPS with its forward planning and resourcing.
36. The CPS will provide NHS Protect. with management information on the cases being prosecuted, and their outcomes in order to assist NHS Protect. in developing their strategies and to help in the monitoring and improvement of case preparation.

#### **Archiving and file retention and retrieval**

37. Archiving, retention and retrieval of prosecution files will be in accordance with CPS procedure.

#### **Ministerial or Parliamentary Correspondence**

38. Where one of the Parties receives Ministerial or Parliamentary correspondence in connection with matters pertaining to the investigation and prosecution of offences and connected relevant policies it will consult the relevant other Parties before a reply is sent to seek relevant contributions and clear lines that relate to the work of the other Parties. Contact will originate from the Department of Health (DoH) Parliamentary Correspondence Unit or the CPS Parliamentary and Complaints Unit and may involve NHS Protect's DH Sponsor, NHS Protect. and should be actioned in accordance with set parliamentary deadlines. Generally, whilst NHS Protect. and CPS will deal with investigative and prosecution questions respectively, any general queries in respect of fraud policy, statistic's etc should be referred to both NHS Protect. and the CPS .
39. DH Private office and the Attorney General's Office will be engaged as appropriate.
40. NHS Protect will reply to Ministerial or Parliamentary correspondence within the time limits set by DH by the parliamentary relations unit..
41. The CPS will reply to Ministerial or Parliamentary correspondence within the time limits set by the CPS in its Briefing for Parliament Guide.
42. If any of the Parties receives Ministerial or Parliamentary correspondence which is more appropriately handled by being transferred to another Party, they will arrange for

it to be passed on to the other within two working day of receipt. If the Party is asked to accept the transfer of correspondence, they should formally accept/decline the correspondence within two working days of the request for transfer.

### **Parliamentary Questions**

43. NHS Protect. and the CPS will liaise with each other and with the DoH and the AGO as appropriate.
44. NHS Protect., the CPS, DoH and AGO will decide jointly whether the DoH ministers or the Law Officers are in the best position to answer particular Parliamentary Questions where responsibility is not immediately clear. NHS Protect . and the CPS will draft answers or contributions to Parliamentary Questions in accordance with the deadlines set by the DoH, AGO or the CPS as appropriate and, where necessary, after discussion with each other.
45. If comment is to be made in an answer to a Parliamentary Question that touches upon the work of the other Party then the draft answer will be cleared with that Party.

### **Complaints against the NHS Protect. and the CPS**

46. The CPS defines a complaint as any expression of dissatisfaction about any aspect of their service by a person who is directly involved in that service ( not including defendants in ongoing cases or convicted defendants). Concerns about the CPS that fall outside that definition are treated as feedback.
47. The CPS will handle complaints and feedback in relation to the CPS.
48. NHS Protect defines a complaint as an expression of dissatisfaction that requires a response. This includes dissatisfaction about the service provided, including the conduct of staff, or the process involved in deciding what action to take (or not to take)
49. Subject to the work of external scrutiny bodies NHS Protect. will handle complaints and feedback in relation to the NHS Protect..

50. Wherever, in the opinion of the Parties, a complaint or any feedback requires joint handling, they will consult the appropriate party before replying.

51. If the Parties receive a complaint or feedback intended for another party, they will pass it to the other(s) within one working day. If the Party is asked to accept the transfer of a complaint, they should formally accept/ decline within two working days of the request for transfer.

### **Press handling**

52. The communications teams within NHS Protect and the CPS will work together as appropriate reflecting the organisations' separate roles.

### **Requests for information from the public**

53. If any of the Parties receives a request under the Freedom of Information Act 2000 (FOIA), or the Data Protection Act 1998 (DPA) for information they must ascertain what information they hold and respond to the requester accordingly. If they do not hold the information and believe it may be held by another Party, they will, after first liaising, respond to the applicant within two working days informing the applicant that they do not hold information and give the alternative Party's appropriate contact details. Generally, whilst NHS Protect and the CPS will deal with investigative and prosecution questions respectively, any questions in respect of NHS Protect fraud types should be referred to NHS Protect even if the query relates to a prosecution case.

54. For the CPS, requests for information under FOIA and Subject Access Request (SAR) under DPA are dealt with by a central unit based in CPS HQ Rose Court.

### **Miscellaneous**

55. An up to date list of contact details for the relevant staff under this MOU will be retained by all the Parties.

56. This MOU may be modified by agreement in writing between the Parties.

**Signed**

**For NHS Protect**



**Date: 2<sup>nd</sup> August 2012**

**For the Crown Prosecution  
Service, the Director of Public  
Prosecutions**



**Date: 13<sup>th</sup> August 2012**

## **Annex A**

### **RESPECTIVE ROLES OF NHS PROTECT. AND CPS PROSECUTORS IN CRIMINAL INVESTIGATIONS**

Guidance for Investigators and Lawyers

#### **Introduction**

1. Criminal investigations in relation to NHS Protect. matters are the responsibility of NHS Protect. Head of Division. The CPS has an important part to play by providing guidance and advice in determining the evidence required to support a prosecution or to decide if a case can proceed to court. The Parties share a common goal of ensuring that investigations are conducted effectively, fairly and lawfully.
2. This guidance note also sets out the casework standards to be met by NHS Protect. and the CPS in the discharge of their functions in relation to criminal investigations and prosecutions and linked proceedings.
3. Responsibilities in a case do not end until such time as all legal proceedings (whether commenced by CPS or by others) have been concluded and all legal obligations discharged, including appropriate time limits for the retention of case papers.

