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## DIRECTIONS

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# The NHS Counter Fraud Authority Directions, with Supplemental Directions to the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) 2017

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SCHEDULE — Functions of the Authority

The Secretary of State for Health makes the following Directions in exercise of the powers conferred by sections 7, 8, 272(7) and (8) and 273(1) of, and paragraph 3(4) and (5) of Schedule 6 and paragraphs 2 and 3 of Schedule 15 to, the National Health Service Act 2006(a).

## PART 1

### Introductory

#### Citation, commencement, application and interpretation

1.—(1) These Directions may be cited as the NHS Counter Fraud Authority Directions, with Supplemental Directions to the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) 2017 and come into force on 1<sup>st</sup> November 2017.

(2) They apply in relation to England.

(3) In these Directions—

“the 2016 Directions” means the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) Directions 2016(b);

“the NHS Act” means the National Health Service Act 2006;

“the Authority” means the NHS Counter Fraud Authority(c);

“the BSA” means the NHS Business Services Authority(d);

“the establishment date” means the 1st November 2017;

“the Establishment Order” means the NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017(e);

“NHS body” means the Board(f), a clinical commissioning group(g), a Special Health Authority(h), an NHS trust(i), a foundation trust(j), the National Institute for Health and Care Excellence(k), the Health and Social Care Information Centre(l) and Monitor(m);

“the transitional period” has the meaning given in the Establishment Order(n).

(4) Any requirement for a report or other document to relate to or cover a financial year in which the Authority is established or abolished is met where the report or document covers the part of that period during which the Authority remains established.

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(a) 2006 c. 41. Section 7 was amended by section 21(1) to (4) of the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”). Section 8 was amended by sections 55(1) and 179(6) of, and paragraph 5 of Schedule 4, and paragraphs 1 and 3 of Schedule 14 to, the 2012 Act. Section 28 was amended by section 55(1) of, and paragraph 13 in Part 2 of Schedule 4 to, the 2012 Act. By virtue of section 271 of the National Health Service Act 2006 (c. 41) (“the 2006 Act”), the powers exercised in making these Directions are exercisable by the Secretary of State in relation to England only.

(b) signed on the 1st June 2016. A copy can be found at the following website: [https://www.nhsbsa.nhs.uk/sites/default/files/2017-02/Section\\_2\\_-\\_B1\\_NHSBSA\\_Directions\\_2016.pdf](https://www.nhsbsa.nhs.uk/sites/default/files/2017-02/Section_2_-_B1_NHSBSA_Directions_2016.pdf), or obtained on written request from the Department of Health Correspondence Unit, Richmond House, Whitehall, London SW1A 2NS.

(c) established by NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017 (SI 2017/958).

(d) established by the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) Establishment and Constitution) Order 2005 (SI 2005/2414).

(e) SI 2017/958, which is unamended.

(f) “The Board” means the National Health Service Commissioning Board established by section 1H of the 2006 Act; *see* section 275(1) of the National Health Service Act 2006.

(g) Clinical commissioning groups are established under section 14D of the 2006 Act pursuant to section 1I of that Act.

(h) Special Health Authorities are established under section 28 of the 2006 Act.

(i) NHS Trusts are established pursuant to section 25 of the 2006 Act.

(j) *See* section 30 of the 2006 Act, and Chapter 5 of Part 2 of the 2006 Act generally as to the authorisation of foundation trusts.

(k) The National Institute for Health and Care Excellence (NICE) is established by section 232 of the 2012 Act.

(l) The Health and Social Care Information Centre is established by section 252 of the 2012 Act.

(m) Monitor is the body corporate previously known as the Independent Regulator of NHS Foundation Trusts, which was first established by section 2 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43). That body’s existence was continued and its name changed to Monitor by section 61 of the 2012 Act.

(n) The transitional period begins on 1st November 2017 and ends immediately before 1st November 2018.

## **Relation to the Establishment Order, the National Health Service Act 2006 and other legal obligations**

2. These Directions to the Authority apply without prejudice to specific requirements of the NHS Act and the Establishment Order and are subject to any directions given in Schedule 1 to that Order.

