



# HFMA VAT Technical Sub-Committee

## Minutes

Thursday 2 February 2023, 11.00 – 16.00

Microsoft Teams Meeting

### Members Present

Anthony Robson, Gateshead Health NHS Foundation Trust (AR)  
Katy Battley, Sheffield Teaching Hospitals NHS Foundation Trust (KB)  
Lucy Baxter, NHS Kent and Medway (LB)  
Emma Bruce, NHS Shared Business Services (EB)  
Mike Clements, Royal Berkshire NHS Foundation Trust (MC)  
Neil Helliwell, Rochdale Borough Council / CIPFA representative (NH)  
Paul Jones, Ministry of Justice, Tax Centre of Excellence (PJ)  
Gareth Lewis, Aneurin Bevan University Health Board (GL)  
Terenia MacRory, Yorkshire Ambulance Service NHS Trust (TM)  
Rachel Owen, NHS England (RO)  
Sarah Radford, NHS Shared Business Services (SR)  
Gita Raja, University College London Hospitals NHS Foundations Trust (GR)  
Amanda Randall, Newcastle Upon Tyne Hospitals NHS Foundation Trust (ARa)  
Di Roberts, Humber Teaching NHS Foundation Trust (DR)  
Anne-Marie Simpson, NHS Shared Business Services (AS)  
Jane Wharton, Wirral University Teaching Hospital NHS Foundation Trust (JW)  
Nichola Young, Gateshead Health NHS Foundation Trust  
Rosum Milen (attending for Solomon Zekarais), Guy's and St Thomas' NHS Foundation Trust (SZ)

### VAT Profession

Phillip Simmons, Deloitte LLP (PS)

### HMRC

Deanna Matthews, HMRC (DM)  
David Smith, HMRC (DS)  
Helen Stretch, HMRC (HS)  
David Webb, HMRC (DW)  
Mark Whittington, HMRC (MW)

### HFMA/Guests

Pauline Chidlow, HMRC (PC)

Alex Hawkes, HM Treasury (AH)  
Sam Jones, NHS West Yorkshire ICB (SJ)  
Gary Mincher, HFMA (GM)  
Alexander O’Riordan, HM Treasury (AO)  
Debbie Paterson, HFMA (DP)  
Robin Williamson HMRC (RW)  
Clare Davenport HMRC (CD)

## Business

### 1 Welcome and apologies

#### 1.1 Apologies

Apologies were received from Michael Bull, Michael John, Michael Sheils, and Desiree Robitaille (DRi).

#### 1.2 Membership updates

Terenia MacRory has moved to Yorkshire Ambulance Service NHS Trust and Sam Jones is attending as an interim representative from NHS West Yorkshire Integrated Care Board.

Michael Bull is retired and can be removed from the membership.

Anthony Robson is retiring so the VAT sub-committee need to find a replacement for the chair.

**Action: committee members to consider whether they would like to stand for chair**

## For discussion and approval

### 2 Minutes of the last meeting

The committee accepted the minutes of the meeting held on 8 September 2022.

### 3. Matters arising from previous meetings (audit trail)

#### 3.1 Section 41 review

HM Treasury/ HMRC provided an update. They presented at the HFMA pre-accounts planning conference on 26 January regarding a data request sent to government departments just before Christmas. They were grateful for this committee’s input on the data request which was taken on board.

The data request went to all s41 bodies except for those in the NHS in England. For the NHS, they have commissioned the Department of Health and Social Care (DHSC) to provide a return to HM Treasury so the data request will go out via NHS England (NHSE) and the DHSC. The deadline is 28 April.

AH reiterated that the return asked for historic data for two years and forecast for 2023/24 and 2024/25 to explore fiscal neutrality and to help with the budget adjustment process to ensure that net funding remains the same.

GL noted that NHS bodies in Wales had not seen the data request. AH advised that it will be coming via the Welsh Government, but he will pick up on where the Welsh Government is on that. GL also said that the deadline of 28 April might be difficult for NHS bodies in Wales as that is the deadline for the accounts and the same people prepare the accounts and the VAT returns.

PJ and RO – had a constructive meeting with Leeds Teaching Hospitals NHS Trust to discuss the best way to complete the return and ensure that everyone is working to the same basis. They

discussed the reports that were available to see whether it is possible to download reports of all invoices and what the VAT treatment was. Leeds could do that but the report had 800,000 lines. However, with some formatting and pivoting, the ledger system would produce the sensible numbers for the historical data.

