



HFMA VAT Technical Sub-Committee

Minutes

Thursday 24 January 2019, 11:00 – 14:00
110 Rochester Row, Victoria, London, SW1P 1JP

Attendees

Anthony Robson	Gateshead Health NHS Foundation Trust (Chair)	
Senaka Attygalle	HMRC	Dial in
Mike Barlow	HMRC	
Martin Ginnelly	NHS Shared Business Services	
Stuart Grant	HMRC	Dial in
Michael John	London Ambulance Service NHS Trust	
Paul Jones	Department of Health and Social Care	
Gareth Lewis	Aneurin Bevan University Health Board	
Richard Lodge	Founder member	
David Ogilvie	HMRC	
Anne-Marie O'Reilly	HMRC	
Rachel Owen	NHS England	
Debbie Paterson	Policy and technical manager, HFMA	
Amanda Randall	Newcastle Upon Tyne Hospitals NHS Foundation Trust	
Steve Rourke	Gateshead Health NHS Foundation Trust	Dial in
Michael Sheils	NHS Greater Glasgow and Clyde	
Phil Simmons	Deloitte	
David Smith	HMRC	
Shelley St John	Guy's and St Thomas' NHS Foundation Trust	
Sally Wilson	Plymouth Hospitals NHS Trust	Dial in

Business

1. Welcome and apologies

The meeting opened with a welcome to Rochester Row for the first meeting under the management of the HFMA.

Martin Ginnelly and Debbie Paterson were welcomed to their first meeting.

Apologies were received from Michael Creaton, Michele Rapier, Gita Raja, Emma Legg and Emma Knowles.

The committee formally thanked Mark Jenkins, and CIPFA, for their input to the committee and wish Mark the best of luck with his new role.

The application from Di Roberts to join the committee was approved.

Action: HFMA to add Di Roberts to the membership of the committee

For discussion and approval

2. Minutes of the last meeting

The minutes of the meeting on 27 September 2018 were approved

3. Terms of reference (attachment 2)

The changes in the terms of reference to reflect the new arrangements were agreed.

The committee discussed the proposal to start an on-line advisory panel:

- It is not clear who is advising who – whether the panel would be providing advice or seeking it
- There is a concern that the committee would be inundated with NHS body specific queries which they would not be able to discuss without understanding the detail of the query
- There was also a concern that the panel would be used as a way of trying to get or change a HMRC opinion ‘through the back door’
- It was agreed that the wider NHS should be able to identify issues for the committee to discuss but these should be strategic issues which would impact more than a single NHS body
- It was confirmed that the minutes of the meetings are already made public – on TISonline and on the HFMA website
- Rather than set up an advisory panel it was suggested that the committee needs to formalise that the committee is accessible from anyone with NHS VAT questions. However, the committee cannot look at individual cases, it will pick up wider, strategic issues only which is why it was established – to discuss issues of impact to the wider NHS rather than one particular NHS body
- It was also agreed that the template for submitting issues to the committee would be rebranded and put on the website so anyone can submit issues. It would then be for the secretariat to decide whether they are to go to the committee for discussion.

Action: Anthony Robson and Debbie Paterson to put something together on the basis of that discussion

Action: HFMA to add the query form onto their website, once it has been updated and rebranded

4. Matters arising from meeting held on 27 September 2018 (attachment 3)

4.1 NHS healthcare income via commercial entities

Paul Jones reported that nothing has changed. The issue should stay as a standing item on the agenda but there is unlikely to be any change.

There is little known activity around subsidiaries at the moment. NHSI have changed their guidance on transaction reporting to include subsidiaries. From a parliamentary perspective there have been no recent developments / questions raised in this area. DHSC receives occasional FOI requests from journalists but these have tailed off in the past few months.

4.2 Agency staff

The guidance is still awaiting approval so has not been updated. David Smith will let the committee know when anything changes but cannot say when that might be.

4.3 COS Heading 33 Library services

This has not moved on as Paul Jones has yet to be sent any real examples.

Gareth Lewis reported that one of his colleagues has been told they cannot recover VAT on subscriptions to the British Library as it is not a purely online library. Paul and Gareth to pick it up.

Steve Rourke said that the challenge is around subscriptions and the purpose of the subscription. A subscription to a magazine – the main purpose is to access the current information. This is different to a subscription to online library where main purpose is to access historic data which would have previously been accessed by visiting a library.