#### **The National Health Service Protect/Department of Health– status and role**

4. NHS Protect. make decisions on the scope and ambit of individual investigations and carries out those investigations, taking account, where applicable, advice received from the CPS.
5. NHS Protect have responsibility for reviewing investigations conducted locally by NHS Healthbodies through the use of Local Counter Fraud Specialists who are either directed employed or contracted in by the organisation. NHS Protect Area Anti Fraud Specialists will conduct a technical assessment of all files being referred from local NHS Healthbodies for consideration of proceedings before onward referral to Crown

Prosecution Service. An internal document CFS13 must be completed and signed by the Director of Finance of the Healthbody and the Area Anti Fraud Specialist to confirm that this assessment has taken place and should be included on the file to be submitted to CPS. NHS Protect incur the costs of the legal fees in local investigations it is therefore imperative that Area Anti Fraud Specialist are kept apprised of developments in casework.

6. Where a Local Counter Fraud Specialist refers an investigation direct to local police and the police progress the investigation the police usually refer the investigation to CPS. However the Local Counter Fraud Specialist still requires prior authority from the Director of Finance of the healthbody and NHS Protect Area Anti Fraud Specialist by the completion and signing of the CFS13 form. In these circumstances historically CPS progressed matters without any cost to NHS Protect or the former CFSMS

7. The NHS Protect. will:

- i. furnish prosecution files of the required standard to enable the prosecutor to apply the tests under the Code for Crown Prosecutors and to comply with all legislative requirements, codes of practice and guidance and the Criminal Procedure Rules;
- ii. to comply with any requests made by the CPS for further information within the required timescales;
- iii. consult with the CPS at an early stage in any major investigation which may lead to a prosecution and in particular, where it appears that the case may be particularly complex, serious, sensitive, or resource intensive, or where a case may attract significant media or ministerial interest;
- iv. consult with the CPS prior to adopting joint operations with other investigating agencies where it is anticipated that CPS may conduct, be engaged or have an interest in any resulting prosecution;
- v. inform the CPS if legal advice has been sought and/or received from any other source;
- vi. Notify the CPS when they are contacted by any other Government Department, the defence or any third party in connection with an investigation or prosecution and convey the content of that contact.

- vii. provide the CPS with the material necessary to draft any letter of request to obtain evidence from abroad, including a concise and clear summary of the case, the material sought, and the reason for seeking the material;
- viii. notify the CPS immediately whenever a financial investigation is started in a criminal case;
- ix. undertake financial investigations in accordance with the advice of the CPS;
- x. provide the prosecutor with all necessary information, evidence and documents in support of any application or proceedings relating to restraint and confiscation;
- xi. advise the prosecutor of any civil action, disciplinary proceedings or proceedings contemplated or commenced in relation to a case and of any subsequent developments on the civil/ disciplinary aspects of a case; and
- xii. provide appropriate court attendance in support of a prosecutor for hearings including any subsequent confiscation proceedings, as agreed by the CPS.
- xiii. be readily available for consultation (at court, conference, by phone, or electronically) in the event that the CPS proposes to terminate proceedings, or review case progression.

#### **CPS – status and role**

8. The CPS is responsible for the prosecution of NHS Protect. Casework, and its prosecutors may give advice to NHS Protect. officers. The CPS will also make a decision on whether criminal proceedings should be instituted in relation to a NHS Protect. investigation.
  
9. NHS Protect. Casework will be handled by prosecutors based within a Central Casework Division at CPS Rose Court, London, and also at the CPS offices in Birmingham, Liverpool, Cardiff and Leeds.
  
10. The CPS will undertake all relevant functions relating to the role of the Prosecutor, including:
  - i. Advice to NHS Protect. throughout the course of the investigation including on alternative methods of disposal
  - ii. instituting and conducting criminal proceedings;

- iii. Providing advice to NHS Protect. on charge, the merits and conduct of prosecutions and all ancillary matters, including confiscation and restraint;
- iv. advice to NHS Protect. throughout the course of the investigation including on alternative methods of disposal;
- v. ensure that the CPS is appropriately represented at every court hearing.
- vi. all matters relating to the selection and instruction of counsel;
- vii. act as a contact point with the defence and the court, including serving all documents within the time let set by law or by order of the court;
- viii. advise NHS Protect. of the first hearing date;
- ix. advise the NHS Protect. of the final outcome of the case;
- x. decide whether to apply for restraint or confiscation orders, and conduct any related proceedings.

#### **Legal advice – general**

11. The general circumstances in which advice may and should be sought from the CPS prosecutor are set out in paragraphs 12 to 15 below.
  