3. Nothing in these Directions—

- (a) requires the Authority to investigate or advise on or take other actions in respect of matters relating to theft unless, in the Authority’s discretion, or on specific instruction of the Secretary of State, such matters should reasonably be included in the investigation, advice or other actions, in the context of other matters which are investigated, advised on or in respect of which actions are taken;
- (b) requires or authorises a breach of any obligations in respect of the holding or processing of data or information.

## **PART 2**

### **Functions, plans, accounts and reports of the Authority**

#### **Functions and Officers, etc**

4.—(1) The Authority is directed to discharge the counter fraud functions of the Secretary of State conferred on it by the Establishment Order as set out in the Schedule to these Directions.

(2) The Authority must ensure that, apart from appointments made pursuant to paragraph 2(1) of Schedule 2 to the Establishment Order (in respect of which interim executive appointments there are particular requirements),—

- (a) the Chief Executive and each member of the senior management team is a person with suitable experience of counter fraud issues; and
- (b) the appointment of a Chief Executive is approved by the Secretary of State.

(3) The Authority may arrange for any administrative activity required to support the exercise of its functions to be undertaken by another body or person, and may pay such body or person to that end.

(4) The Authority must ensure that any person who is a member of staff or a service provider is—

- (a) appropriately trained, including in matters as to confidentiality;
- (b) in the case of persons directly involved in counter fraud work, an accredited Counter Fraud Specialist.

(5) In this paragraph—

- (a) “the senior management team” means the persons appointed by the Chief Executive of the Authority to head each of the business units within the Authority;
- (b) “service provider” means a person engaged to provide services to the Authority in relation to the exercise of the Authority’s functions;
- (c) “staff” means persons employed by the Authority;
- (d) “accredited Counter Fraud Specialist” has the meaning given in Schedule 1 to the Establishment Order(a).

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(a) The definition in Schedule 1 provides that this is a person accredited by the Counter-Fraud Professional Accreditation Board or similar organisation providing counter fraud prevention, detection and investigation accreditation to government departments. The Board itself is a non-statutory regulatory body financed by, and run by representatives from, in particular, the Department of Work and Pensions and its agencies, the Department of Health, certain local government bodies, HM Revenue and Customs, and the UK Passport Agency, and hosted by the University of Portsmouth, with the purposes of

## Planning and strategic functions

5.—(1) The Authority is directed to produce, no later than 1<sup>st</sup> December 2017, a broad statement of the goals the Authority has set itself in order to fulfil its functions over the period beginning on the establishment date and ending no later than 31<sup>st</sup> October 2020(a).

(2) At the times specified in sub-paragraph (3), the Authority must produce for the approval of the Secretary of State, in respect of each of the periods specified in that sub-paragraph, the documents containing the following (“the documents”)—

- (a) a business plan, that is, a statement of the Authority’s specific goals over the period to be covered by the plan; and
- (b) specific objectives for the period specified in sub-paragraph (3), that is, a statement of the tasks required to deliver the Authority’s business plan for that period.

(3) The time for producing the documents and the period each document is to cover is as follows:

- (a) production on 1<sup>st</sup> December 2017 in respect of the documents covering the period 1<sup>st</sup> January 2018 to 31<sup>st</sup> March 2018;
- (b) production on 28<sup>th</sup> February 2018 in respect of the documents covering the financial year beginning 1<sup>st</sup> April 2018;
- (c) production on 28<sup>th</sup> February 2019 in respect of the documents covering the financial year beginning 1<sup>st</sup> April 2019;
- (d) production on 28<sup>th</sup> February 2020 in respect of the documents covering the period 1<sup>st</sup> April 2020 to 31<sup>st</sup> October 2020.

(4) The documents must be prepared in accordance with any specific instructions of the Secretary of State as to format and any particular matters that should be covered.

