



National Health Service in Scotland
Management Executive

St. Andrew's House
Edinburgh EH1 3DG

Dear Colleague

STANDARDS OF BUSINESS CONDUCT FOR NHS STAFF

Summary

1. This letter supplies guidance to assist NHS employers and staff in maintaining strict ethical standards in the conduct of NHS business. The guidance, which re-states and reinforces the principles previously set out in NHS Circular No 1989(GEN)32, has been produced in 5 parts attached to this letter and detailed as follows.

PART A: Brief summary of the main provisions of the Prevention of Corruption Acts 1906 and 1916.

PART B: General policy guidance on (i) the standards of conduct expected of all NHS staff where their private interests may conflict with their public duties, and (ii) the steps which NHS employees should take to safeguard themselves and the NHS against conflict of interest.

PART C: Action checklist for Managers.

PART D: Short guide for staff.

PART E: Ethical Code of the Institute of Purchasing and Supply (IPS) (reproduced courtesy of IPS).

2. The guidance attached to this letter also applies to executive and non-executive members of Health Boards and NHS Trusts.

Action

3. General Managers and Chief Executives should ensure that the guidelines attached are brought to the attention of all staff and are effectively implemented.

4. The Chief Executive, NHS in Scotland, should be informed of any conflict of interest of a non-executive member reported to the Chairman of the Board.

29 April 1994

Addressees

For action:

General Managers,
Health Boards

General Manager,
Common Services Agency

General Managers,
State Hospital

Chief Executives, NHS
Trusts

General Manager,
Health Education Board
for Scotland

Executive Director,
Scottish Council for
Postgraduate Medical
and Dental Education

For information:

Director of Finance:

Health Boards; CSA;
State Hospital; NHS
Trusts; HEBS

To be copied to:

Unit General Managers
for information

Enquiries to:

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IPMS: 106836

5. Local conflict of interest policies and systems for implementing these should be developed in consultation with local staff and staff representatives.
6. Managers should satisfy themselves that their policies and procedures are regularly reviewed.
7. This letter should be copied to Unit General Managers.



A J CUMMING
Acting Director of Finance, NHS in Scotland

**STANDARDS OF
BUSINESS CONDUCT**

for NHS staff

PREVENTION OF CORRUPTION ACTS 1906 AND 1916 - SUMMARY OF MAIN PROVISIONS

Acceptance of gifts by way of inducements or rewards

1. Under the Prevention of Corruption Acts, 1906 and 1916, it is an offence for employees corruptly to accept any gifts or consideration as an inducement or reward for:

- * doing, or refraining from doing, anything in their official capacity; or
- * showing favour or disfavour to any person in their official capacity.

2. Under the Prevention of Corruption Act 1916, any money, gift or consideration received by an employee in public service from a person or organisation holding or seeking to obtain a contract will be deemed by the courts to have been received corruptly unless the employee proves the contrary.

GENERAL GUIDELINES**Introduction**

1. These guidelines are intended to be helpful to all NHS employers⁽ⁱ⁾ and their employees and reinforce the guiding principles previously set out in Circular No 1989(GEN)32.

Responsibility of NHS employers

2. NHS employers are responsible for ensuring that these guidelines are brought to the attention of all employees; also that machinery is put in place for ensuring that they are effectively implemented.

Responsibility of NHS staff

3. It is the responsibility of staff to ensure that they are not placed in a position which risks, or appears to risk, conflict between their private interests and their NHS duties. This primary responsibility applies to **all NHS staff**, ie those who commit NHS resources directly (eg by the ordering of goods) or those who do so indirectly (eg by the prescribing of medicines). A further example would be staff who may have an interest in a private nursing home and who are involved with the discharge of patients to residential facilities.

Guiding principle in conduct of public business

4. It is a long established principle that public sector bodies, which include the NHS, must be impartial and honest in the conduct of their business, and that their employees should remain beyond suspicion. It is also an offence under the Prevention of Corruption Acts 1906 and 1916 for an employee corruptly to accept any inducement or reward for doing, or refraining from doing anything, in his or her official capacity, or corruptly showing favour, or disfavour, in the handling of contracts (see PART A).

Staff will need to be aware that a breach of the provisions of these Acts renders them liable to prosecution and may also lead to loss of their employment and superannuation rights in the NHS.

Principles of conduct in the NHS

5. NHS staff are expected to:

- * ensure that the interest of patients remains paramount at all times;
- * be impartial and honest in the conduct of their official business;

(i) In these guidelines "NHS employer" means all "for action" addressees listed in the title page of NHS MEL(1994)48 and includes non-executive as well as executive members of Health Boards and NHS Trusts

- * use the public funds entrusted to them to the best advantage of the service, always ensuring value for money.
6. It is also the responsibility of staff to ensure that they do **not**:
- * abuse their official position for personal gain or to benefit their family or friends;
 - * seek to advantage or further their private business or other interests, in the course of their official duties.

