

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT NHS COUNTER FRAUD AUTHORITY
(ESTABLISHMENT, CONSTITUTION, AND STAFF
AND OTHER TRANSFER PROVISIONS)
(AMENDMENT) ORDER 2020

Wednesday 8 July 2020

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The Committee consisted of the following Members:

Chair: DAVID MUNDELL

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| † Bowie, Andrew (<i>West Aberdeenshire and Kincardine</i>) (Con) | Rees, Christina (<i>Neath</i>) (Lab/Co-op) |
| † Double, Steve (<i>St Austell and Newquay</i>) (Con) | Sharma, Mr Virendra (<i>Ealing, Southall</i>) (Lab) |
| † Gibson, Peter (<i>Darlington</i>) (Con) | † Throup, Maggie (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Howell, John (<i>Henley</i>) (Con) | † Western, Matt (<i>Warwick and Leamington</i>) (Lab) |
| † Jenkinson, Mark (<i>Workington</i>) (Con) | † Whately, Helen (<i>Minister for Care</i>) |
| † Jones, Fay (<i>Brecon and Radnorshire</i>) (Con) | † Whittome, Nadia (<i>Nottingham East</i>) (Lab) |
| McCabe, Steve (<i>Birmingham, Selly Oak</i>) (Lab) | |
| † Madders, Justin (<i>Ellesmere Port and Neston</i>) (Lab) | Bradley Allbrow, <i>Committee Clerk</i> |
| † Mann, Scott (<i>North Cornwall</i>) (Con) | |
| Osborne, Kate (<i>Jarrow</i>) (Lab) | † attended the Committee |

Fourth Delegated Legislation Committee

Wednesday 8 July 2020

[MR DAVID MUNDELL *in the Chair*]

Draft NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) (Amendment) Order 2020

9.25 am

The Minister for Care (Helen Whately): I beg to move,

That the Committee has considered the draft NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) (Amendment) Order 2020.

It is a pleasure to serve under your chairmanship, Mr Mundell. Like any organisation, the NHS is not immune to fraud. As hon. Members are aware, the Government have backed the NHS with the biggest cash boost in its history: an extra £34 billion by 2023-24. That money will make a difference to many people. Yet, fraudulent activity in the NHS means that the money intended for patient care sometimes ends up in the pockets of those who did not legitimately earn it, meaning fewer resources available to be spent on frontline health services such as patient care, health care facilities, doctors, nurses and other staff. It is taxpayers' money, and we have a duty to spend it appropriately. An effective counter-fraud organisation that is able to operate independently is crucial—a body that can act without external interference or influence and perform functions that cannot be undertaken at a local level, such as serious and complex investigations that cross borders and cases of alleged bribery and corruption on a national level.

As a result, the NHS Counter Fraud Service was set up in 1998 as part of the Department of Health. Since then, the function has evolved, and in autumn 2017 the NHS Counter Fraud Authority was launched as an independent special health authority. The National Health Service Act 2006 means it is limited to a maximum lifespan of three years, and so is due to be abolished on 31 October 2020. To prevent that, a statutory instrument was laid on 11 June 2020 to extend the abolition date of the NHSCFA by three years, to 30 October 2023.

I want to take this opportunity to highlight the important work of the NHSCFA and set out why we need to extend its lifespan for a further three years. The NHSCFA is a national centre of excellence. It has built strong relationships with organisations across the health and law enforcement sectors so that we can take the fight to those who seek to deprive the NHS of resources for patient care. Fraud is a hidden crime; to fight it, we have to find it. The NHSCFA is continually developing its intelligence and investigation capabilities, and is breaking new ground in how it detects and prevents fraud. It has also set important national standards for the counter-fraud work of NHS providers and commissioners. It also applies to independent healthcare providers and NHS organisations. Its work is clearly bearing fruit.