HMRC need a comprehensive brief with real examples in order to take this forward.

Action: Gareth Lewis to send his example to Paul Jones

Action: Steve Rourke and Paul Jones to have a discussion

Action: Martin Ginnelly to see if SBS have any wider examples or circumstances to feed in

4.4 VAT impact of commissioning support unit ('CSU') spin out of NHS England control

Mike Barlow has had a meeting with NHSE's head of commissioning to discuss the direction of travel. A range of work previously provided by CSUs is now provided by commercial organisations (outside of the NHS VAT registration).

HMRC are now waiting for NHSE to get back to them so they can consider how this works in relation to single supply.

Rachel Owen has met with the CSU team in order to get more information from the 30(ish) CCGs affected – who are mainly in Yorkshire, Lincolnshire and Kent

There is a new Lead Provider Framework (LPF) coming up which is bigger than the transfer of services from CSUs so all parties want to resolve this issue before the wider framework rolls out. This will have quite a big impact; it reflects the fact that the ways of doing business in the NHS are changing. The issue should be kept on the agenda but the title of the agenda item needs to be changed to VAT impact on introduction of LPF

Action: HFMA to change the title to VAT impact on introduction of LPF on the audit trail and future agendas

4.5 P22 Framework, in particular the impact on COS Heading 35: VAT recovery associated with NHS Capital Investment Projects

A working group has been set up as agreed at the last VAT subcommittee meeting. A note of the meeting from HMRC is included in the papers for this meeting (attachment 4).

Other parties fed into the working group:

- The DHSC Procure 22 (P22) team, advised by BDO. Their concern is around the logistics – how do you get the VAT funding back? If the current arrangements changed then this could slow the whole process down and P22 is supposed to speed things up.
- The NHSI capital team. Their concerns are around how to get the funding to the right area. If funding was provided to cover irrecoverable VAT, their concern is that it would not get to the capital programme. Not straightforward to simply change the funding as capital funding is complex.

The working group's concerns are not around the principals but about the logistics, particularly around the funding so that any changes would be cost neutral for NHS bodies. The committee had a wide-ranging discussion about the issue but **it was agreed that it is clear that, in the interim, the current guidance remains extant and no decision has been made. The principals are agreed but the practicalities are an issue.**

The committee's concern was the resource impact of any change in approach – any changes may result in lots of work at a trust level and/ or changes in behaviour.

HMRC have taken the working group and the committee's concerns around funding and practicalities on board but are still looking at how P21, P22, design for life and framework Scotland sit within the legislative framework. HMRC are currently taking advice to understand this. They will have to take the advice into account when coming up with the new arrangements.

Committee members queried why, historically, if the easements have been accepted is there is a query about the legislation. If they don't currently meet the requirements of VAT law, then how do you get to a process which does fit in with VAT law. Practicalities would have to feed into what any new process would look like.

HMRC reiterated that no decisions have been made and they do recognise the resource impact of changing the current arrangement. They have fed through to Treasury the importance of having a VAT neutral/ cost neutral outcome to this. There is some work to be done to determine whether these arrangements are a single supply or multiple supplies. A discussion around the history of design and build ensued and the issues which had arisen over time. The banding system was introduced by HMRC to make the VAT recovery process less onerous and to avoid the administrative burden of time consuming reviews.

No one wants to create an industry out of VAT recovery or encourage perverse incentives which affect behaviour.

It was suggested that part of the review of legislation should also consider the historic reasons for the establishment of the COS rules and why VAT recovery was originally allowed. It is understood that the arrangements for P21 were predicated on the fact that even though there was a single supplier, the contract would be structured to be on a multiple supply basis and perhaps this is not the way that contracts are currently structured – the history and agreed practicalities may have been lost. Has the advent of time and changing working arrangements meant that it no longer works in the same way that P21 was expected to work – that legally and contractually the arrangements have changed so they no longer fit into the legal framework?

HMRC also looked at the appropriateness of the £5,000 threshold as that has been a rule for some time. There is no intention to change it but they are considering whether it remains appropriate. They are trying to get to a place where the arrangements meet legislative and Treasury requirements but is fully implementable by the NHS. Hence the engagement with the practice.

