



HFMA VAT Technical Sub-Committee

Minutes

Thursday 23 January 2020, 11:00 – 14:00
110 Rochester Row, Victoria, SW1P 1JP

Members

Anthony Robson	Gateshead Health NHS Foundation Trust (Chair)
Mike Barlow	HMRC
Jon Brice	Sheffield Teaching Hospitals NHS Foundation Trust
Martin Ginnelly	NHS Shared Business Services
Paul Jones	Department of Health and Social Care
Gareth Lewis	Aneurin Bevan University Health Board
Richard Lodge	Harrison Lodge Consultancy LTD
David Ogilvie	HMRC
Rachel Owen	NHS England
Amanda Randall	Newcastle Upon Tyne Hospitals NHS Foundation Trust
Michael Shiels	Greater Glasgow Health Board
David Smith	HMRC
Soloman Zekarias	Guy's and St Thomas' NHS Foundation Trust

HFMA

Debbie Paterson

Charley Spicer

1 Welcome/apologies for absence/membership

The committee welcomed Jon Brice, Charley Spicer and Soloman Zekarias to their first meeting of the committee.

The committee noted that Gary Mincher has left the NHS.

Apologies were received from: Daniel Bell, Michael Creaton, Di Roberts, Gita Raja, Stuart Grant, Phillip Simmons, Jane Wharton and Michael John.

As a number of members have recently left the committee, HFMA will review membership and contact members who have not attended the previous three meetings.

Action – To contact members on the committee who have not attended the previous three meetings and check if they still want to remain a member of the committee. (CS)

2. Minutes of the last meeting

The committee agreed that the minutes of the previous meeting, held on 26 September 2019, are an accurate record. It was agreed that all actions are in progress or have been completed.

3. Matters arising

3.1 HM Treasury s41 review

DO confirmed that, if everything continues according to plan, the policy paper, now called a 'call for evidence' is expected to be issued on budget day, presently timetabled for Wednesday 11 March.

There will be time for responses, and these will need to be considered and possibly consulted on further. This means it is unlikely that a conclusion will be reached, and any changes enacted, before 2022.

3.2 NHS healthcare income via commercial entities

PJ stated that subsidiary bodies are now back on the agenda. He and DO were involved in providing technical support for the Minister of State for Health in an adjournment debate in the House of Commons regarding VAT rules on new builds and wholly owned subsidiaries. The debate was originally labelled 'what is the VAT impact of the 40 new hospitals', however, the MP wanted to discuss other issues including, staff being TUPE'd out of the NHS, the pension impact and the VAT implications of establishing subsidiary bodies. The debate is available on Hansard to either view the live recording of the debate or read the [transcript](#).

The outcome of the debate is that Minister of State for Health is keen to discuss this further with the MPs that were at the debate, however, there is update yet. The meeting will happen when diaries permit, and the committee will be updated once this has happened.

3.3 Agency staff

No further news. After sharing the draft guidance, several litigation questions and issues have arisen which means that HMRC withhold further guidance until they are satisfied with their position on this issue. At the committee meeting in April 2018 DS shared draft guidance – he hopes to get the guidance out soon but he is aware that this has been the case for almost two years now.

3.4 COS heading 33 - library services

There is currently no update with this matter. However, it was agreed that GL will follow it closely and will hopefully provide a further update at the May meeting.

3.5 VAT impact of lead provider framework (LPF)

RO updated the committee that the numerous assessments raised by approximately 10 CCGs have now been formally appealed. The deadline for the HMRC to respond is the end of January. RO is not aware of any new LPF contracts/arrangements as some CCGs are taking service back in house. All LPF contracts will be coming to an end by April 2020. Whether there is an LPF2 arrangement after that will depend, in part, on the outcome of the appeal as to whether the current contract is single or multiple supply on the current contract.

3.6 P22 framework and COS heading 35

MB and PJ met the P22 team in December to discuss P2020, the new procurement model launching this year.

HMRC are attempting to support the capital team to produce guidance for customers who use P22 framework to get the contracts in a format that will allow entities to make claims in the format that HMRC would like. The skeleton of the guidance is ready and once this has been formalised; it will be presented to DHSC for comment. People often overcomplicate the process to maximise recovery. HMRC have been working with DHSC and their advisors to improve the guidance to benefit everyone and to speed up the process. There are still ongoing issues with the 4-year cap and are waiting for an internal response on this.

