

Alert Letters in the NHS – Information for Doctors

Alert Letters and Alert Notices – their impact on doctors and how to have an alert rescinded

Alert Letters (or Alert Notices) have been in circulation for some years within the **NHS**. They are made pursuant to NHS guidance and directions (and legislation), that is revised from time to time. It is important to check on the latest provisions in force where a doctor or other healthcare practitioner seeks to challenge an appeal notice / letter. The countries of England, Wales, Scotland and Northern Ireland each has separate frameworks and named contacts. Doctors Defence Service can advise doctors and other healthcare practitioners on the legislative provisions of each country.

The logo for Doctors Defence Service, consisting of the text "Doctors Defence Service" in a green, sans-serif font, enclosed in a green rectangular border.

Alert letters can have the effect of preventing a doctor from working for the NHS, if an employing authority chooses to take the relevant information into account. On occasions, this can have the effect of making a doctor unemployable in the NHS, even where allegations have been untested or unproved. Understandably, doctors that they are named in an Alert Letter may wish to challenge the NHS's justification for the Alert Letter. A doctor may request that an Alert Letter be rescinded and the NHS must make a decision whether to cancel the alert notice. Where an NHS body unreasonably declines to cancel an alert notice, a doctor may issue proceedings for judicial review.

Alert Letters in their current guise were first developed under the [Health Service Act 1977](#) [View the [National Service Act](#) (external link)]. Guidelines and directions issued by the Department of Health must be followed, and “live” alert

letters should be retained by those who recruit doctors. There is an expectation (set out in the guidelines), where an **Alert Letter / Notice** has been issued, that the named doctor will also be promptly reported to the General Medical Council (GMC), which has the power to restrict a doctor's practice or suspend them from practice.

Current Alert Notice Scheme:

Since the Health Professionals Alert Notice Directions 2006 came into effect, the issuance of Alert Letters (or Notices, as the directions describe them) has become the responsibility of the regional Strategic Health Authority (SHA), where an NHS employer recommends to the SHA that an alert notice should be issued in relation to a named doctor. However, there have now been modifications (as of April 2013) as the [NHS \(England\) Guidance Letter on Alert Letters](#) sets out.

A guide to employers summarises the regime and how to go about raising an alert, which is a useful simplified overview: *Safe Recruitment – Scheme for the issue of alert notices for healthcare professionals in England* [View [Alert Notice / Letter Guidance](#) (external link)] However, this is not now so relevant since 2013. See the updated documents on the new HPAN system: [NCAS on Alert Letters](#) and [NCAS on Interim Arrangements](#), and the [NCAS Operational Document](#).

An alert notice is described as ' a way by which an NHS employer can make other bodies aware that a healthcare professional may pose a threat to patients or staff. It is intended as a means of alerting prospective employers to check the applicant's employment record and take up references in advance of employment'. The new regime requires that here must now be a "**pressing need**" to issue an alert letter or alert notice. The concept of a "pressing need" is drawn from European Convention of Humans Rights jurisprudence. It requires in Alert cases the balancing of he doctors interests and interests of patients and staff, that they

are not to be placed *at risk of significant harm from the doctor's acts or omissions*. See also the case of [R \(D\) v SoS for Health \[2006\] EWCA Civ 989 \[at 31\]](#) which explored the concept of 'pressing need' in an alert letter judicial review case.

A doctor can still be employed by the NHS where a full risk assessment is undertaken. A doctor may challenge an Alert Notice, and ask for it to be withdrawn or cancelled, if the doctor can demonstrate that the Alert Notice was wrongly issued, or where there has been a change of circumstances, making the Alert Letter obsolete or overwhelmingly unfair to the doctor, for example where there is no longer a pressing need because the GMC is involved and has made an Order for, say, Conditions of Practice. Where the SHA fails to withdraw an **Alert Notice** a doctor may challenge the refusal by way of judicial review. Legal aid may be available if the doctor has little income and few assets, otherwise the doctor will have to fund the judicial review privately, unless they are in a union and their union decides to financially back the doctor. [Doctors Defence Service can advise doctors on how to correspond with the SHA and on the content of any submissions that request the withdrawal of an alert notice that names the doctor.] Other countries of the United Kingdom (Wales, Scotland, Northern Ireland) have their own legislation and guidelines in place, though the spirit is much the same of the legislation and guidance of England.

Previous Alert Letter Guidance (Old Law):

1) The Strategic Health Authority approach has been abolished as of April 2013. Where a potential employer was considering employing a doctor where an alert notice has been issued, the employer could still employ the doctor. Guidance from the National Patient Safety Agency (NPSA) *NCAS Resource: Use of Alert Letters (Nov 2006)* but a full risk assessment needs to be undertaken.

2) In the Health Service Circular 2002/011 *The Issue of Alert Letters for Healthcare Professionals in England* issued by the Department of Health stated that: “**Alert letters** are solely for use in cases where an individual is considered to be a serious potential or actual risk to patients or staff. They should not be used for any other reason”. Alert letters under the 2002 could only be implemented where a “ health professional could place patients or staff at serious risk”. Annex 1 (England) to the circular sets out the steps that a organisation must take and matters that must be taken into consideration when determining whether to initiate the Alert Letter process. Annex 2 (England) is a template for the content of the letter, and it is made clear that no other information should be included in the letter. See, also the previous circulars for Wales, Northern Ireland and Scotland.

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Doctors Defence Service can advise doctors on the law concerning Alert Letters and assist doctors in applying for the Alert Letter to be cancelled and withdrawn. Call us on: **0800 10 88 739** for more details of our legal service to doctors relating to NHS Alert Letters. Alternatively, use our [Contact Form](#).