



Scottish Home and Health Department

St Andrew's House
Edinburgh EH1 3DE



NHS CIRCULAR NO 1989(GEN)32

Previous Circular No 1975(GEN)1

General Managers of Health Boards
General Manager of the Common Services Agency

Your ref

Our ref NEB/15/06/B

Date 29 September 1989

Dear Sir

ACCEPTANCE OF FINANCIAL ASSISTANCE, GIFTS AND HOSPITALITY AND DECLARATION OF INTEREST

SUMMARY

1. This circular restates and reinforces the principles previously set out in NHS Circular No 1975(GEN)1 relating to the acceptance of financial assistance, gifts and hospitality in the National Health Service. It reflects changes in commercial practice which have taken place since 1975(GEN)1 was issued and the increased incidence of promotional offers and sponsorship by manufacturers and suppliers. The guidance should be followed by both non-medical and medical staff: the latter group should route any reports, information, requests for advice or approval arising from the contents of this circular through their CAMO and thence to their General Manager.

2. Throughout this circular references to "Health Board(s)" should be taken as including the Common Services Agency.

BACKGROUND

3. Contact between employees of the National Health Service involved in using and purchasing equipment and services and commercial firms, particularly suppliers, is both necessary and desirable. By improving industry's understanding of the needs of the NHS, it may help suppliers to improve specifications and reduce costs. Industrial firms may also be able to put into commercial production, to the national benefit, the results of research and development undertaken by the NHS. In accordance with Government purchasing policy, however, all companies dealing with the NHS as suppliers and potential suppliers should be treated impartially and equally. The guidance given by this circular is intended to protect NHS staff against accusations of acting improperly or in breach of the principle of impartiality. In recent years the use of promotional and other offers by manufacturers, suppliers or contractors has increased and new forms of inducement have appeared. These developments have made it necessary to revise and supplement central guidance to Health Boards, the CSA and their staff.

GENERAL GUIDANCE

4. It is a basic principle in all parts of the public service that public servants must be scrupulously impartial and honest, that they must be seen to be so, and that they must be beyond suspicion. The Prevention of Corruption Acts 1906 and 1916 prohibit staff from obtaining or seeking any kind of inducements from those with whom they have official dealings. Extracts from those Acts are at Annex 1. The Acts cover gifts or considerations of any kind offered to or sought by staff in both their private and their official capacities 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.

5. It should be clearly understood that:-

i. a breach of the provisions of those Acts renders staff liable to prosecution, will lead to disciplinary action and may provide grounds for dismissal. Ministers expect Health Boards to deal severely with any breach;

ii. the Act of 1916 creates a presumption of corruption where it is proved that any money, gifts or other consideration from a person holding or seeking to hold a contract with a public body has been paid or given to or received by a person in the employment of that public body;

iii. a person convicted of corruption may forfeit his or her superannuation rights; and

iv. a person holding qualifications which are subject to registration by a statutory body may be subject to removal from the register if convicted of corruption, thus forfeiting his or her right to practise professionally.

6. There will be many instances where staff have the opportunity to accept a gift or some other form of promotional offer from a supplier, manufacturer or contractor without it being obvious that it is intended as an inducement. Indeed, the offer may be described as "without strings". Acceptance of such offers may, however, create a sense of obligation which could affect the impartiality of the member of staff on some future occasion, and could in any event cast doubt on his or her integrity, with damaging effect on his or her reputation and that of the service. Although some offers may not fall within the terms of the Prevention of Corruption Acts and the firms concerned may regard them as normal commercial practice, staff who are in a position to influence a purchasing decision directly or indirectly may be at risk of apparent impropriety if they accept them. The guidance in the following paragraphs is designed to cover those situations which are likely to occur most frequently. The general principle, to be followed regardless of the specific circumstances, is that staff should under no circumstances accept any gift or consideration which may, or may be presumed to, influence a purchasing decision and lead to a presumption of corruption under the Prevention of Corruption Acts.