(5) The Authority must produce final documents approved by the Secretary of State before the beginning of the period each document is to cover, unless the approval of the Secretary of State cannot be obtained before that date (in which case further, specific directions will set out requirements in this respect).

(6) The documents for any period may be reviewed and revised during that period in consultation with and with the approval of the Secretary of State.

(7) The Secretary of State may request periodic reports from the Authority as to its progress against the matters set out in the documents, in particular as to the objectives mentioned in sub-paragraph (2)(b).

## Accounts

6.—(1) The Authority is directed to prepare and keep annual accounts in respect of each financial year(b) which shall give a true and fair view of the income and expenditure and cash flows of the Authority for the period, and of the financial position of the Authority as at the end of the period(c).

(2) The accounts must, except where agreed with the Secretary of State, in which case the exception shall be disclosed in the notes to the accounts, be prepared in accordance with—

- (a) guidance issued by the Department of Health and the Treasury as applicable to the accounts of Special Health Authorities; and

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ensuring the delivery of professional counter fraud training and academic study and that, once qualified, those who are accredited maintain their professional standards.

- (a) The Establishment Order (as defined in paragraph 1 of these Directions) provides for the abolition of the NHS Counter Fraud Authority on this date: see article 13 of and Schedule 3 to the Order.
- (b) “Financial year” is defined in section 275 of the enabling legislation, that is, the National Health Service Act 2006 (c. 41) (“the 2006 Act”), as the period of twelve months ending with 31<sup>st</sup> March in any year.
- (c) See Schedule 15 to the 2006 Act in relation to requirements as to accounts and audit applying to Special Health Authorities performing functions only or mainly in respect of England.

(b) any other requests made by the Secretary of State.

(3) The Authority must send copies of the annual accounts to the Secretary of State by 31<sup>st</sup> May of the financial year following the year to which the accounts relate(a).

### **Audit**

7. The Authority must put in place arrangements for internal audit which are in accordance with Public Sector Internal Audit Standards(b).

### **Annual and closing reports**

8.—(1) Subject to sub-paragraph (2), the Authority is directed to prepare, at the end of each financial year, a report in relation to its activities during that period and send a copy to the Secretary of State no later than 30<sup>th</sup> June of the financial year following the year to which the report relates.

(2) In respect of any financial year in which the Authority is to be abolished, the report required in sub-paragraph (1) must be sent to the Secretary of State before the date of abolition.

(3) Except in relation to a report prepared in the circumstances described in sub-paragraph (2), and subject to any specific directions given by the Secretary of State in relation to any given report, the Authority must publish reports prepared under this paragraph (that is, publication must be effected in accordance with paragraph 16 of Schedule 2 to the Establishment Order).

### **Agency arrangements with Welsh Ministers**

9. Nothing in these Directions prevents the Authority from making agency arrangements with Welsh Ministers pursuant to section 83 (agency arrangements and provision of services) of the Government of Wales Act 2006(c).

### **Managing conflicts of interest**

10. The Authority is directed to adopt a policy on managing conflicts of interest in relation to its members and non-member officers which is consistent with the requirements of the Establishment Order, in particular, with Schedule 2 to that Order, and with such guidance that may be issued to NHS bodies from time to time by the Board, Monitor, the NHS Trust Development Authority(d) or the Secretary of State.

## **PART 3**

### **Directions to the BSA**

#### **Amendment and revocation of certain directions to the BSA relating to counter fraud and security functions of the Secretary of State**

11.—(1) The 2016 Directions are amended as follows.

(2) In paragraph 1(4) (application, commencement and interpretation), omit definitions for the following terms—

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(a) The 31<sup>st</sup> May is the date specified for purposes of paragraph 5(3) of Schedule 15 to the National Health Service Act 2006 (being the date by when copies of annual accounts must be sent to the Secretary of State).

(b) These are standards set by identified United Kingdom authorities, including the Secretary of State for Health who sets standards in relation to the health sector (other than foundation trusts). The Standards give effect to the international standards set in the Institute of Internal Auditors' International Professional Practices Framework. They also impose additional requirements for the UK public sector. More information can be found at: <https://www.gov.uk/government/publications/public-sector-internal-audit-standards>.