PJ and RO also stated that the deadline is a concern – 31 March would be more ‘do-able’ than 28 April as the later date coincides with accounts submission. After that it is unlikely to be completed until July. A July return would however include finalised numbers for 2022/23.

RO stated that SBS can produce a report for people who use them so that includes all of the commissioners as well as some providers. Other shared service providers, ELFs and NE Patches can also produce reports for their customers.

RO indicated that the forecasting element of the return is an issue as it is really difficult. There is some work being done on whether that NHS providers could use the TAC forms used for planning submissions as the basis for the forecasts but that has not been worked through yet.

AH said HMT are thinking about the deadline and do take on the points that everyone has made on this.

The timescale for the s41 reform was queried. AH said this was ultimately a decision for ministers –it would have to happen on or around a spending review so 2024/25 is the earliest it would be.

**Action: AH to review the deadline for the section 41 data request for NHS bodies and report back to the committee.**

### **3.2 Partial exemption – proposed statement of practice**

The draft statement of practice was circulated ahead of the meeting. It was noted that it is not replacing legislation and guidance but is there to support NHS bodies. It is HMRC’s intention that the correct process will be applicable from 1 April 2023. AR welcomed the draft statement and the need to have standardisation - lots of people have ‘unusual’ ways of doing this. The more standard the process can be, the better. There was general agreement.

DP said that HFMA will help with communications.

It is HMRC’s preference for the guidance to form part of the NHS guidance on their website, but they are currently looking into whether it is possible.

**Action: GM/DP to share *Partial exemption – statement of practice* via HFMA channels.**

**Action: PJ to share *Partial exemption – statement of practice* on TCOE website.**

### **3.3 Making tax digital**

A letter went out on 28 September advising that making tax digital for GIANT customers will be deferred to April 2024. That date will be kept under review with the s41 review – if there is need for further deferral this will be discussed with ministers when required.

### **3.4 COS heading 65**

HMRC has been working on the heading and have issued some clarification which is available on the website. Courses without an in-person element can still be training courses as long as they are interactive.

AR stated it improved clarity and was helpful.

### **3.5 Free car parking**

It had previously been discussed that the DHSC sent out comms stating that free car parking should be limited to specified groups after March 2022. A lot of NHS bodies did not make this change until later in the year (October 2022).

HMRC's guidance specified free car parking was acceptable until 'the end of the pandemic'. HFMA members had queried when the official end date of the pandemic was and the implication for HMRC guidance.

Official DHSC guidance was that the Covid-19 relaxation of parking charges should end on 1 April 2022, but some trusts did not follow that for local reasons. There may have been other guidance from local systems. However, there was no other official guidance from NHS England or the DHSC. The HMRC guidance therefore needs to refer to 1 April 2022 – HS will update the guidance on official pdf to be shared with members.

**Action: HS will update the guidance on free car parking, on official pdf to be shared with members.**

### **3.6 Public health services and the impact of ICBs being established as statutory bodies**

RO reported that there are no issues in particular. Some of the work in item 3.7 links into this.

The decision was taken to leave this item on the agenda for the time being – as ICBs are new bodies, with the possibility of their own emerging issues. These issues can be discussed as separate, specific agenda items (such as 3.7 and 3.10).

### **3.7 VAT barriers to closer working arrangements between LA's and the NHS**

NHS cannot fully delegate its funding to the LA and cannot always fully recover VAT. CIPFA's local authority VAT committee are putting a paper to their March meeting with one specific example. Items for consideration include where the LA is the lead for developing a care provision that will be used for both LA and NHS clients, is the LA able to fully recover the VAT or are they looking at partial recovery?

A draft briefing on secondments was discussed. NH talked through the process for assessing the VAT status of a local authority secondment set out in HMRC's guidance, *Other local authority activities: supplies of staff (VATGPB8860)*<sup>1</sup>. This guidance was re-written by HMRC last autumn in relation to a specific issue. MW has explained previously at CIPFA that the guidance page is currently being reviewed. However, it was also acknowledged that much of the uncertainty stems from employment law issues rather than the VAT treatment itself. MW stated that the VAT guidance page would not be able to comment on employment law questions. Two grey areas relate to profit / no material benefit as well as what a tri-partite arrangement is (as a number of secondments are from LA to NHS on NHS pay rates). If there is a clear agreement between all three parties, it is driven by the employee and there is no profit, then in theory VAT notice 8860 could be interpreted to mean the supply is not taxable but this will depend on the individual circumstances of the case. MW suggested that HMRC would expect most secondments to be standard rated. NH asked MW if he would be able to provide examples of a tripartite agreement that would meet HMRC requirements for non business treatment. MW said he would consider this as part of the review.