The question was raised as to whether this only applies in England. Once P2020 is finalised in England, it will be shared with the Welsh Design for life and Scottish Procurement Scotland teams to ensure that lessons are learned across the board.

The aim is to produce guidance that is straight forward and easy to follow. Even with the current process, people still choose to go seek advice elsewhere and there is little that can be done to combat this.

3.7 COS heading 14 – computer services supplied to the specification of the recipient

HMRC provided the following statement in response to an email received from the Welsh DFD group (attached):

- At the previous VAT committee meeting, on 26 September 2019, it was noted that there were 90+ outstanding cases on COS heading 14, both following audits and unanswered enquiries, which were being worked on by compliance colleagues with the intention to deal with these. After reviewing the letter, it was evident colleagues needed assistance in applying the existing guidance to these cases. Their difficulty is frequently dealing with situations on a historic basis. Compliance colleagues grouped the types of situation they are encountering and sought advice on how the guidance applies to these situations. Thus, the purpose of the exercise was to assist individual compliance staff in answering or dealing with specific situations, based on how the guidance applies to these situations. Therefore, it is not a situation where there are two sets of guidance – one internal and one external; but instead one where an aide memoire has been prepared using the guidance. Hopefully, this addresses the Welsh DFD Group's concerns.
- HMRC would like to amend the guidance, however, they are still awaiting on correspondence from the Tax Centre of Excellence (TCoE). The TCoE stated last December they're wishing to take existing guidance and track into the departments view where it could be made clearer and how the guidance was causing practical concerns. This has also been raised with the

committee and it would be of use for the committee to assist on areas that could be clearer and where it may be out of sync with IT practices. The ongoing cases have signified areas where the guidance is too blunt. For example, as was mentioned at the meeting on 26 September, we accept that the following is covered by COS14:

- As well as a GD/NHS body approaching a supplier to design/build/modify a system or software to accommodate its needs, the supplier might identify the needs of a GD/NHS body and provide a bespoke product to address those needs.
- A product designed/built/substantially modified to meet the needs of a GD/NHS body might later be supplied (probably adapted or modified) to the private sector.

Action: PJ to get in touch with TCOE to see where they are with their review

HMRC want to know:

- How the guidance can be clearer/ simpler?
- What are the particular points that need to be clearer?
- What are the areas that the guidance needs to address, including the issues that HMRC know about?

Action: committee members to identify examples where the current COS 14 guidance is not helpful and send them to the HFMA so the committee can send in a coordinated response (all).

DP and CS to ask other HFMA committees for examples and collate all comments (DP and CS)

The committee discussed the issue. The guidance will be finalised before the s41 review. HMT decided that the review will roll into the s41 review, which will not be concluded until 2022 at the earliest. They want to make sure that the guidance is revised in a way that is more practical so that it is as clear and helpful as possible. In DO's opinion, HMT are likely to request more data for the s41 review as it is complex and it is not clear that they have enough data at the moment.

It was noted that the heading has not changed – it was discussed but it has not changed.

Technology advancements provide increasing complexities, as new products become more difficult to categorise. For example, AR is aware of AI products where there are virtual workers that use VPNs to access multiple systems. These arrangements are working in provider bodies already and can move data from different systems such as accounts payable to HR. It is just a process driven by the machine but it is difficult to classify what it is in terms of COS 14. It comes down to the terms of the contract each time but as soon as an approach is agreed a new product is released that does not fit into the guidance.

This is difficult as more technology and processes advance. However, the committee also noted that the HMRC guidance needs to also keep up with the pace of change.

RO asked whether telephony still was outside of the COS 14 requirements. It was noted that this committee prepared a paper on telephony contracts some time ago that might be helpful.

Action: DP and CS to find the paper and circulate it to the committee (DP and CS)

RO asked whether the HMRC's aide memoire is available externally. MB stated that it really covers the two areas listed in their statement – these areas will be included in the guidance once TCOE and this committee have answered those questions.

The aide memoire was intended to build knowledge within the compliance team so that, whilst there is no one answer for everything, there will be consistency between HMRC judgements. HMRC do not want the cases that were paused to be restarted on the same basis. So all of the HMRC compliance

team have the same aide memoire and two people are leading on the cases to try to ensure consistency.