12. Where consideration is being given to adopting a case for criminal investigation, the CPS may be consulted as part of the decision-making process, and should be consulted at an early stage where it is thought that the case will be particularly complex, serious, sensitive or resource intensive for the prosecution, or where a case may attract significant media or ministerial interest.
  
13. Once a case is adopted for criminal investigation, requests for advice in relation to the case should be addressed to the prosecutor. In cases of any complexity, NHS Protect. officers should seek the allocation of a CPS prosecutor to the case at an early stage.
  
14. CPS prosecutors will provide advice and guidance to NHS Protect. officers throughout the investigative and prosecution process. This may include advising on reasonable lines of enquiry, evidential requirements, the legal or evidential effect of operational procedures, restraint and confiscation, and disclosure issues. The CPS will not advise on the appropriateness or the efficacy of any operational matter or advise on/arrange representation at court where investigative measures are sought.

15. CPS prosecutors will be proactive in identifying and advising on evidential deficiencies and in bringing to an early conclusion those cases that cannot be strengthened by further investigation.

### **Legal Professional Privilege**

16. Legal Professional Privilege (LPP) does not normally apply to communications between NHS Protect. and the CPS.
17. Where material seized in the course of an investigation may contain items subject to legal professional privilege within the meaning of section 10 of the Police and Criminal Evidence Act 1984, the identification of such material remains the responsibility of the investigating officer.
18. The CPS, if asked, will advise on the appropriateness of NHS Protect. instructing independent counsel on whether or not seized material may be subject to legal professional privilege.

### **Operational matters**

19. The CPS will not advise on the appropriateness or the efficacy of any operational matter or advise on/arrange representation at court where investigative measures are sought. The CPS will advise on the legal or evidential effect of any particular operational procedure, whether the activity has taken place or is proposed.
20. The issuing of disclosure notices or warrants under Part 2 of the Serious Organised Crime and Police Act 2005 are a prosecutorial function, and all enquiries in relation to these matters should be addressed to the CPS Prosecutor.

### **Overseas enquiries**

21. The CPS will deal with all overseas enquiries in accordance with its guidance.
22. Where evidence is required from a foreign jurisdiction, NHS Protect. should always consider the possibility of obtaining it by Mutual Administrative Assistance (MAA) or other informal means. Even if the conclusion is that it will be necessary to proceed by way of Mutual Legal Assistance (MLA), an initial approach by MAA can be useful in

establishing what assistance can be given and how the Letter of Request can best be phrased in order to obtain it.

23. It is the responsibility of the CPS to give timely advice on outgoing MLA requests, decide what evidence is required and to draft, issue and secure the transmission of Letters of Request. It is also the CPS's responsibility to liaise with overseas authorities and, where appropriate, a CPS Liaison Magistrate, Eurojust or the European Judicial Network, in order to facilitate and monitor the execution of requests.

#### **Financial enquiries**

24. Where it is contemplated that a restraint order will be required, advice should be sought from the CPS prosecutor.
25. NHS Protect. will notify the CPS immediately whenever they start a financial investigation in a criminal case and undertake financial investigations in accordance with the advice of the CPS.

#### **Witnesses and witness costs**

26. NHS Protect. will be responsible for providing witness availability dates, arranging witness liaison, arranging the court attendance of witnesses and the payment of witness costs which arise from a NHS Protect. case.

## **Annex B**

### **DISCLOSURE ARRANGEMENTS**

#### **Legal Framework**

1. All investigating officers, disclosure officers and CPS prosecutors will comply with their legal obligations as set out in:
  - The Criminal Procedure and Investigations Act 1996 (CPIA), the CPIA Code of Practice and the Attorney General's Guidelines on Disclosure (for cases where the investigation began on or after 1 April 1997); and
  - The CPIA as amended by the Criminal Justice Act 2003, the CPIA Code of Practice and the Attorney General's Guidelines on Disclosure 2005 (for cases where the investigation began on or after 4 April 2005).

#### **Guidance**

2. The CPS Disclosure Manual sets out approved procedures for ensuring compliance with legal duties relating to disclosure. The CPS and NHS Protect. will follow the procedures set out therein.

#### **Resources and training**

3. NHS Protect. will:
  - Ensure that appropriate resources are allocated to allow the proper discharge of disclosure officers' duties;
  - Provide appropriate guidance training and supervision of disclosure officers to ensure the quality and timeliness of all disclosure related functions;
  - Ensure that the prosecutor is made aware of the existence of all relevant material, from whatever source, at the earliest opportunity;
  - Ensure that unused material is correctly listed on the appropriate unused material schedule;
  - Comply with requests for revelation of material from the CPS; and
  - Where it is likely that a disclosure exercise is likely to involve extensive unused material, including electronic material, notify the CPS at the earliest

opportunity so that the resource implications can be considered and phases of disclosure planned out.

4. The CPS will:

- Provide appropriate training to prosecutors and ensure that they are updated where necessary as to the law; and
- Ensure that CPS prosecutors are fully engaged in the disclosure process and ensure that advocates meet their responsibilities in relation to disclosure.