IMPLEMENTING THE GUIDING PRINCIPLES

Casual gifts

7. Casual gifts offered by contractors or others, eg at Christmas time, may not be in any way connected with the performance of duties so as to constitute an offence under the Prevention of Corruption Acts. Such gifts should nevertheless be politely but firmly declined. Articles of low intrinsic value such as diaries or calendars, or small tokens of gratitude from patients or their relatives, need not necessarily be refused. In cases of doubt, staff should either consult their line manager or politely decline acceptance.

Hospitality

8. Modest hospitality provided it is normal and reasonable in the circumstances, eg lunches in the course of working visits, may be acceptable, though it should be similar to the scale of hospitality which the NHS as an employer would be likely to offer.

9. Staff should decline all other offers of gifts, hospitality or entertainment. If in doubt they should seek advice from their line manager.

Declaration of interests

10. NHS employers need to be aware of all cases where an employee, or his or her close relative or associate, has a controlling and/or significant financial interest in a business (including a private company, public sector organisation, other NHS employer and/or voluntary organisation), or in any other activity or pursuit, which may compete for an NHS contract to supply either goods or services to the employing authority.

11. All NHS staff should therefore declare such interests to their employer, either on starting employment or on acquisition of the interest, in order that it may be known to and in no way promoted to the detriment of either the employing authority or the patients whom it serves.

12. One particular area of potential conflict of interest which may directly affect patients, is when NHS staff hold a self beneficial interest in private care homes or hostels. While it is for staff to declare such interests to their employing authority, the employing authority has a responsibility to introduce whatever measures it considers necessary to ensure that its interests and those of patients are adequately safeguarded. This may for example take the form of a contractual obligation on staff to declare any such interests. Advice on professional

conduct issued by the General Medical Council recommends that when a doctor refers a patient to a private care home or hostel in which he or she has an interest, the patient must be informed of that interest before referral is made.

13. In determining what needs to be declared, employers and employees will wish to be guided by the principles set out in paragraph 5 above; also the more detailed guidance to staff contained in Part D.

14. NHS employers should:

- * ensure that staff are aware of their responsibility to declare relevant interests (perhaps by including a clause to this effect in staff contracts);
- * consider keeping registers of all such interests and making them available for inspection by the public.
- * develop a local policy, in consultation with staff and local staff interests, for implementing this guidance. This may include the disciplinary action to be taken if an employee fails to declare a relevant interest, or is found to have abused his or her official position, or knowledge, for the purpose of self-benefit, or that of family or friends.

Preferential treatment in private transactions:

15. Individual staff must not seek or accept preferential rates or benefits in kind for private transactions carried out with companies with which they have had, or may have, official dealings on behalf of their NHS employer. (This does not apply to concessionary agreements negotiated with companies by NHS management, or by recognised staff interests, on behalf of all staff - for example, NHS staff benefits schemes).

Contracts

16. All staff who are in contact with suppliers and contractors (including external consultants), and in particular those who are authorised to sign Purchase Orders, or place contracts for goods, materials or services, are expected to adhere to professional standards of the kind set out in the Ethical Code of the Institute of Purchasing and Supply (IPS), reproduced at PART E.

Favouritism in awarding contracts

17. Fair and open competition between prospective contractors or suppliers for NHS contracts is a requirement of NHS Standing Orders and of EC Directives on Public Purchasing for Works and Supplies. This means that:

- * no private or public company, firm or voluntary organisation which may bid for NHS business should be given any advantage over its competitors, such as advance notice of NHS requirements. This applies to all potential contractors, whether or not there is a relationship between them and the NHS employer, such as a long-running series of previous contracts.

- * each new contract should be awarded solely on merit, taking into account the requirements of the NHS and the ability of the contractors to fulfil them.

18. NHS employers should ensure that no special favour is shown to current or former employees or their close relatives or associates in awarding contracts to private or other businesses run by them or employing them in a senior or managerial capacity. Contracts may be awarded to such businesses where they are won in fair competition against other tenders, but scrupulous care must be taken to ensure that the selection process is conducted impartially, and that staff who are known to have a relevant interest play no part in the selection.

Warnings to potential contractors

19. NHS employers will wish to ensure that all invitations to potential contractors to tender for NHS business include a notice warning tenderers of the consequences of engaging in any corrupt practices involving employees of public bodies.

Outside employment

20. NHS employees are advised not to engage in outside employment which may conflict with their NHS work, or be detrimental to it. They are advised to tell their NHS employing authority if they think they may be risking a conflict of interest in this area. The NHS employer will be responsible for judging whether the interest of patients could be harmed, in line with the principles in paragraph 5 above. NHS employers may wish to consider the preparation of local guidelines on this subject.

