

Item 4.10

David,

At the last HFMA VAT meeting I promised to email you about the issue with Legal Services.

Since the introduction of the Contracted Out Services Directions in 1984, the NHS has recovered legal services under the heading "Professional services, including those of any manager, adviser, expert, specialist or consultant". Initially this was heading 15 in the NHS list.

Prior to that all NHS Regional Health Authorities had their own, often quite large, legal departments which handled all the NHS legal affairs from minor advice to handling clinical negligence claims. This included representation in the lower courts where barristers are not required. Under the instruction of the government these legal departments were Tupeed to private legal practices and the NHS no longer has any in-house legal expertise. The guidance for the professional services heading had no reference to advise only. In fact the word manager implies active involvement.

Overtime the various departmental cos lists were combined and legal services is now covered by heading 52.

Various trusts have contacted the committee concerned that HMRC inspectors are querying recoveries on solicitors invoices and being told that they now cannot recover VAT where the work is not purely advice. In addition a couple of Trusts have been told that VAT cannot be recovered on advice which ultimately may lead to action. This raises a question of how do you know if the subject on which advice is obtained will result in legal action being taken. It is also contrary to the latest guidance that advice is recoverable.

This seems to be at odds with the original intention of the contracting out provisions, given that this work was previously done in house.

As a committee we are concerned that this is another area where the contracting out rules are being changed by stealth and funding to the NHS is being restricted. We have been reassured in the past that the rules are not being changed

Certain HMRC inspectors seem to be applying their own more restrictive interpretation of the guidance, and as a committee we are keen that there is clear unambiguous guidance which is applied uniformly across the NHS. It is not right that VAT recovery which is in line with historical practice and guidance is being disallowed on an individual whim.

I have tried to summarise the issue. It will come up under matters arising at the next meeting

Thanks

Ian