AR said there could be different scenarios based on similar systems. Some of the facilities are delivered by various parties. The problem with hospital discharge means that we will see more examples with varying levels of care being provided at different facilities.

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<sup>1</sup> HMRC, *VATGPB8860 - Other local authority activities: miscellaneous (N to Z): supplies of staff*, last updated December 2022

### **3.8 Northumbria Court of Appeal case – car leasing**

The members of the committee have seen payments being made to individuals across the service. There are issues around if and how they have been communicated to staff at the end of the contract line.

RO stated that NHS England have had quite a few freedom of information (FOI) requests in relation to these payments.

Where organisations are making payments they need to be accounting for tax and NI, but there have been questions as to whether they are pensionable. This is a live issue for organisations – the mechanism for making payments needs to be decided and communicated.

TM said that the pensionable aspect is really important. Providers have paid out, so it is important to be clear. There are a number of different schemes operating throughout the NHS so bodies need to discuss with the lease provider to check whether it's ex-gratia payment.

RO stated that no central guidance is planned to be issued. Payments are unlikely to be pensionable, but it will depend on the schemes as they are very different. If it is an ex-gratia payment, then it would not be pensionable under normal circumstances.

DS advised that HMRC have been working on some VAT guidance on the issue that they hope to issue soon.

### **3.9 Provision of primary care services – possible case studies**

AR's possible case study has been unsuccessful. There are a number of different models adopted in the NHS and there seem to have been no adverse effects from the absence of guidance. In light of this, it was agreed to take this off as an agenda item and bring it back if anyone asks.

### **3.10 VAT welfare restructuring (COS heading 71)**

RO is now picking this issue up again now that DHSC accounts have been filed and the change from CCGs to ICBs has happened. NHS England are receiving queries, so they are trying to pull together examples to share with HMRC to review.

There are no VAT implications in relation to care contract novation as long as the relevant criteria are met. Some advisers are taking commission for VAT recoveries but NHS bodies and local authorities are concerned that they are not interested in protecting the NHS or LA incomes and liabilities. For example, Care England have run an event recently, highlighting LA concerns, pointing out that this is not as straightforward as it seems and LAs need to carry out compliance checks before they accept it. Another agent has referenced a sister company to carry out the compliance checks and thereby mitigating any potential HMRC penalties in the future.

CIPFA's LA VAT committee have indicated that guidance in the same style as Kings Crest would be useful – to set out the checks that they would expect LAs to follow.

HS noted that concerns about the care sector have been raised in previous meetings. HMRC are very aware of this and are working on it, they share the committee's concerns but cannot comment further at this stage because it is a live issue.

MW confirmed that HMRC are aware and he and David Webb have been party to the conversation in earlier meetings. It is unlikely that HMRC will issue guidance to LAs as some of these transactions expose bodies to a level of governance risk.

SJ noted that they have examples where care homes have novated the contract without telling the ICB. Invoices have to be processed and paid without sight of the contract and with no VAT included. They are concerned about the risk that they are exposed to.

**Action: MW to provide further updates on VAT welfare restructuring (COS heading 71), when available.**

### **3.11 Interest payable on continuing healthcare claims (CHC)**

This item is still not resolved.

### **3.12 Home oxygen therapy services – VAT discrepancy between England and Scotland.**

PJ circulated a paper ahead of the meeting about the queries are being raised with DHSC on this issue. There do not seem to be significant differences between the regimes in Scotland (where supplies are zero rated) and England (where supplies are standard rated).

GL said that NHS Wales are also exploring this issue. Home oxygen is an all Wales contract with one supplier. Elements of the contract should be zero rated – each of the health boards, in conjunction with the supplier, have submitted claims with HMRC contesting the VAT. GL offered to go back to HS with the basis on which the claim has been made (if the claim is not submitted by the health board then it will not come to HS).