Private practice

21. Consultants (and associate specialists) employed under the Terms and Conditions of Service of Hospital Medical and Dental Staff (Scotland) are permitted to carry out private practice in NHS hospitals subject to the conditions outlined in the handbook on the Management of Private Practice in Health Service Hospitals (see NHS Circular 1987(GEN)25). Consultants who have signed new contracts with Trusts will be subject to the terms applying to private practice in those contracts.

22. Other staff may undertake private practice or work for outside agencies, providing they do not do so within the time they are contracted to the NHS, and they observe the conditions in paragraph 20 above. All hospital doctors are entitled to fees for other work outside their NHS contractual duties under "Category 2" (paragraph 37 of the TCS of Hospital Medical and Dental Staff) (Scotland) eg examinations and reports for life insurance purposes. Hospital doctors and dentists in training should not undertake locum work outside their contracts where such work would be in breach of their contracted hours as set out in their terms and conditions of service and the hours controls for training grades. Career grade medical and dental staff employed by NHS Trusts may agree terms and conditions different from the National Terms and Conditions of Service.

Rewards for Initiative

23. NHS employers should ensure that they are in a position to identify potential intellectual property rights (IPR), as and when they arise, so that they can protect and exploit them properly, and thereby ensure that

they receive any rewards or benefits (such as royalties) in respect of work commissioned from third parties, or work carried out by their employees in the course of their NHS duties. Most IPR are protected by statute; eg patents are protected under the Patents Act 1977 and copyright (which includes software programmes) under the Copyright Designs and Patents Act 1988. To achieve this NHS employers should build appropriate specifications and provisions into the contractual arrangements which they enter into **before** the work is commissioned, or begins. They should always seek legal advice if in any doubt in specific cases.

24. With regard to patents and inventions, in certain defined circumstances the Patents Act gives **employees a right** to obtain some reward for their efforts, and employers should see that this is effected. Other rewards may be given voluntarily to employees who within the course of their employment have produced innovative work of outstanding benefit to the NHS. Similar rewards should be voluntarily applied to other activities such as giving lectures and publishing books and articles.

25. In the case of collaborative research and evaluative exercises with manufacturers, NHS employers should see that they obtain a fair reward for the input they provide. If such an exercise involves additional work for an NHS employee outside that paid for by the NHS employer under his or her contract of employment, arrangements should be made for some share of any rewards or benefits to be passed on to the employee(s) concerned from the collaborating parties. Care should however be taken that involvement in this type of arrangement with a manufacturer does not influence the purchase of other supplies from that manufacturer.

Commercial sponsorship for attendance at courses and conferences

26. Acceptance by staff of commercial sponsorship for attendance at relevant conferences and courses is acceptable, but only where the employee seeks permission in advance and the employer is satisfied that acceptance will not compromise purchasing decisions in any way.

27. On occasions when NHS employers consider it necessary for staff advising on the purchase of equipment to inspect such equipment in operation in other parts of the country (or exceptionally overseas), employing authorities will themselves want to consider meeting the cost, so as to avoid putting in jeopardy the integrity of subsequent purchasing decisions.

Commercial sponsorship of posts - "linked deals"

28. Pharmaceutical companies, for example, may offer to sponsor, wholly or partially, a post for an employing authority. NHS employers should not enter into such arrangements, unless it has been made abundantly clear to the company concerned that the sponsorship will have no effect on purchasing decisions within the health body. Where such sponsorship is accepted, monitoring arrangements should be established to ensure that purchasing decisions are not, in fact, being influenced by the sponsorship agreement.

Under no circumstances should employers agree to "linked deals" whereby sponsorship is linked to the purchase of particular products, or to supply from particular sources.

"Commercial - in Confidence"

29. Staff should be particularly careful of using, or making public, internal information of a "commercial - in confidence" nature, **particularly if its disclosure would prejudice the principle of a purchasing system based on fair competition. This principle applies whether private competitors or other NHS providers are concerned,** and whether or not disclosure is prompted by the expectation of personal gain (see paragraphs 16, 18 above and Part E).

30. However, NHS employers should be careful about adopting a too restrictive view on this matter. It should certainly not be a case of excessive secrecy on matters which are not strictly commercial per se. For example, the term "commercial - in confidence" should not be taken to include information about service delivery and activity levels, which should be publicly available. Nor should it inhibit the free exchange of data for clinical audit purposes, for example, subject to the normal rules governing patient confidentiality and data protection. In all circumstances the overriding consideration must be the best interests of the patients.