The NHSCFA's latest strategic intelligence assessment shows an overall estimated reduction in losses from fraud of £60 million between 2017-18 and 2018-19. It also showed a £27.6 million reduction specifically on dental contractor fraud, thanks to a relentless focus by the NHSCFA over recent years, along with an £85 million annual reduction in fraud losses from false entitlement claims for help with healthcare since 2017.

It is clear that that approach is working. To change direction now would be a mistake. The concerted approach by the NHSCFA to improve fraud awareness and drive up fraud reporting across the NHS is bearing fruit, so we need it now more than ever, especially when we are in the middle of the greatest threat to public health that we have seen in generations.

As part of the Government's response to coronavirus, the Chancellor has repeatedly said that the NHS will get the funding it needs. An initial £5 billion coronavirus fund was established at the Budget in April 2020. That was then increased to a £14.5 billion emergency response fund, of which £6.6 billion was earmarked to support our health services. We are continuing to work with the NHS and Her Majesty's Treasury to ensure the NHS gets the funding and resources it needs.

Although we have seen the nation coming together to celebrate the heroic work of NHS staff, coronavirus unfortunately presents a heightened risk of fraud, where criminals may seek to exploit the situation. Never before has a counter-fraud response to this investment been so important. "Protect the NHS" is not just about protecting staff. It is also about the money that taxpayers contribute to this invaluable national resource.

The NHSCFA has played a key role during this period and has produced and shared coronavirus threat assessments with partners, and coronavirus counter-fraud guidance specifically for the NHS. This includes guidance outlining the unique risks during the coronavirus response and specific guidance outlining types of mandate fraud, and how to identify, prevent and respond to them.

As technology evolves, the risks to the NHS will also evolve, especially the risks from fraud, so we will need organisations such as the NHSCFA to co-ordinate the response at a national level. If we made the decision to abolish the NHSCFA today, that would expose the NHS to significant financial risks. It would mean that there would be no ability to record and assess accurately the nature and scale of fraud, and inform the response to it, both within the NHS and across the wider health sector. That would result in serious and complex fraud investigations being transferred elsewhere—for example to other NHS bodies, the police or the Department of Health and Social Care.

John Howell (Henley) (Con): I thank the Minister for giving way and for the examples that she has just set out. However, could she give us an overall picture of where the fraud is arising? Is it arising from within the NHS, from organisations with which the NHS has a relationship or from the man in the street?

Helen Whately: I thank my hon. Friend for his intervention. The fraud we see comes from a range of the categories he has just mentioned, sometimes including

members of the public and users of the NHS, but sometimes also organisations with which the NHS has contractual relationships.

Let me come back to the point I was making about the downsides there would be if we did not decide to continue the NHSCFA today. If we were to do that, it would undermine NHS funding—much-needed resources that are critical for patient care. I therefore urge hon. Members to keep this vital organisation in place and allow it to keep doing its important work, providing confidence and even certainty for many people. I commend the draft order to the Committee.

9.32 am

Justin Madders (Ellesmere Port and Neston) (Lab): It is a pleasure to see you in the Chair, Mr Mundell.

As we have heard, this statutory instrument extends the abolition date of the NHS Counter Fraud Authority from 31 October 2020 to 30 October 2023. As the Minister set out, any order for a new special health authority established after 1 April 2013 must include provision for the abolition of that authority within three years of its establishment, pursuant to section 28A of the 2006 Act. The 2006 Act also provides that the abolition date can be varied or changed by order within that three-year period to a later date, beginning with the day on which the authority would have been abolished. Of course, that is why we are here today, because, as the Minister said, we clearly need an authority to deal with fraud in the NHS.

I think that this is the first time that we have had an opportunity to discuss the NHSCFA since the statutory instrument that brought it into force was laid in 2017. I think that came in under the negative procedure, which meant that it did not require approval by resolutions of both Houses, so there has been no discussion of the NHSCFA's remit and performance.