7. Staff should be aware that the Department now expects Health Boards to include in their Standing Financial Instructions a requirement that a notice should be issued with all invitations to tender warning tenderers of the consequences of engaging in any corrupt practices involving public servants, and that every formal contract to purchase

should contain a clause entitling the Board to cancel the contract and recover any losses if any inducements or gifts are offered by the contractor or by his employees with or without his knowledge. Staff should also be made aware of any requirements of Standing Financial Instructions with regard to contracts and to the disclosure by an officer of any pecuniary interest, direct or indirect, in any contract or proposed contract. Staff should report to their employer any attempt to infringe contract clauses or to influence decisions on contracts and should understand that failure to do so will lead to disciplinary action.

8. The following principles and guidance apply to all NHS employees, including medical, nursing and other professional staff. Additionally, staff who are in a position and are authorised to sign Purchase Orders or to 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 in Annex 2.

FINANCIAL ASSISTANCE WITH CONFERENCES, COURSES, ETC

9. In seeking or accepting financial help from any commercial undertaking towards, for example, the organisation of or attendance at a conference, course or other occasion, NHS employees should be scrupulous not to place themselves under any obligation which would influence or appear to influence decisions on the purchase of drugs, equipment or any other material for the NHS. They should also take care in accepting invitations to speak at or attend conferences or other occasions, particularly where these are sponsored wholly or in part from a single commercial source. Where it is clear that commercial sponsorship is involved, senior staff, or heads of departments where junior staff are concerned, should ensure so far as possible that travel facilities, accommodation and hospitality are at a level appropriate to the grade of the officer concerned. They should establish that the visit is wholly confined to bona fide professional, educational, scientific or technical purposes and that funding is limited only to the expenses of the participant. The Health Board and/or the Board General Manager should be informed in advance of the visit.

10. Sponsorship of scientific meetings or other educational gatherings, for example those that take place at post-graduate institutes, may continue, subject to the approval of the Health Board and/or the Board General Manager. It is preferable that support should come from more than one source, and the Health Board and/or the Board General Manager should be satisfied that the funding is restricted to what is necessary to enable the event to be held.

FINANCIAL HELP FOR DEVELOPMENTS AND RESEARCH

11. Many individual institutions and departments within the NHS have succeeded in raising substantial sums of money for service developments or specific projects and Ministers wish to continue to encourage this. There are nonetheless dangers to be avoided in inviting financial help. Financial support should not be accepted if it is, or may be thought to be, likely to restrict a department's freedom to purchase from the most advantageous source at that time or in the future. In cases of doubt the advice of the Board General Manager should be sought.

12. Manufacturers or suppliers may offer a free piece of equipment either as an encouragement to purchase or without any apparent ulterior motive. Such offers should be accepted only on the basis that the

equipment will be judged on performance, price, reliability, running costs and quality of after sales service, and that the acceptance of the gift cannot influence or restrict the purchasing policy of the department. It is important in such circumstances that an investment appraisal should be properly carried out. A Manual giving guidance on the option appraisal of medical and scientific equipment was distributed to Health Boards and the Common Services Agency under cover of SHHD/DGM(1988)37 issued on 5 July 1988. Detailed information on performance, reliability, servicing arrangements, etc of equipment is generally available through either the Scientific and Technical Branch of the CSA Supplies Division or current local sources of advice eg Medical Physics Departments. Advice must be sought from these bodies.

13. Departments and individuals within the NHS are likely to be invited to accept sponsorship to participate in research and the testing of new equipment or drugs. In many cases this is likely to benefit both the NHS and the manufacturer; but if sponsorship is given it should be on the basis that it would not prejudice the NHS in favour of the manufacturer or product when purchasing decisions come to be made.