There was some discussion about the role of Treasury. Their role is to look at public expenditure at a wider level, not just VAT. The Committee felt it would be useful to understand what the Treasury's position is – what do they want the outcome to be? – accepting that the Treasury would be unable to comment at this stage.

HMRC will go to policy if there has been or is a change in the way that the NHS operates.

All of these factors feed into this work. Once HMRC have got their advice they will come back to the committee to move this forward to get a workable solution.

Action: Paul Jones will go back to see if he can understand the history of P21

There are two questions here – P22 and COS 45 – these are two separate questions but they are inextricably linked.

It was noted that claims under COS 45 are rising so there is no evidence that this is not how people are procuring anymore. HMRC have some engagement with NHSI about what procurement will look like after PFI.

The next steps are that once HMRC have the answer to the legal question there will be a further working group meeting but no timeline for this to happen.

4.6 COS Heading 14 – Computer services supplied to the specification of the recipient

There is no change – this is with Treasury, HMRC hope that there will be a decision soon.

This is also being looked at in parallel by the Tax Centre of Excellence (TCoE) – they have come up with a simpler heading which might work. Treasury will look at it and if they are happy it will be implemented soon.

4.7 Making Tax Digital

Deadline extended to October. A letter should have gone to all GIANT users to confirm deferment to 1 October – everyone should have had the letter except subsidiary bodies, limited liability partnerships who remain on the 1 April deadline.

SBS and other service providers are waiting for the VAT21 confirmation from HMRC. Once this is received, they will be able to develop the appropriate API, should this be a requirement from 1 October 2019.

Keep it on the agenda as a live issue.

There was a question around whether there is a plan for any further public sector pilot. Mike Barlow has a meeting on Monday so he will ask then.

It was reiterated that subsidiary companies of NHS bodies will be expected to go live on the 1st April 2019 and will not be subject to the extension provided to other s41 bodies.

There was also a question asked about the soft-landing period for deferred bodies. HMRC confirmed on 18 January that it would be for a year – see <https://www.gov.uk/government/publications/vat-notice-70022-making-tax-digital-for-vat/vat-notice-70022-making-tax-digital-for-vat>.

4.8 Legal fees

A query has been submitted but still waiting for a response – there is a meeting next week after which David Ogilvie will update the Committee.

Action: David Ogilvie to update the committee in respect of the legal fee query

4.9 NHS adjusting for bad debt relief

It was proposed that this would come off of the agenda. However, one of the members in the Welsh group has come to the NHS from a Local Authority. S33 bodies (local authorities) are given relief, does that same relief apply to s41 (NHS) bodies? The NHS and local authority VAT regimes are different so there may be a disparity.

Action: Gareth Lewis to liaise with Mike Barlow direct

4.10 Public health services

The committee's letter has been submitted to HMRC and is being considered.

4.11 VAT liability on transactions between CCGs and GP Confederations (attachment 5)

This was submitted to the HMRC by an HFMA member. Mike Barlow has looked at the query but needs to see the contractual arrangements to understand it fully.

Action: HFMA to forward the additional information to Mike Barlow

Rachel Owen said that this issue has also been raised through NHSE. It is a much wider issue than this specific query and links to the current primary care strategy so Rachel will pick it up to look at it on a wider basis. Leeds CCG have been pushing it (hence the query) but others have the same problem.

Rachel Owen is trying to link up with the relevant policy people to ensure that they are picking up the VAT issues as the primary care strategy is being developed. Primary care networks sometimes get added into this issue as well.

Understanding where the policy is intended to get to is necessary to understand the VAT implications and whether changes need to be made. This means clearly setting out what is being supplied – staff, service? The key question is who is doing what for who? Where are the layers and the contracts?

The whole model of primary care delivery is changing so this may be a scenario where the VAT rules aren't keeping pace with the service model. There have clearly been issues in the past where VAT hasn't been considered until after the event – so learning from that, the VAT is being considered here.

It was agreed that the committee can't respond to this specific query as it is too entity/contract specific. The CCG need to take the specific issue forward with HMRC. However, the general issue needs to stay on the committee's agenda to understand the wider VAT implications of the change in policy.

Action: HFMA to add to the audit list and the agenda going forward

4.12 Construction industry scheme

This issue was raised as a result of queries. The construction industry scheme (CIS) legislation was established a while ago so the impact has passed people by as time has elapsed. Therefore, a refresher is needed on the relationship between NHS bodies and the CIS – that it is advantageous and adds in a layer of security within various legislation.

