

Dear

### **ATISN 19384 – NHS Counter Fraud Service**

Thank you for your request for information which was received on 08 December 2023. You referred to the NHS Counter Fraud Service and requested the following:

1.
  - i. Copies of the legislation, or other regulatory or policy provision, that, provides Welsh Government with the direct accountability for the operational work of Counter Fraud Services Wales?
  - ii. Copies of the legislation, or other regulatory or policy provision, that provides Counter Fraud Services Wales the legal authority to reach independent conclusions in their operational work?
  - iii. Copies of the legislation, or other regulatory or policy provision, that provides Counter Fraud Services Wales the legal authority to make independent decisions in relation to seeking prosecutions?
  - iv. Copies of the legislation, or other regulatory or policy provision, that provides Counter Fraud Services Wales the legal authority to make independent decisions in relation to seeking prosecutions?
  - v. Copies of the legislation, or other regulatory or policy provision, that provides Counter Fraud Services Wales the legal authority to make independent decisions in relation to investigations that they themselves undertake and subsequently make the decision to take no further action?
  - vi. Copies of any review mechanism or procedure in place to evaluate an independent decision made by Counter Fraud Service Wales? If so, copies of the legislative, other regulatory, or policy provision that sets this out.
2. Information around reporting lines for Counter Fraud Services Wales into Welsh Government, what reports are issued by Counter Fraud Services Wales to Welsh Government, short of content what is the nature of those reports, and to whom specifically within Welsh Government Counter Fraud Service Wales are operationally answerable to.
3.
  - i. How many investigations undertaken by Counter Fraud Services Wales since 1st April 2020 have resulted in in court cases which have subsequently resulted in criminal convictions?
  - ii. How many investigations undertaken by Counter Fraud Services Wales since 1st April 2020 have resulted in in court cases which have subsequently resulted in no criminal convictions?
4. Please provide copies of each of the annual risk based work plans completed by CFS Wales team manager since 1st April 2020.

### **Our Response**

#### **Question 1 (all components)**

Section 83 of the Government of Wales Act 2006 [Government of Wales Act 2006 \(legislation.gov.uk\)](#) allows arrangements to be made between the Welsh Ministers and any relevant authority for functions to be exercised in ways outlined.

Section 10 and Part 10 of the NHS (Wales) Act 2006

<https://www.legislation.gov.uk/ukpga/2006/42/contents> provide further detail on specific NHS arrangements. The Welsh Health Circular on Counter Fraud Measures (attached WHC 2005 (95) document) describes arrangements for CFS Wales investigations in NHS Wales.

### **Question 2**

The operational management of CFS Wales has largely been delegated by Welsh Government to the NHSCFA. CFS Wales issue quarterly and annual reports to WG and NHS Wales Directors of Finance on national and local, reactive and proactive counter fraud work in Wales, and also update Directors of Finance and WG on any significant developments via Advance Warnings on court cases, searches or arrests.

The annual workplan with risk priorities is largely dependent on information in the NHSCFA Intelligence Reports (WG buy in this support service from the NHSCFA), and the workplans are then submitted to NHS Wales Shared Services Partnership Management via the Integrated Medium Term Plan and the Counter Fraud Steering Group for review.

### **Question 3**

- i) CFS Wales investigations have led to six Court Cases in total since 1/4/2020: These have secured five criminal convictions and one enforcement action under the Proceeds of Crime Act 2002.
- ii) CFS Wales have had one criminal prosecution which failed to secure a criminal conviction at Court after trial since 1/4/20.

### **Question 4**

I have concluded that the information requested should be exempt from disclosure under the following sections of the Freedom of Information Act 2000:

- Section 31(1)(a) and 31(1)(b) Law Enforcement

An explanation of our application of this exemption and the public interest test is set out at the Annex 1 of this letter.

### **Next steps**

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at:

Information Rights Unit,  
Welsh Government,  
Cathays Park,  
Cardiff,  
CF10 3NQ

or Email: [Freedom.ofinformation@gov.wales](mailto:Freedom.ofinformation@gov.wales)

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at: Information Commissioner's Office,  
Wycliffe House,  
Water Lane,  
Wilmslow,  
Cheshire,  
SK9 5AF.

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely,

# Annex 1

## Section 31 – Law Enforcement

### Engagement of Exemptions

When considering the release of information captured by a request, we are required to consider the potential effects of disclosure of the information to the wider World. This is because information released in response to a FoI request is released to the World, not just to the person submitting the request. As such we need to take into account how any other individual may use, or misuse, the information if it is placed into the wider public domain. So whilst the request may have a legitimate, and benign, interest in accessing the requested information, we could conclude that the risk that the information could be misused by others is more compelling and thus the information should be withheld .

This Annex sets out the information you have requested and the corresponding reasons for the engagement of section 31 (Law Enforcement) of the Freedom of Information Act 2000 (FOIA) and where required, our subsequent consideration of the Public Interest Test.

I am of the view that the information requested is exempt from disclosure under section 31(1)(a) and 31(1)(b) of the FOIA which states that –

*31.—(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice -*

*(a) the prevention or detection of crime,*

*(b) the apprehension or prosecution of offenders,*

You have requested copies of each of the annual risk based work plans completed by CFS Wales team manager since 1st April 2020. These risk assessments and work plans are created and tabled by the Counter Fraud Steering Group so that areas that have been highlighted for investigation are discussed and strategically planned.

Since April 2020, CFS Wales have relied upon the annual risk assessment compiled by the NHS Counter Fraud Authority in NHS England to identify proactive priorities and emerging risks. The current proactive priorities are procurement fraud, mandate frauds, staff frauds and pharmacy practitioner frauds.

The risk assessments and workplans are tabled at the Counter Fraud Steering Group and are considered confidential documents. I can confirm that the workplans and quarterly reports provide details of ongoing investigations and data on current fraud trend.

I believe that the release of these reports into the public arena for anybody to read would be likely to result in prejudice to those investigations that are currently underway or about to commence. Disclosure could inform those subject to the investigations of the ongoing investigations, allowing them to destroy evidence or otherwise cover their tracks, or to take action to avoid being brought to trial for any offences.

The workplans identify high risk areas for NHS Wales and potential opportunities for economic crime against NHS Wales. Disclosure of the workplans may assist offenders in targeting specific areas for fraud action and would be likely to impact on preventative actions or measurement exercises to determine the current or future levels of economic crime in NHS Wales.

Releasing the information would also provide potential fraudsters with knowledge of where we are / are not focusing our attentions and would be likely to increase the risk of fraudulent activity being undertaken.

This exemption is subject to the public interest test.

### **Public Interest Test**

In applying the tests, we have balanced the public interest in open and transparent in the prevention and detection of crime with the public interest in ensuring effective detection and prosecutions of offenders. While transparency increases public confidence prevention and detection have been conducted fairly and effectively, there is a risk that the release of this information might compromise future prosecutions making it more difficult to bring successful prosecutions in future.

We have considered that release of part of the information with elements redacted / anonymised may prove to be a deterrent for some potential fraudsters, but as noteworthy prosecutions are often well publicised, we believe these will instead act as deterrents for many and therefore do not provide sufficient justification to share the information.

We have decided that on balance the public interest lies with withholding the information on this occasion.