SJ reported that someone in West Yorkshire thinks that the claims in Wales have been resolved – so they want to submit a claim for West Yorkshire. GL clarified that the first claim by the first health board is almost at resolution stage but the outcome isn't known. Other claims for the other six health boards are either submitted or due to be submitted.

AR advised that recovery depends upon the detail of the contract, who is administering what to who and the detail.

PJ has had discussions with Scotland, but it is interesting to know that it is a live issue in England and Wales.

RO noted that this is really an issue for the supplier as the NHS is the recipient of the service and simply pays the invoice. If the supply is zero rated then it would simply mean that the cost is less. The VAT aspects will be different for different contracts, not all elements of the contract will be affected depending on the services provided - the contract is complicated.

RO asked how quickly the Welsh claims issue will be resolved, GL will update the committee if he is able. He hopes it will be resolved by the June committee.

**Action: GL to go back to HS with the basis on which the home oxygen treatment claims have been made for Welsh health boards.**

**Action: GL to update the June committee if resolution reached in respect of the Welsh home oxygen treatment.**

### **3.13 Query on migration from CHIEF to CDS**

The HFMA has had a query from a member asking about the deadline for the migration to [Customs Declaration Service](#) (CDS). The deadline seemed to have been brought forward to 30 September 2022 from 31 March 2023. Is this a live issue?

HS clarified that the original deadline for transfer was 31 March 2023. The import side of things was implemented from 30 September 2022. The implementation date for the export side of CHIEF has been pushed back to 30 November 2023 and could be pushed back further.

## **4. VAT briefs (Anthony Robson)**

The following VAT briefs, issued since the last meeting, were discussed and noted:

- [Revenue and Customs Brief 11 \(2022\): VAT and children's face masks](#)



- Revenue and Customs Brief 1 (2023): changes in processing option to tax forms by the option to tax national unit

## 5. HMRC consultations

There was nothing to note under this item.

## 6. Update on Tax Centre of Excellence

PJ talked through the presentation, by the TCOE, at HFMA's pre accounts planning conference. This was an introductory piece for NHS bodies, to raise awareness of what TCOE do. PJ will share the slides.

For website registration, all NHS staff will have access as long as they have a nhs.net or nhs.uk email address and are advised to put 'NHS England' as their organisation. If the registration form asks for 'civil service pay band' users can input anything.

TCOE is not trying to replace VAT advisers but can draft guidance and provide technical guidance on their website. Partial exemption is a good example – people can start their own calculation rather than paying advisors to do it.

The website includes tribunal summaries e.g. the Northumberland tribunal on car parking and on Main Pay agency. The aim is to upskill NHS staff. TCOE is part-funded by the DHSC so free of charge to NHS staff.

They are currently working with HMT around s41 review and coordinating it across government.

Issues from this committee will be picked up with HMRC by TCOE to share sector wide issues.

PJ also advised that TCOE is wider than just VAT; for example, they cover IR35 and have staff who are expert in workforce taxation issues. The gov.uk site is wider than the TCOE guidance – there is also accounting guidance on there.

TM indicated that some VAT advisors have accessed information from the TCOE and are quoting the guidance as their view. PJ reiterated the need to understand the basis of the information that this being used. Organisations need to be aware of the distinction between HMRC guidance and the TCOE guidance and to what extent that it can be relied on.

## 7. Any other business

None noted.

## 8. Future meeting dates

2023 proposed meeting dates:

- 8 June 2023
- 7 September 2023

GL asked if we can move the meets for later in the working month, preferably to the end of the second week because, of month end deadlines.