14. Medical staff should submit all research projects, irrespective of their funding source, to local Ethics Committees and should take account of the General Medical Council's advice that any payments to individuals should be specified in the protocol (see Annex 3 of this Circular). Nursing staff should keep General Managers informed through their CANO of any financial transactions touching on nursing research activities. In all cases, great care should be exercised in the acceptance of any offers of financial assistance.

VISITS TO INSPECT EQUIPMENT

15. It may be necessary for staff advising on the purchase of equipment to inspect such equipment in operation in other parts of the country or, exceptionally, overseas. As acceptance of an offer by the manufacturer to meet the cost of such visits may cast doubts on the integrity of subsequent purchasing decisions, Health Boards should meet the costs of any visits which they consider necessary. Any such visits must, therefore, be authorised in advance by the Board or its General Manager.

DECLARATION OF INTERESTS

16. The Department expects the Standing Financial Instructions of Health Boards to provide for the declaration of interests by members of staff, who must notify their employer if they have any financial interest in or relationship with a manufacturer, supplier or contractor with whom the Board is entering or is likely to enter into a contractual relationship, and of any financial or other interest which may affect the Board's planning or policy decisions. This includes individuals holding posts as consultants to firms. Any individual whose advice is specifically sought by a Health Board in relation to any commercial transaction where such an interest arises must declare that interest. Health Boards should establish and maintain registers both of the financial interests of any staff involved in purchasing/commercial policy and of any 'gifts or considerations' received by staff from any commercial sources.

DEALINGS IN SECURITIES AND OTHER ASSETS

17. An NHS employee must not use his or her official position or knowledge for private gain. Apart from the need to declare interests (paragraph 16), staff should avoid any dealings in specific investments for as long as the information about them continues to be confidential and price-sensitive or should distance themselves from the official work on the information.

HOSPITALITY AND GIFTS

18. Staff should exercise the utmost discretion in accepting offers of hospitality from contractors or their representatives or from other organisations or individuals concerned with the supply of goods or services which might later be construed as hampering their strict independence and impartiality. Whether hospitality can be accepted depends on its nature and on the circumstances, and precise rules cannot be laid down. As a general guide, staff may accept conventional hospitality (eg working lunches in the course of official visits) provided it is normal and reasonable in the circumstances. In any case of doubt about the acceptance of frequent hospitality or hospitality which otherwise appears to be excessive, the advice of a senior officer of the Board should be sought. Any case where hospitality is pressed unduly must also be reported.

19. Staff must not accept personal gifts from commercial sources other than isolated gifts of a trivial character or inexpensive seasonal gifts. If pressed unduly to accept more lavish gifts staff must report the incident to their senior officer.

PRIVATE TRANSACTIONS

20. Staff having official dealings with NHS contractors and other suppliers of goods or services to the NHS must avoid transacting any kind of private business with them by any means other than normal commercial channels. No favour or preference as regards price or otherwise which is not generally available to the public or through discount schemes negotiated by staff organisations should be sought or accepted.

ASSOCIATION OF THE BRITISH PHARMACEUTICAL INDUSTRY

21. The Department recognises the ABPI Code of Practice for the industry which is generally in line with this circular. Breach of the ABPI Code renders a member company liable to disciplinary action, and NHS officials should bring any such breach to the attention of the ABPI.

ACCEPTANCE OF FEES

22. Where NHS employees are offered fees by outside agencies for undertaking work or engagements (eg radio or TV interviews, lectures etc) which have a bearing on their official duties, or draw on their official experience, the Health Board and/or its General Manager should be informed and approval obtained before any commitment is given by the employee. An assurance will be required that the individual concerned is not making use of his NHS employment to further his private interests and, in the case of full-time employees, that any outside work does not interfere with the performance of their NHS duties. Any fee offered may be accepted in whole or in part provided that the work has been

undertaken or prepared substantially outside official hours. Health Boards may find it helpful to prepare a code of conduct and management guidance describing employees' relationships with commercial interests and relating particularly to patent rights and inventions by hospital service employees; it has been suggested that the preparation of such guidance might be carried forward on a national basis by the Board General Managers' Group.

