

# ANNEX 1

## Health Service Circular 2002/011: The Supporting Document

### PROCEDURES FOR OPERATING THE ALERT LETTER SYSTEM FOR HEALTH PROFESSIONALS IN ENGLAND

#### Purpose

1. An alert letter is the way in which **all** NHS bodies are made aware of a doctor or other registered health professional whose performance or conduct could place patients or staff at serious risk. They cover situations where doctors or any other health professionals who pose a hazard to patients or staff may move from their present NHS employer to work elsewhere in a health or social care setting in any capacity, whether or not requiring registration, before their regulatory body has had the chance to consider interim suspension or other measures. Even where such measures are in place, alert letters are intended to reduce the risk of inappropriate employment in any capacity.
2. It is also a way in which **all** NHS bodies are made aware of a doctor or other health professional who may reasonably be considered to pose a serious potential or actual risk to patient care or staff safety because their performance or conduct seriously compromises the effective functions of a clinical team or local primary care services.
3. Alert letters are not intended to be issued in circumstances where an individual practitioner's performance or conduct is being considered by their NHS employer. For doctors, the policy is that the advice and support of the National Clinical Assessment Authority (NCAA) should be sought by employing bodies in cases where the performance or conduct of a hospital doctor or general practitioner is giving serious cause for concern. A doctor undergoing assessment by the NCAA must give a binding undertaking not to practise in the NHS or private sector other than in their main place of NHS employment until the assessment process is complete. An alert letter is intended to cover situations where a doctor moves on, or could move on before the assessment process is completed.

**NOTE: 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.**

4. When an employer considers that their employee\* or former employee\* who is a health professional could place patients or staff at serious risk, they should make a request to the Regional Director of Public Health (RDPH) for the issue of an alert letter. In the case of health professionals other than doctors, the RDPH will seek advice from senior professional colleagues with responsibility for that profession (eg for nurses, the Head of Nursing at the relevant Directorate of Health and Social Care (DHSC), or for midwives, the local Supervisor of Midwives).

\* **see paragraph 11, 43-45 for primary care practitioners**

5. However, it will be for the RDPH to decide whether the criteria for issuing an alert letter have been met.

6. In all cases where an alert letter is issued, referral must be made to the individual's regulatory body (e.g. the General Medical Council) as a matter of urgency by the initiating organisation. However, there might be very rare occasion when an alert letter may need to be issued as a matter of urgency but immediate referral may not be appropriate. This may be, for example, when investigations are ongoing to gather sufficient evidence to substantiate a referral to the regulatory body. In such cases, referral must be made at the earliest appropriate opportunity, or the alert letter withdrawn immediately it becomes clear that referral is not warranted. Consideration should also be given to the power of some regulatory bodies to place interim suspension or conditions on an individual's registration in circumstances when urgent action is required. The NCAA should also be notified in the case of doctors and hospital and community dentists.
7. In summary, the alert letter is a measure to reduce the risk of an unsafe or poorly performing health professional practising until the appropriate regulatory body has had the chance to consider what action is appropriate. In the case of doctors, an alert letter is intended to cover situations where the individual moves on without the NCAA assessment process being completed. It can also reduce the risk of individuals being inappropriately employed in posts not requiring registration, whether or not the regulatory body has taken action. There may be exceptional cases where the RDPH may decide that the individual remains a potential danger to patients and/or staff and therefore considers that the alert letter should remain in force. In this type of case, the RDPH may wish to consider consulting the Department's Solicitors branch.

## **Background**

8. The alert letter helps to manage risk and is part of the wider NHS quality strategy for the protection of patients and staff. Clinical governance provides NHS organisations and health professionals with a coherent framework that links together the key elements for local services. These include policies aimed at managing risk such as that posed by individual practitioners working in the NHS.
9. All health sector employers (including temporary staffing agencies, NHS Professionals and private healthcare providers) have a legitimate interest in being informed that a prospective employee is regarded as a serious potential or actual risk to patients or staff by a NHS organisation. This system aims to ensure that prospective employers are notified of such individuals.
10. Alert letters are usually issued after an employee has ceased to be employed by an organisation, to ensure that information about an individual who is believed to pose a serious potential or actual risk to patients or staff is disseminated to the wider health care sector. However, they can also be issued prior to completion of internal sickness or disciplinary procedures, or while investigations of alleged offences or other matters are being undertaken by the police, the regulatory body or the employer.
11. Alert letters can also be issued in respect of individuals who are not employees, such as general practitioners providing GMS or PMS, general dental practitioners, opticians, pharmacists, and honorary contract holders. In

the case of student health professionals, consideration should be given to notifying the relevant education institution and regulatory body.

12. Alert letters are purely factual and ensure that prospective employers are put in contact with previous employers and NHS organisations whose names might not be included on application forms. They can be issued in cases where an individual has left a job and a disciplinary issue has not been resolved. After issuing an alert letter in these circumstances, employers are expected to complete all investigations, consider the evidence and reach a judgement as to whether or not the concerns are valid.