(c) 2006 c 32. Amended by section 4(2)(a) of the Wales Act 2014 (c. 29).

(d) Monitor and the NHS Trust Development Authority work together organisationally under the name "NHS Improvement".

“accredited Counter Fraud Specialist”;  
“accredited Security Management Specialist”;  
“counter fraud”;  
“security management”.

(3) Omit paragraphs 2 to 5 and 12 (which relate to functions of the division within the BSA known as NHS Protect), 18(5) (which relates to counter fraud activity in respect of certain abolished organisations and their former staff) and Schedule 1 (functions of the BSA in relation to counter fraud and security management).

(4) After paragraph 17 (other functions of the BSA), insert(a)—

“**17A.** The Authority(b) is directed to provide information and assistance to the Board(c) and clinical commissioning groups(d) in relation to sections 192, 193 and 194 of the NHS Act(e).”.

## PART 4

### Directions to the Authority and the BSA as to transitional matters

#### Transitional provisions

**12.**—(1) The Authority is directed to take reasonable steps to ensure that—

- (a) any parties affected or whom the Authority considers likely to be affected by the transfer of property under Part 2 of the Establishment Order; and
- (b) any parties, tribunals and courts concerned in any proceedings in respect of which provision for continuity is made in that Part (including in relation to staff transfers),

are accordingly informed of the Authority’s establishment, of the transfers, and of the effect of those provisions for continuity as soon after the establishment date as practicable.

(2) For purposes of sub-paragraph (1), “property” excludes records, data and documents(f), but includes contracts other than employment contracts.

(3) The BSA is directed to provide the Authority as expeditiously as possible with such assistance as the Authority may reasonably require in respect of—

- (a) such of the functions conferred on the Authority on the establishment date as previously fell to the BSA to discharge;
- (b) the transfer of staff and any property, including records and case management files, rights and liabilities transferring to the Authority pursuant to the Establishment Order.

#### Continuity in relation to certain operating policies

**13.** The Authority is directed to consult the Secretary of State and await his response before making any substantive changes to its Standard Operating Procedures in respect of the conduct of investigations and, in particular, the use of investigatory powers.

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- (a) This amendment previously appeared as paragraph 14 in Schedule 1 to the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) Directions 2016 to the NHS Business Services Authority (“the BSA”), which schedule these Directions revoke.
  - (b) In the substituted text, “the Authority” refers to the BSA.
  - (c) “The Board” means the National Health Service Commissioning Board established by section 1H of the National Health Service Act 2006 (c. 41) (“the 2006 Act”); *see* section 275(1) of that Act.
  - (d) Clinical commissioning groups are established under section 14D of the 2006 Act, pursuant to section 11 of that Act.
  - (e) Section 194(4) of the 2006 Act was amended by sections 208 and 210 of and Schedules 21 and 23 to, the Legal Services Act 2007 (c. 29).
  - (f) Provisions of the Data Protection Act 1998 (c. 29) continue to apply in respect of any data held by the Authority, including data transferred to it pursuant to NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017 (SI 2017/958).

Signed by authority of the Secretary of State for Health

Date of signature:

*Dermid McCausland*  
an official of the Department of Health  
and member of the Senior Civil Service

Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS

## SCHEDULE Paragraph 4(1)

### Functions of the Authority

#### **Interpretation**

1. In this Schedule—

“commissioning contracts” means a contract described in section 6E of the NHS Act 2006<sup>(a)</sup> to which the Board or a clinical commissioning group is party;

“the health service” means the health service<sup>(b)</sup> in England;

“to investigate” means to investigate in relation to civil or criminal proceedings;

“other bodies and persons” means bodies or persons providing services pursuant to a commissioning contract or to a contract with the Secretary of State entered into for the purposes of his public health functions<sup>(c)</sup>.