AR asked how HMRC is going to track the systems that several NHS bodies use. MB said that they will track systems that have the same name and are being used in the same way. However, the answer will depend on what the system is, its development and how it was brought into existence. So, there will not be a one size fits all answer where systems have been tweaked. There may be cases where VAT is not recoverable but where that is the case it should be explainable to the customer.

3.8 Making tax digital (MTD)

No further update. Keep this on the agenda.

3.9 Public health services

AR received an email from Ian Harris, Leicester City Council on the morning of the meeting so it will be circulated to the committee, along with the minutes for discussion at the next meeting.

Action – To share the communication from Ian Harris to HMRC colleagues within the committee. (CS)

3.10 GP federations setting up subsidiary companies

This is a developing area. MB reported that they had been asked recently about a GP federation being commissioned by a CCG to help deliver services. This looks like the supply of staff at first glance.

RO said that the current focus is on the content of the PCN contract. PJ noted that PCNs are an area of focus at the moment - PCNs were raised in the adjournment debate. However, the issue is there is not a consistent, mandatory way to set up PCNs, therefore, HMRC are unable to give advice on this, as the appropriate treatment will depend on the exact terms of the contract.

Another parliamentary question has asked how many trusts have outsourced their outpatient pharmacies and how much tax has this cost? The committee agreed this is a complex issue, and factors such as increasing healthcare at home need to be considered. There are an increasing number of pharmacy questions that are being raised, including issues of prescribing different drugs when the original prescription is not available.

Action – To add arising questions on outpatient pharmacies to the agenda. (CS)

3.11 Amenity beds

MB noted that the work has not been delivering what was hoped for and it is not appropriate to ask every NHS body about amenity beds so it will be addressed during normal HMRC visits. The committee agreed to take this off the agenda for the foreseeable future.

3.12 VAT on staff seconded between NHS bodies and local authorities

It was noted that this is following previous discussions and the VAT treatment follows what has been supplied. HMRC commented that delivering joined up healthcare presents new VAT challenges, which make it difficult to deliver. This issue has been raised at the Local Government VAT committee.

Action: DP to liaise with CIPFA's Local Government VAT committee

3.13 Milton Keynes tribunal decision

DO has been asked to set aside 22-24 June for a potential hearing date.

The committee agreed to revisit this at the September 2020 meeting.

4. VAT briefs

There were no briefs of relevance to discuss.

5. HMRC Consultations

There are currently no live consultations that will impact the NHS. The loan charge review should not have an impact to the NHS.

The IR35 extension to the private sector will commence in April 2020, again, this should not have any impact on NHS bodies. HMRC are working on a couple of minor tweaks to the detail, and NHS bodies will be informed of these in writing.

6. Brexit

It was noted that the European Union Withdrawal Bill has received royal ascent, which cements the United Kingdom exiting the EU on 31 January 2020 in law. Following this, there will be a period of transition – during this time the VAT regime will remain broadly the same and there no significant changes that the committee should be made aware of. Negotiations on trade deal will start next month with a view to agreeing the deal by the end of the year.

AR noted that several companies that have previously been registered in the European Union have now taken registration in the UK. This may reflect the process that firms are going through.

7. VAT sub-committee terms of reference

The committee agreed to the slight amendments to the Terms of Reference. These will now need to be approved by the Accounting and Standards committee and the Board of Trustees.

Action – To ensure the Terms of Reference are added to the agenda for the next Accounting and Standards and are sent to the Board of Trustees for approval. (CS)

8. Any other business

Nothing was raised.

9. Future meeting dates

The committee agreed to change the previously agreed dates of the 2020 meetings. All meetings will be held at 110 Rochester Row from 11am – 2pm:

- 14 May 2020
- 24 September 2020

The above dates are the new agreed 2020 meetings.

Action – To liaise with the venue to confirm the new 2020 meeting dates and all logistics accordingly (CS).