### **Available Advice**

13. The Regional Directors of Public Health (RDsPH) will be available to provide informal, confidential advice and support to organisations dealing with matters of this nature.
14. The regulatory bodies are in an excellent position to offer advice on the referral of a case for consideration by them. We strongly encourage employers to take advantage of the assistance that the regulatory bodies can and are willing to offer.
15. The NCAA ([www.ncaa.nhs.uk](http://www.ncaa.nhs.uk)) will also be able to give support and advice on problems of poor performance of doctors and should be consulted.

### **The Process for Deciding to Issue an Alert Letter**

#### **(a) The Role of the Employing/Contracting Organisation**

16. An individual is considered to pose a serious potential or actual risk to the safety of patients, clients and carers and/or staff and it is considered that they may be working or likely to seek permanent or temporary employment elsewhere in a health or social care setting.
17. Internal consultation takes place within the organisation at a senior (Director) level, involving only those with a need to know. Once the decision is made that the issue of an alert letter should be considered, the case is referred to the RDPH with a request for the issue of an alert letter, giving the name of the individual and details of the case. In the case of NHS employers, the request will be made at Director level.
18. Only RDsPH may issue alert letters. This is to reduce the number of people that can issue alert letters in order to ensure consistency of approach throughout the country.
19. Primary Care Trusts will ask the RDPH to consider issuing an alert letter in the case of primary care practitioners (ie, general medical practitioners providing GMS or performing PMS, general dental practitioners, opticians and pharmacists) and any of those practitioners' employees. The request should be made by a Director of the Primary Care Trust.

20. Health Authorities will ask the RDPH to consider issuing an alert letter in the case of any of their employees. The request should be made by a Director of the (Strategic) Health Authority.
21. NHS Trusts will ask the RDPH to consider issuing an alert letter in the case of any of their employees. The request should be made by a Director of the NHS Trust.
22. There may be instances when another government department or private sector employer feels there is a need to issue an alert letter in respect of an individual involved in healthcare that they employ or have previously employed. In such circumstances they should contact the RDPH to discuss the details so that he/she can decide whether to issue an alert letter. In the case of other government departments the appropriate medical officer or human resources director should make the request. In the case of a private sector organisation, the request should be made at Director level.
23. There may also be circumstances where a Postgraduate Dean feels there is a need for an alert letter to be issued in respect of a doctor in training. In such circumstances they should contact the RDPH to discuss the details so that the RDPH can decide whether to issue an alert letter. The Postgraduate Dean also has a responsibility to keep any organisation which is involved in the doctor's training informed during this process.
24. Employers may wish to seek legal advice from their own lawyers in certain cases, especially those where there is any doubt.
25. All organisations must ensure that they comply with the Data Protection Act 1998. Guidance on this has been issued to the NHS in HSC 2000/009 – Data Protection Act 1998 – protection and use of patient information.

#### **(b) The Role of the RDPH**

26. The RDPH considers the representations from the organisation and decides whether or not to issue an alert letter after consultation with senior professional colleagues with responsibility for that profession (eg for nurses, the Head of Nursing in the relevant DHSC or for midwives, the local Supervisor of Midwives).
27. The RDPH advises the requesting organisation whether or not the alert letter will be issued and the reasons for this. If an alert letter is issued the requesting organisation must also refer the case to the regulatory body as a matter of urgency. It is recognised that there may be exceptional circumstances when immediate referral might not be appropriate, for example when investigations are ongoing to gather sufficient evidence to substantiate a referral to the regulatory body. In such cases referral must be made at the earliest appropriate opportunity or the alert letter withdrawn immediately it becomes clear that referral is not warranted.
28. The alert letter will be issued by the RDPH to all NHS bodies in the region. It will ask them to contact a named officer at the originating organisation for a reference if the subject of the alert letter contacts them with a view to obtaining employment and in addition will ask Health Authorities to distribute the letter to independent health care providers in their locality. The RDPH will

also send the alert letter to other RDsPH, national independent health care providers and those organisations set out in paragraphs 43-45. A model alert letter is detailed in the Annex 2. Alert letters are strictly confidential and should only be shared in an NHS body on a 'need to know' basis.

29. Once an alert letter is issued the individual concerned should be notified by the initiating organisation within 7 days (in writing to their last known home address and, where appropriate, their registered address) that the RDPH has issued an alert letter. They should be given a summary of the reasons for this action and given 21 days from the date of notification in which, if they wish to challenge the decision, to send representations in writing to the initiating organisation, who will then pass them unaltered to the RDPH for consideration.
30. Following receipt of any representations, if the RDPH decides that that the individual does not in fact pose a serious potential or actual risk to patients or staff, then the alert letter must be formally cancelled. The RDPHs decision to cancel or not must be notified to the initiating organisation within 7 working days of receipt of the representations by the RDPH. The individual must be notified of the RDPHs decision by the initiating organisation.