As the Minister said, the Secretary of State's function to protect the health service from fraud has been carried out by a number of organisations since 1998. Obviously, the NHSCFA was established on 1 November 2017 to identify, investigate and prevent fraud, bribery and corruption across the national health service in England. That responsibility was previously held by NHS Protect, which was a division within the NHS Business Services Authority. NHS Protect's staff, property and liabilities were transferred to the new authority.

The estimate of fraud in the NHS from the most recent NHSCFA annual report—that is for 2018-19, and I hope that when the Minister speaks at the end of the debate she will tell us when the 2019-20 report will be available—will be of concern to most people. The sum that we are talking about—the estimated fraud in the NHS—is £1.27 billion each year. We often talk about the issue of NHS workforce shortages; we know that there are more than 40,000 vacancies for nurses. When I say that £1.27 billion would pay for those 40,000 nurses, 5,000 frontline ambulances or 116,000 hip operations, we can be in no doubt that it is extremely important that we counter fraud as much as we can, and that this authority is needed to prevent fraud, bribery, corruption and any illegal acts or any financial gain at the expense of the NHS and, of course, as the Minister said, the taxpayer.

It is important to remember that, although we are talking about significant sums, those who commit fraud are the minority. However, their actions take resources away from the NHS, staff and patients and have an impact on us all. As the Minister said, at this time in particular, the NHS is under additional pressure with coronavirus, so it is vital that every penny intended for the NHS stays within it. The scale of the challenge is clear. It is welcome that the most recent annual strategic intelligence assessment highlighted a reduction of £90 million in patient fraud, but it is fair to say that there is still an awful long way to go.

The explanatory memorandum that accompanied the instrument that created the NHS Counter Fraud Authority stated:

“The establishment of a special health authority focused entirely on counter fraud activities is intended to provide the independence and practical accountability that is required to deliver effective anti-fraud services across the health service.”

It also stated:

“The Secretary of State has statutory responsibility for health service security management functions under the 2006 Act”, and that security management is most effective when tailored to local circumstances. It concluded that local NHS bodies were best placed to develop and apply security management policies and practices, in order for them to take account of local circumstances and deal with security matters. We need to establish whether that has, in fact, turned out to be correct. Concerns about those powers being transferred were raised by Members of both Houses at the time, in 2017.

The Government stopped collecting data on assaults against NHS staff in 2016, but following freedom of information requests from all NHS trusts in England in 2016-17, the *Health Service Journal* reported that physical assaults on NHS hospital staff had risen 9.7% since the previous year. Those figures suggest that, on average, there were just over 200 reported violent attacks on NHS workers every day. As alarmingly high as those figures are, Unison believes that many incidents go unreported, and estimates that there were 56,435 physical assaults on NHS staff in 2016-17.

In January this year, *The Independent* reported that the Health and Safety Executive found that 25 NHS trusts were in breach of rules designed to make sure that they manage risks to their staff from violent patients or members of the public, following 38 inspections by the regulator since April 2018. These inspections were prompted by increasing numbers of assaults on staff, including three killings by patients in the last five years. Figures show that between 2015 and 2018 the number of violent attacks on health and social care staff was three times as high as in other industries. We can see that the disbanding of NHS Protect has had some impact, but without national data it is difficult to determine the true scale of the problem. Can the Minister tell us whether the Government have any plans to resume the collection of national data? If she cannot advise us of that today, could she possibly write to me?

The protection of staff should of course be an absolute priority, and the Government did promise an anti-violence strategy in 2018. Will the Minister update us on where that is, and on the seven trusts that were issued notices of improvement in terms of how they manage the risks of violence and aggression? What action are they taking to reduce violence against NHS staff across all settings,

[Justin Madders]

and what training and support is available? We know from the annual staff survey that 14.5% of staff said they had experienced physical violence from patients, their relatives or the public. The figures for the most recent survey are not yet available. Will the Minister update us on whether we can expect to see those latest figures?

