

NHS Counter Fraud Investigations



NHS Counter Fraud Investigations – Legal Defence

The NHS has its own security force that investigates clinicians where there are concerns that they may have acted dishonestly within the workplace, or otherwise improperly outside of accepted NHS protocols, to the benefit of others or themselves, including acts of bribery.

A NHS counter-fraud investigation (also called [NHS Protect](#)) can come about suddenly. Some investigations are closed quickly while others might rattle on for a long time, and there is a risk that the matter will be referred to the criminal courts. See also the [Welsh division of NHS Counter-Fraud](#)

Doctors who face investigation may be invited to be formally interviewed under the Police and Criminal Evidence Act procedures (PACE). On some occasions, the police will be involved and a doctor will be arrested. Alternatively, they will be invited to attend an interview on a voluntary basis, either with NHS personnel and/or the police being present.

It is not always wise to attend a voluntary interview but at the same time to not do so could lead to criticism and in some cases GMC involvement. A doctor may take a lawyer with them to NHS-based interviews and it is wise for a doctor to attend with one.

Even where NHS Counter Fraud does not bring criminal charges the evidence obtained may nevertheless be passed to the General Medical Council (GMC) to investigate further.

The [GMC](#) will investigate the allegations and apply a lower threshold, the balance of probabilities, in comparison to the criminal process, which uses the criminal standard of proof (beyond reasonable doubt; or, being sure of guilt).

Not all cases lead to criminal charges being brought and at Doctors Defence Service we work hard with the doctor to demonstrate innocence, or, where a doctor may have fallen into error, to work towards obtaining the best possible outcome. This may be a without liability repayment to the NHS of monies, or the return of property. Such actions need to be undertaken carefully and in a structured way to avoid such steps being used against the doctor later. Here at Doctors Defence Service we have known the GMC to become involved and place reliance on a settlement to bring allegations of misconduct.

On occasions, a doctor will accept that due to personal circumstances or financial pressures they have acted improperly. In such cases, it is important to carefully manage the disclosures that are made to others, where formal admissions are to be made. Good mitigation can lead in some cases to the avoidance of criminal proceedings altogether, as not all cases are in the public interest to be prosecuted.

It should be noted that an allegation of dishonesty can come about through an act or omission to act. It might be a direct action or omission that is alleged, or a failure as a manager to prevent fraud from occurring.

Legal advice should be obtained before answering questions or putting anything into writing, as to do otherwise could lead to criminal or GMC proceedings. Where criminal charges are brought, Doctors Defence Service can represent doctors in the

magistrates and crown courts, and on appeal. Where cases are referred to the GMC, our lawyers at Doctors Defence Service can advise and represent doctors at all stages, including [fitness to practise](#) and appeals.

Most often NHS Counter-Fraud will alleged some form of [dishonesty](#). You can read the NHS policy on combating fraud across the health service estates: [Countering Fraud in the NHS](#) (1998).

Doctors Defence Service can also advice doctors in relation to potential whistleblowing concerns, where fraud may be alleged against others that they work with. Allegations need to be carefully made as at Doctors Defence Service we have known for senior doctors to retaliate and crush the doctors who have brought the complaints, by making serious counter-allegations. To make a complaint of fraud in the NHS you can do so anonymously: [Report Fraud in the NHS](#)

Cases Mentioning NHS Counter Fraud Team and Clinicians

[Nursing and Midwifery Council, R \(on the application of\) v Akinleye \[2010\] EWHC 150 \(Admin\)](#)

[London Strategic Health Authority v Pandya & Ors \[2008\] EWHC 967 \(Ch\)](#)

Doctors Defence Service advises and represents doctors facing investigation by **NHS counter-fraud** or **NHS Prevent** or the police. Call us in strict confidence to speak to a lawyer without obligation: **0800 10 88 739**