**NOTE: 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.**

### **Monitoring the situation and withdrawal of alert letters**

31. So far as is reasonably practicable, the organisation that triggers the alert letter system must ensure that it monitors the progress of any proceedings by the police, regulatory body, NCAA or Occupational Health Service and of any disciplinary proceedings, so that, should the individual be shown not to pose a risk to patients or staff, the RDPH can be notified and can consider if the alert letter should be withdrawn. Where practicable, the initiating organisation will also wish to keep track of any civil case (eg, where a patient sues a practitioner through the courts). While such a process is underway, the initiating organisation should keep the RDPH informed on a monthly basis. Once the process is completed and a decision reached, there should be no need to continue to monitor or review the existence of the alert letter. The RDPH will need to satisfy him/herself on an annual basis that existing alert letters are still relevant.
32. As part of the monitoring process, the RDPH (where appropriate as a result of representations from the initiating organisation) must ensure that the alert letter is rescinded should the concern for the safety of patients and/or staff be removed. Each case must be considered on its merits and alert letters should not remain in force any longer than necessary in terms of protecting patients or staff. The individual concerned must also be advised by the initiating organisation when the letter has been withdrawn. It must be made clear on the face of the informing letter that the decision was made by the RDPH.
33. The RDPH should maintain and keep up to date a list of all alert letters he or she has issued and where applicable the date on which they were rescinded.

34. The RDPH should retain all details relating to the alert letter for five years after it has been rescinded. The existence of a rescinded letter would form an important piece of evidence should the same individual again be considered to pose a serious potential or actual risk to patients or staff at a later date.
35. There may be occasions where an NHS employer wishes to appoint an individual who is the subject of an alert letter (after making contact with the named contact on the alert letter) or a Primary Care Trust wishes to employ or include the individual on the Medical or Supplementary list. If an NHS employer proposes to employ or include on its list an individual who is subject to an alert letter, careful thought must be given to appropriate safeguards. Any decision, one way or the other, by the prospective employer must be justified, and if in doubt, legal advice should be sought from the prospective employer's solicitors. Where the RDsPH are made aware of such a decision or proposed decision, they should consider consulting the Department's Solicitors.

### **Statutory Regulatory Bodies**

36. Where an alert letter is issued, the case must be referred to the regulatory body as a matter of urgency, unless there are exceptional circumstances (see paragraph 19).
37. If the regulatory body concludes its consideration of the case in terms that allow the individual to continue in practice, either with or without conditions, the RDPH and initiating organisation should review the need to continue the alert letter. It does not automatically follow that the alert letter should be withdrawn – there may be other reasons for continuing it. If it is decided to continue with the alert letter, both the RDPH and the initiating organisation must be prepared and able to defend this decision against legal challenge.
38. Healthcare employers will automatically receive alert letters. Prospective employers contacting the regulatory body regarding the registration of an individual will also be informed if an individual is being considered formally under their fitness to practise procedures in accordance with the appropriate rules governing disclosure. This two pronged approach will deliver additional protection for patients and staff.

### **Circulation of Alert Letters**

39. The **initiating** RDPH must send alert letters to the Chief Executives of all NHS bodies, independent and other healthcare employers within the region and other RDsPH.
40. The **initiating** RDPH must also send alert letters to national private healthcare providers, temporary staffing agencies, NHS Professionals, other Government employers, the Scottish Executive, the National Assembly for Wales and the Department of Health, Social Services and Public Safety in Northern Ireland. In addition, copies should be sent to the relevant regulatory body or bodies so that they are aware that a referral is going to be made. (The Department has compiled a list of non-NHS addresses to which alert letters must be sent and this has been issued separately to RDsPH).

41. As soon as possible, the other RDsPH should copy the alert letter to NHS Trusts, and Health Authorities who in turn should copy it to independent and other healthcare employers in their localities.
42. The same procedure and circulation list must be used when an alert letter is rescinded.

### **Management of Alert Letters in Primary Care Settings**

43. It is expected that primary care practitioners (doctors in GMS (part II) and PMS (part I), dentists, pharmacists and opticians) will contact the Primary Care Trust if they have a member of staff or a colleague who is a health professional, whom they consider poses a serious potential or actual risk to the safety of patients or staff, and who is believed likely to be working or seeking work elsewhere in a health or social care setting. The Primary Care Trust will deal with this appropriately and, if the situation merits, will contact the RDPH to issue an alert letter.
44. It is considered disproportionate to the number of relevant cases to circulate all alert letters to every individual primary care practitioner. Therefore it will be necessary for Primary Care Trusts to maintain a list of current and rescinded alert letters issued so that Primary Care practitioners can access them when considering making a new appointment.
45. When considering making a new appointment, primary care practitioners are strongly recommended to contact the Primary Care Trust to confirm whether or not the applicant is the subject of an alert letter.

### Standard Words for an Alert Letter

1. Always mark the letter “MANAGEMENT IN STRICT CONFIDENCE”
2. The letter should:
  - Be addressed to the Chief Executive of the organisation;
  - Contain the subject’s full name, their national insurance number and/or date of birth if known, and the name of the organisation where they work or formerly worked (normally the organisation which triggered the alert system) in the reference of the letter;
  - In cases relating to individuals registered by a statutory regulatory body, the registration number should also be included.
  - Explain in the letter in what capacity the subject formerly worked and in what speciality and in what other capacity they can work;
  - State clearly the name, address and telephone number of the person to be contacted should the subject submit an application for employment.
3. **No** further information about the individual or the case may be supplied in the alert letter.