**Action: DRi to arrange future meetings to the end of the second week of a month**

## Attendance

# HFMA VAT Technical Sub-Committee

Name	Organisation	Feb-22	Jun-22	Sept-22	Feb-23
Anthony Robson	Gateshead Health NHS FT	Y	Y	Y	Y
Katy Battley	Sheffield Teaching Hospitals NHS FT	Y	Y	Y	Y
Lucy Baxter	NHS Kent and Medway CCG	Y	A	Y	Y
Emma Bruce	NHS Shared Business Services				Y
Michael Clements	Royal Berkshire NHS FT		A	Y	Y
Michael Creaton	University Hospitals Birmingham and NHS FT	Y			
Neil Helliwell	Rochdale Borough Council / CIPFA representative	Y	Y	Y	Y
Michael John	London Ambulance Service NHS Trust			Y	A
Paul Jones	Department of Health and Social Care	Y	Y	Y	Y
Gareth Lewis	Aneurin Bevan University Health Board	Y	Y	Y	Y
Terenia MacRory	Leeds CCG	YR	A	Y	Y
Rachel Owen	NHS England and Improvement	Y	Y	Y	Y
Sarah Radford	NHS Shared Business Services		Y	Y	Y
Gita Raja	University College London Hospitals NHS FT	Y	Y	Y	Y
Amanda Randall	Newcastle Upon Tyne Hospitals NHS FT	Y	Y	Y	Y
Di Roberts	Humber Teaching NHS Foundation Trust	Y	A	Y	Y
Michael Sheils	NHS Greater Glasgow and Clyde	Y	A	A	A
Anne-Marie Simpson	NHS Shared Business Services		Y	Y	Y
Jane Wharton	Wirral University Teaching Hospital NHS FT			Y	Y
Nichola Young	Gateshead Health NHS FT	Y	Y	Y	Y
Solomon Zekarais	Guy's and St Thomas' NHS FT	Y	Y	Y	YR
Phillip Simmons	Deloitte LLP	Y	Y	Y	Y
Deanna Matthews	HMRC	Y	Y	Y	Y
Helen Stretch	HMRC	Y	A	Y	Y
David Smith	HMRC	Y	Y	Y	Y
David Webb	HMRC	Y	Y		
Mark Whittington	HMRC	Y	Y	Y	Y

Key	
Y	Attended
YR	Sent representative
A	Sent apologies
	Did not attend



## HFMA VAT Technical Sub-Committee

Actions: 2 February 2023

Minute reference	Action	Who?	Status
2022June3.7	DW to speak with HS to see if there is anything more that can be done from a compliance perspective regarding the Northumbria Court of Appeal case.	DW	On-going
2022June3.10	RO to get in touch with HS with more detail on the interpretation of heading 71.	RO	Complete
2022June3.10	HS to provide an update at the next meeting on the interpretation of heading 71.	HS	On-going but no further action required
2022Sept3.1	AH to further consider the data request proposal and keep the committee updated on next steps.	AH	Complete
2022Sept3.2	DM to confirm and feedback to the committee if any amendments would be made to Giant in relation to Making tax digital.	DM	Complete
2022Sept3.2	DS to send the VAT 21 guidance to RO and GL to help with Giant.	DS	Complete
2022Sept3.2	GL and RO to feedback directly to DS if the guidance does not correct the headings in Giant. If this is the case DS will then speak with his colleagues to consider how this can be corrected.	GL/RO/DS	Complete
2022Sept3.3	HS to investigate if an end date for the pandemic has been identified by HMRC.	HS	Complete
2022Sept3.3	DP/DRi to add the NHS free car parking VAT consequences document to the website once an end date for the pandemic has been identified.	DP/DRi	Complete
2022Sept3.8	RO to send the NHSE Northumbria court of appeal communication to GL.	RO	Complete
2022Sept7	Committee members to consider how the reinvigorate the committee and feedback with any ideas.	All	Ongoing
2022Sept8	HS to speak with policy colleagues about getting the non-statutory clearance request template put on their website.	HS	Complete
2022Sept8	HS to share the non-statutory clearance request template with DP so that it can be included in the minutes.	HS	Complete
2023Feb1.2	Committee members to consider whether they would like to stand for chair.	All	Complete
2023Feb3.1	AH to review the deadline for the section 41 data request for NHS Bodies and report back to the committee.	AH	Complete

2023Feb3.2	GM/DP to share Partial exemption – statement of practice via HFMA channels	GM/DP	On hold
2023Feb3.2	AR to share Partial exemption – statement of practice on HMRC’s website.	AR	On hold
2023Feb3.2	PJ to share Partial exemption – statement of practice on TCOE website	PJ	On hold
2023Feb3.5	HS will update the guidance on free car parking, on official pdf to be shared with members.	HS	Complete
2023Feb3.10	MW to provide further updates on VAT welfare restructuring (COS heading 71), when available.	MW	On-going
2023Feb3.12	GL to go back to HS with the basis on which the home oxygen treatment claims have been made for Welsh health boards.	GL	Complete
2023Feb3.12	GL to update the June committee if resolution reached in respect of the Welsh home oxygen treatment.	GL	Complete
2023Feb8	DRi to arrange future meetings to the end of the second week of a month	DRi	Ongoing