ACTION CHECKLIST FOR NHS MANAGERS

References are to paragraphs in Part B of "Standards of business conduct for NHS staff" (Annex to NHS MEL(1994)48).

You Must:

- * Ensure that all staff are aware of this guidance (2) and (4);
- * Develop a local policy and implement it (2 and 14);
- * Show no favouritism in awarding contracts (eg to businesses run by employees, ex-employees or their friends or relatives) (17-18);
- * Include a warning against corruption in all invitations to tender (19);
- * Consider requests from staff for permission to undertake additional outside employment (20);
- * Apply the terms of NHS Circular 1987(GEN)25 concerning doctors' engagements in private practice (21);
- * Receive rewards or royalties in respect of work carried out by employees in the course of their NHS work, and ensure that such employees receive due rewards (24);
- * Similarly ensure receipt of rewards for collaborative work with manufacturers, and pass on to participating employees (25);
- * Ensure that acceptance of commercial sponsorship will not influence or jeopardise purchasing decisions (26-27);
- * Refuse "linked deals" whereby sponsorship of staff posts is linked to the purchase of particular products or supply from particular sources (28);
- * Avoid excessive secrecy and abuse of the term "commercial in confidence" (30).

SHORT GUIDE FOR STAFF

References are to paragraphs in Part B of "Standards of business conduct for NHS staff" (Annex to NHS MEL(1994)48).

Do:

- * Make sure you understand the guidelines on standards of business conduct, and consult your line manager if you are not sure;
- * Make sure you are not in a position where your private interests and NHS duties may conflict (3);
- * Declare to your employer any relevant interests (10-14). If in doubt, ask yourself:
 - i. am I, or might I be, in a position where I (or my family/friends) could gain from the connection between my private interests and my employment?
 - ii. do I have access to information which could influence purchasing decisions?
 - iii. could my outside interest be in any way detrimental to the NHS or to patients' interests?
 - iv. do I have any other reason to think I may be risking a conflict of interest?

If still unsure - Declare It!

- * Adhere to the ethical code of the Institute of Purchasing and Supply if you are involved in any way with the acquisition of goods and services (16);
- * Seek your employer's permission before taking on outside work if there is any question of it adversely affecting your NHS duties (20). (Special guidance applies to doctors);
- * Obtain your employer's permission before accepting any commercial sponsorship (26);

Do Not:

- * Accept any gifts, inducements or inappropriate hospitality (see 7-9);
- * Abuse your past or present official position to obtain preferential rates for private deals (15);
- * Unfairly advantage one competitor over another (17) or show favouritism in awarding contracts (18);
- * Misuse or make available official "commercial in confidence" information (29).

INSTITUTE OF PURCHASING AND SUPPLY - ETHICAL CODE
(Reproduced by kind permission of IPS)

Introduction

1. The code set out below was approved by the Institute's Council on 26 February 1977 and is binding on IPS members.

Precepts

2. Members shall never use their authority or office for personal gain and shall seek to uphold and enhance the standing of the Purchasing and Supply profession and the Institute by:

- a. maintaining an unimpeachable standard of integrity in all their business relationships both inside and outside the organisations in which they are employed;
- b. fostering the highest possible standards of professional competence amongst those for whom they are responsible;
- c. optimising the use of resources for which they are responsible to provide the maximum benefit to their employing organisation;
- d. complying both with the letter and the spirit of:
 - i. the law of the country in which they practise;
 - ii. such guidance on professional practice as may be issued by the Institute from time to time;
 - iii. contractual obligations;
- e. rejecting any business practice which might reasonably be deemed improper.

Guidance

3. In applying these precepts, members should follow the guidance set out below:

- a. Declaration of interest. Any personal interest which may impinge or might reasonably be deemed by others to impinge on a member's impartiality in any matter relevant to his or her duties should be declared.
- b. Confidentiality and accuracy of information. The confidentiality of information received in the course of duty should be respected and should never be used for personal gain; information given in the course of duty should be true and fair and never designed to mislead.
- c. Competition. While bearing in mind the advantages to the member's employing organisation of maintaining a continuing relationship with a supplier, any relationship which might, in

the long-term, prevent the effective operation of fair competition, should be avoided.

- d. **Business Gifts.** Business gifts other than items of very small intrinsic value such as business diaries or calendars should not be accepted.
- e. **Hospitality.** Modest hospitality is an accepted courtesy of a business relationship. However, the recipient should not allow him or herself to reach a position whereby he or she might be deemed by others to have been influenced in making a business decision as a consequence of accepting such hospitality; the frequency and scale of hospitality accepted should not be significantly greater than the recipient's employer would be likely to provide in return.
- f. when it is not easy to decide between what is and is not acceptable in terms of gifts or hospitality, the offer should be declined or advice sought from the member's superior.