Action: Anthony Robson to put out an update

5. VAT briefs

There were no VAT briefs to update the committee on.

6. HMRC Consultations

There are no consultations which look to have the potential to impact the NHS.

7. Brexit

The policy aim is that VAT will look the same during a transitional period. However, the current Parliamentary discussions mean that it is hard to say what the position will be and it is not clear what things would look like if there is no transitional period.

To note

8. Any other business

8.1 Implications of NHS Supply Chain leaving the English VAT divisional registration

All NHS bodies should have been informed that NHS Supply Chain are under a different regime from 1 April 2019 which will mean their invoices will come out with VAT on them and normal VAT arrangements will now apply.

This should be a practical issue which will affect those processing invoices and preparing VAT returns but there should be no cost implication.

NHS Supply Chain have a VAT person – Paul Jones will see if he can pass on their details to committee members.

Action: Paul Jones to contact the NHS Supply Chain VAT person

8.2 Facilities management

Paul Jones has been contacted by NHSI (paper circulated prior to the meeting). This is a regional issue if not national and needs some investigation.

The affected trusts have a single facilities management (FM) contract with a single supplier – all of the services would be VAT recoverable (under different COS headings) if they were provided under separate contracts but they have been told that as there isn't a heading for FM, the VAT is not recoverable.

There was some TCoE guidance that it would normally all be recoverable under COS 21.

Anyone else having similar issues? Any thoughts? It would be helpful to understand whether this is how the NHS is now doing business.

This goes back to the single supply issues and LPF. It is part of the wider question of whether this is the way that NHS is moving. Mike Barlow will look at the TCoE paper and how the direction looks at FM services. Heading 21 is about estate management services and gives examples of what can be included but some contract cuts across a range of COS headings.

Where NHS bodies have claimed under the wrong COS heading then it is a question of getting it right going forward. Where there is a multiple supply then it is a different issue. It is unlikely that Treasury will enter into a debate on single/multiple supply.

It could be that the issue is how FM is defined. But it may be that the nub of the problem is that FM contractors want to supply a wide range of services under a single contract which means recovery is not possible as the contracted supplies are consolidated.

Action: Mike Barlow to look at the TCoE paper and how the direction looks at FM services

8.3 VAT update on amenity beds – HMRC update

Paul Jones said that he has had an email saying that HMRC are looking at amenity beds (private patients in NHS hospital) and have done some work around it. There has been a challenge from advisors which HMRC are dealing with, but guidance will be coming out to all trusts once they have resolved the issue.

Action: keep on the agenda until the information is issued

9. Future meeting dates

All meetings will be held at 110 Rochester Row from 11am – 2pm:

- 23 May 2019
- 26 September 2019
- 23 January 2020

Action: HFMA to book room and send out invite for the January 2020 meeting

Actions

1	HFMA to add Di Roberts to the membership of the committee	EL
3	Anthony Robson and Debbie Paterson to put something together on the basis of that discussion	AR/DP
3	HFMA to add the query form onto their website, once it has been updated and rebranded	EL (HFMA)
4.3	Gareth Lewis to send his example to Paul Jones	GL/PJ
4.3	Steve Rourke and Paul Jones to have a discussion.	SR/PJ
4.3	Martin Ginnelly to see if SBS have any wider examples or circumstances to feed in	MG
4.4	HFMA to change to title to VAT impact on introduction of LPF on the audit trail and future agendas	EL (HFMA)
4.5	Paul Jones will go back to see if he can understand the history of P21	PJ
4.8	David Ogilvie to update the committee in respect of the legal fee query	DO
4.9	Gareth Lewis to liaise with Mike Barlow direct	GL/MB
4.11	HFMA to forward the additional information to Mike Barlow	EL (HFMA)
4.11	HFMA to add to the audit list and the agenda going forward	EL (HFMA)
4.12	Anthony Robson to put out an update	AR
8.1	Paul Jones to contact the NHS Supply Chain VAT person	PJ
8.2	Mike Barlow to look at the TCoE paper and how the direction looks at FM services	MB
8.3	Keep on the agenda until the information is issued	EL (HFMA)
9	HFMA to book room and send out invitations for the January 2020 meeting	EL (HFMA)