#### **Advisory and assistance functions**

2.—(1) The Authority is directed to provide advice and assistance to the Secretary of State when requested by the Department of Health in relation to matters concerning fraud, corruption and other such unlawful activity, which may include competition and market abuse matters, in relation to the health service in a timely manner and in any event within the timescale requested.

(2) The advice mentioned in sub-paragraph (1) may include—

- (a) advice in relation to criminal justice matters;
- (b) recommendations to the Secretary of State about the making of regulations relating to, or as the case may be, the giving of directions to, NHS bodies and other bodies or persons, which regulations or directions the Authority considers necessary or desirable; and
- (c) advice on proposals for the revision of strategy, policy or operational systems in the health service.

3.—(1) From time to time, or on specific instruction from the Department of Health within the timescale requested, the Authority is directed to publish guidance intended to assist the Secretary of State, NHS bodies, other bodies and persons and local authorities, on matters relating to fraud, corruption and other such unlawful activity, which may at the discretion of the Authority or on

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(a) Section 6E was inserted by section 20(1) of the Health and Social Care Act 2012 (c. 7).

(b) “Health service” is defined in section 275 of the National Health Service Act 2006 (“the 2006 Act”).

(c) A reference to the public health functions of the Secretary of State has the meaning given in section 1H(5)(a) of the 2006 Act.

instruction of the Department of Health include advice and guidance on competition and market abuse matters, in relation to the health service.

(2) Guidance mentioned in sub-paragraph (1) includes, in particular—

- (a) guidance about such matters as—
  - (i) arrangements for reporting fraud and other activity mentioned in sub-paragraph (1);
  - (ii) the conduct, or referral of, criminal prosecutions;
  - (iii) confidentiality of information relevant to the investigations into such suspected fraud and other activity mentioned in sub-paragraph (1);
  - (iv) action required to ensure compliance with directions given by the Secretary of State;
- (b) guidance setting out standards for the conduct of counter fraud activity.

4. The Authority is directed to provide advice to the Board on terms and conditions to be included in commissioning contracts entered into by the Board or clinical commissioning groups.

### **Intelligence, detection and prevention functions**

5. The Authority is directed to obtain, monitor, collate and analyse such data held by the Department of Health, NHS bodies, or other bodies or persons or local authorities as the Authority may lawfully acquire and as it may consider appropriate for the purposes of identifying trends and anomalies which may be indicative of fraud, corruption or other unlawful activity, or risk of such fraud, corruption or other unlawful activity occurring, including, at the discretion of the Authority or on instructions from the Secretary of State, trends and anomalies relating to competition and market abuse, against or affecting the health service.

6.—(1) The Authority is directed to prepare a Strategic Intelligence Assessment analysing fraud trends in the health service, excluding in relation to public health functions of local authorities<sup>(a)</sup>, in England during the preceding calendar year, and to send a report containing the assessment to the Secretary of State no later than 31<sup>st</sup> January in the calendar year following the year to which the assessment relates.

(2) In any calendar year in which the Authority is to be abolished, the Authority is to prepare an assessment described in sub-paragraph (1) for any remaining period not covered by any previous assessment (so far as practicable) and to send a report to the Secretary of State before the date of abolition.

### **Investigation functions**

7.—(1) The Authority is directed to investigate fraud, corruption or other such unlawful activity, which may, at the discretion of the Authority, include competition or market abuse matters, against or affecting—

- (a) the health service; or
- (b) the Secretary of State in relation to the Secretary of State's responsibility for the health service.

(2) For purposes of exercising the functions in sub-paragraph (1), the Authority may—

- (a) accept referrals and reports from NHS bodies, local authorities, or other bodies or persons, or investigatory and regulatory bodies about suspicious activity that the NHS body, or other person, authority or body considers may require investigation and must accept referrals and reports from the Department of Health about suspicious activity that the Department considers may require investigation;
- (b) collect such intelligence as may lawfully become available to it in respect of possible fraud, corruption or such other unlawful activity, including competition and market abuse matters, against or affecting the health service;

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(a) see section 1H of the National Health Service Act 2006 for the definition of the public health functions of local authorities.