Can the Minister advise us whether she believes that the uncoupling of security and fraud aspects, per the statutory instrument creating the Counter Fraud Authority, has been a cause of this increase in violence, or whether there are other factors in play? It is important that we get to get to the bottom that.

To return to the Counter Fraud Authority, I mentioned that the most recent annual report identified a number of challenges and potential barriers that affect its ability to tackle fraud against the NHS. It highlights the fact that the

“level of understanding of the nature of fraud in the NHS continues to be uneven across the health system.”

There is under-reporting of fraud and suspicious activity, which is a continuing concern. There is also inconsistent recording of local counter-fraud work, which is another concern. The report highlights a

“fragmented approach in the NHS to sharing lessons learned and limited cross-NHS working, resulting in lost opportunities to identify and prevent fraud.”

Can the Minister advise us on what the NHSCFA intends to do to improve cross-NHS working?

The report also draws attention to a number of initiatives, including an e-learning programme to train counter-fraud champions and improving access to large datasets, which was due to be rolled out in the last financial year. We have not seen that yet, so can the Minister update us on its progress? I also note that last year’s annual report says the authority’s

“approach to counter fraud work is detailed in our 2017-2020 strategy document ‘Leading the fight against NHS fraud’”,

which is obviously due to expire this year. Can the Minister advise us on when we will see an updated strategy document?

We will not be opposing the order. It is clearly important that we continue to have the Counter Fraud Authority, but if it continues for three further years, we need assurances from the Minister that she is holding it to account for its performance. We need to have confidence that greater success in reducing fraud will be part of the story for the following three years.

9.42 am

Helen Whately: I welcome the helpful and constructive comments from the shadow Minister, who shares the perspective of the Government on the important role of the NHSCFA and the importance of preventing and tackling fraud in the NHS. I want to reiterate that never

before has a counter-fraud response to protect the Government’s investment in the NHS been so important, and that only a national organisation such as the NHSCFA can gather and process the information and intelligence arising from the huge range of threats to the NHS.

I should reiterate that the vast majority of people do not commit fraud in their interactions with the NHS; the problem is very much from a minority. The NHSCFA carries out the Secretary of State’s counter-fraud functions in respect of the health service in England, and it has the crucial ability to distil data and enable a focus on prevention in its counter-fraud response.

The shadow Minister asked about cross-NHS working. The NHSCFA is working hard to build and develop capability across the NHS and among NHS organisations, to extend consistent principles, national standards and best practice to all parts of the NHS, and to drive a national, co-ordinated and cross-organisational response. The focus is on prevention, because we know that preventing loss is more cost-effective than prosecuting suspects and recovering funds that have already been lost.

The shadow Minister asked about a revised strategy for the CFA, and I can assure him that it is being drafted and will be published soon.

Justin Madders: On the updated strategy, we have talked a lot about personal protective equipment in the last few months, and it is fair to say there are some unusual entrants into that market. Will the updated strategy look at how PPE is procured moving forward?

Helen Whately: The shadow Minister makes an important point about PPE. Clearly, the Government have had to move very rapidly to increase the procurement of PPE to meet the needs of the NHS and social care during the pandemic. PPE procurement for covid-19 is centrally managed, not managed by NHS trusts, and therefore falls outside the remit of the NHSCFA. It is being investigated by the DHSC anti-fraud unit, but that is being supported by the NHSCFA. No doubt lessons learned from the covid experience will be used by the NHSCFA in developing its processes and the strategy that we have been referring to.

Extending the current model will provide the opportunity for the NHSCFA to continue its work and consolidate its organisational design, which it has been working on over the last three years. The Department will continue to oversee the function of the NHSCFA, in its sponsorship role, to ensure that it remains fit for purpose. The draft order is an important and integral piece of secondary legislation to allow the NHSCFA’s independent and crucial remit to continue. I urge all hon. Members to approve it.

Question put and agreed to.

9.46 am

Committee rose.