Action – To ensure all committee members are aware of the new meeting dates via invitations. (CS)

Actions

Minute reference	Audit train subject	Action	Who	Done?
2020Jan1		Contact members on the committee who have not attended the previous three meetings and check if they still want to remain a member of the committee.	CS/DP	
2020Jan3.7	COS 14	PJ to get in touch with TCOE to see where they are with their review of COS14. HMRC want to know: <ul style="list-style-type: none"> • How the guidance can be clearer/simpler? • What are the particular points that need to be clearer? • What are the areas that the guidance needs to address, including the issues that HMRC know about? 	PJ	
2020Jan3.7	COS 14	Committee members to identify examples where the current COS 14 guidance is not helpful and send them to the HFMA so the committee can send in a coordinated response.	All	
2020Jan3.7	COS 14	DP and CS to find the paper on telephony and circulate it to the committee.	DP and CS	
2020Jan 3.9	Public health services	To share the communication in relation to public health services from Ian Harris to HMRC colleagues within the committee.	CS	
2020Jan 3.10	GP federations	To add arising questions on outpatient pharmacies to the agenda.	CS	
2020Jan 3.12	Staff secondments between NHS and LG	DP to liaise with CIPFA's Local Government VAT committee	DP	
2020Jan 7		To ensure the Terms of Reference are added to the agenda for the next Accounting and Standards and are sent to the Board of Trustees for approval.	CS	

2020Jan 9		To liaise with the venue to confirm the new 2020 meeting dates and all logistics accordingly	CS	
2020Jan 9		To ensure all committee members are aware of the new meeting dates via invitations.	CS	

Attachment – in relation to item 3.7



GIG
CYMRU
NHS
WALES

Bwrdd Iechyd Prifysgol
Caerdydd a'r Fro
Cardiff and Vale
University Health Board

Ysbyty Athrofaol Cymru
University Hospital of Wales

Parc Y Mynydd Bychan,
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Eich cyf / Your ref:
Ein cyf / Our ref: LA/CED
Rhwydwaith Ffôn Iechyd Cymru/
Welsh Health Telephone Network:
Llinell uniongyrchol / Direct line: 02920 743933

6th December 2019

Dear Members of the HFMA VAT Technical Sub- Committee

I'm writing on behalf of my NHS Wales colleagues to raise our concern over recent letters issued to NHS bodies in Wales in respect of **Contracted Out Services Heading 14**.

As you aware, as a result of considerable debate between HMRC officers and NHS bodies your minutes of 25 January 2018 noted "COS 14 is a difficult heading which organisations have been struggling to interpret. With this in mind, HMRC requested that a small working party be set up to discuss the substantive issues relating to this heading, with a view to establishing some common principles and an understanding of the correct terminology which would aid consistent application". Following on from this meeting, HMRC officers started notifying bodies that they were temporarily suspending any further action on these issues until further notice and until such time the HFMA COS Heading 14 Working Party has concluded its review, representations have been submitted to Treasury and Treasury's responses have been received.

Over the last few months bodies have started to receive letters from HMRC which contain the following sentence:

"As part of a collaborative review between HMRC's compliance and advisory teams initiated in 2018 we have now reaffirmed the principles of the extant clarified June 2017 and pre June 2017 COS 14 guidance. Subsequently I am now in a position to review the suspended queries based on these principles and will contact you shortly on the specific suspended issues."

This clarification has not been shared with NHS bodies; so we are still unaware of what the guidance was intended to mean. Much more significantly we believe it is clearly not equitable to judge VAT recovery on principles that were not available to the recoverable bodies at the time of the reclaims.

We feel entitled to a legitimate concern about HMRC seemingly giving themselves the power to retrospectively clarify guidance & in so doing allowing them to raise retrospective assessments for "over" recovered VAT. Clearly there are significant potential legal issues in respect of their approach & inevitably it will lead to many bodies challenging them on

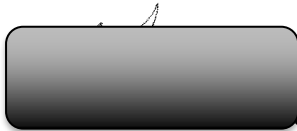
Bwrdd Iechyd Prifysgol Caerdydd a'r Fro yw enw gweithredol Bwrdd Iechyd Lleol Prifysgol Caerdydd a'r Fro
Cardiff and Vale University Health Board is the operational name of Cardiff and Vale University Local Health Board



this. This in turn will lead to significant costs for the NHS as a whole in respect of both VAT & Legal advice, which is an avoidable “leakage” from the Government finance envelope

I hope that the HFMA VAT Technical Sub-Committee will give due attention to the contents of this letter and particularly ask the members of HMRC on the Committee to reconsider this approach

Yours Sincerely



Deputy Finance Directors Group

HFMA VAT committee minutes 23 January 2020