- (c) collate, review, analyse and assess such material described in (a) and (b) as is held by the Authority, including in light of any analysis undertaken for purposes of paragraph 5 or 6 of this Schedule with a view to assessing whether investigation is required into any matters;
- (d) in respect of any investigation that the Authority concludes is required, identify whether it, or any other authority, person, or body should undertake the investigation, or whether a joint investigation by the Authority with such other authority, person or body would be appropriate, and, where the Authority is not so identified, or the Authority considers a joint investigation is appropriate, convey that conclusion to, and share the analysis and assessment with(a), any such authority, person or body that the Authority considers should undertake the investigation or joint investigation.

(3) In exercising the functions in sub-paragraph (1), the Authority must, when requested, cooperate with the police, the Crown Prosecution Service and other enforcement agencies and regulatory bodies and provide support in respect of any prosecutions or other proceedings as those bodies may seek to bring.

(4) In exercising the functions in sub-paragraph (1), and without prejudice to sub-paragraph (2)(a) in respect of the acceptance of referrals and reports, the Authority is not required to investigate fraud, corruption or other unlawful activity occurring in the discharge of public health functions of local authorities.

**8.—**(1) The Authority is directed to carry out the functions of the Secretary of State under section 194 of the NHS Act in relation to—

- (a) forming the opinion (as set out in section 194(5)(a) of the NHS Act), that there is sufficient evidence to justify a prosecution under that section; and
- (b) signing certificates required under section 194(6) of the NHS Act, as conclusive evidence of the date on which such evidence came to the Authority’s knowledge.

(2) The person who signs a certificate required under section 194(6) of the NHS Act must be at Agenda for Change grade 8b or above.

### **Investigatory and other functions in relation to abolished bodies**

**9.** The Authority is directed to investigate, as it considers appropriate, and to take action as it considers appropriate, to seek to secure the prosecution of, or otherwise respond to (as set out in these Directions), any matter concerning fraud, corruption or such other unlawful activity as is suspected or found relating to Primary Care Trusts or Strategic Health Authorities(b), or their former staff, notwithstanding the abolition of such bodies.

### **Monitoring functions**

**10.** The Authority is directed to monitor the arrangements of individual providers, that is, of NHS Trusts, Foundation Trusts and other bodies and persons, in relation to the prevention, detection and investigation of fraud, corruption and other such unlawful activity (“counter fraud arrangements”) and, if the Authority considers it appropriate and likely to assist any individual provider, furnish it with a report on the effectiveness of its counter fraud arrangements.

### **Enforcement functions**

**11.—**(1) The Authority is directed to take appropriate action in relation to enforcing or otherwise responding to fraud, corruption or other unlawful activity, which may, at the discretion of the Authority, include competition or market abuse matters, against or affecting—

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(a) The holding and processing of data and information remain subject to the Data Protection Act 1998 (c. 29) and other information law obligations – see paragraph 3(b) of the main body of the Directions.

(b) Strategic Health Authorities and Primary Care Trusts were abolished with effect on 1<sup>st</sup> April 2013 upon the coming into force of (respectively) sections 33 and 34 of the Health and Social Care Act 2012 (c. 7).

- (a) the health service; or
  - (b) the Secretary of State in relation to the Secretary of State's responsibility for the health service.
- (2) The appropriate action mentioned in sub-paragraph (1) may include action—
- (a) to seek to secure that fraud, corruption or other unlawful activity, including, at the discretion of the Authority, competition and market abuse matters, in, against or affecting the health service or the Secretary of State in relation to his responsibility for the health service, are prosecuted;
  - (b) to trace and recover assets belonging to the Department of Health or an NHS body;
  - (c) otherwise to respond to any individual incident or incidents of other unlawful activity in, against or affecting the health service to the extent that the Secretary of State has powers or other rights to do so including by bringing civil proceedings or seeking to secure that civil proceedings are brought by another person or body.

*[End of Directions]*