WORKS COMMISSIONS AND CONTRACTS

23. The principles set out in this circular apply equally to officers involved in the letting of Works consultancy commissions or Works contracts.

FAMILY PRACTITIONERS

24. Although family practitioners are not Health Board employees, Boards are asked to draw the contents of this circular to their attention. Sufficient copies will be sent under separate cover to each Board for distribution to general practitioners and chemist contractors on the Board's list and resident in their area. Health Boards are also requested to send a copy of this circular and its annexes to the Area Medical, Dental, Pharmaceutical and Optical Committees for the attention of their Secretaries.

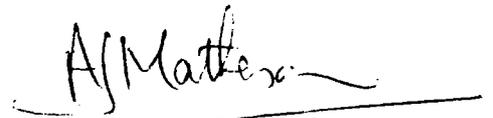
CONCLUSION

25. In view of the wide range of situations which might arise, it is for Health Boards themselves on the basis of the foregoing guidance to reach their own decisions in individual cases. The Department will give advice in any particular case of difficulty.

ENQUIRIES

26. Enquiries about this circular should be addressed in the first instance to Mr I Abbott, Room 131, St Andrew's House, Edinburgh EH1 3DE extension 2492.

Yours faithfully



A J MATHESON

EXTRACT FROM PREVENTION OF CORRUPTION ACTS 1906 AND 1916 AS ALTERED BY SUBSEQUENT LEGISLATION

PREVENTION OF CORRUPTION ACT 1906

1. 1.1 If any agent corruptly accepts or obtains, or agrees to accept or

attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business;

or if any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business;

or if any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal:

he shall be guilty of a misdemeanour, and shall be liable, a) on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both; and b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine or to both.

1.2 For the purposes of this Act the expression "consideration" includes valuable consideration of any kind; the expression "agent" includes any person employed by or acting for another; and the expression "principal" includes an employer.

1.3 A person serving under the Crown or under any corporation or any borough, county, or district council, or any board of guardians, is an agent within the meaning of this Act.

PREVENTION OF CORRUPTION ACT 1916

1. A person convicted on indictment of a misdemeanour under the Prevention of Corruption Act 1906, or the Public Bodies Corrupt Practices Act 1889, shall, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with Her Majesty or any Government Department or any public body or a sub-contract to execute any work comprised in such a contract, be liable to imprisonment for a term not exceeding 7 years.

Provided that nothing in this section shall prevent the infliction in addition to imprisonment of such punishment as under the above-mentioned Acts may be inflicted in addition to imprisonment, or prevent the infliction in lieu of imprisonment of any punishment which may be inflicted under the said Acts.

2. Where in any proceedings against a person for an offence under the Prevention of Corruption Act 1906, or the Public Bodies Corrupt Practices Act 1889, it is proved that any money, gift, or other consideration has been paid or given to or received by a person in the employment of Her Majesty or any Government Department or a public body by or from a person, or agent of a person, holding or seeking to obtain a contract from Her Majesty or any Government Department or public body, the money, gift, or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in such Act unless the contrary is proved.

THE INSTITUTE OF PURCHASING AND SUPPLY
 CODE OF PRACTICE
 (Reproduced by kind permission of the Institute)

"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:

maintaining an unimpeachable standard of integrity in all their business relationships both inside and outside the organisations in which they are employed;

fostering the highest possible standards of professional competence amongst those for whom they are responsible;

optimising the use of resources for which they are responsible to provide the maximum benefit to their employing organisation;

complying both with the letter and the spirit of:

the law of the country in which they practise;

such guidance on professional practice as may be issued by the Institute from time to time;

contractual obligations;

rejecting any business practice which might reasonably be deemed improper.

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 arrangement 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 or 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.

Advice on any aspect of the precepts and guidance set out above may be obtained on written request to the Institute."