

Counter Fraud Policy

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1 Introduction

- 1.1 This document sets out the Trust's policy and advice to employees in dealing with fraud or suspected fraud. This policy sets out the arrangements made in the Trust for such concerns to be raised by employees or members of the public.
- 1.2 The aim of the policy and procedure is to protect the property and finances of the NHS and of patients in our care. The Trust is committed to the proper use of public money, and high level ethical and moral standards, and has a zero-tolerance approach to fraud, bribery and corruption.
- 1.3 This document sets out the Trust's policy for dealing with detected or suspected fraud and corruption, incorporated in the NHS Counter Fraud Authority (NHSCFA) Standards for Providers. The Trust will take all necessary steps to counter fraud and bribery, will seek the appropriate disciplinary, regulatory, civil and/or criminal sanctions and where possible will attempt to recover losses.

2 Scope

- 2.1 This policy relates to all forms of fraud and bribery and is intended to provide direction and help to employees who may identify suspected fraud. It provides a framework for responding to suspicions of fraud, advice and information on various aspects of fraud and implications of an investigation. It is not intended to provide a comprehensive approach to preventing and detecting fraud and bribery. The overall aims of this policy are to:
 - Improve the knowledge and understanding of everyone in the Trust, irrespective of their position, about the risk of fraud and bribery within the organisation and its unacceptability.
 - Assist in promoting a climate of openness and a culture and environment where staff members feel able to raise concerns sensibly and responsibly.
 - Set out the Trust's responsibilities in terms of the deterrence, prevention, detection and investigation of fraud and bribery.
 - Ensure the appropriate sanctions are considered following an investigation, which may include any or all of the following:
 - criminal prosecution;
 - civil proceedings; and/or
 - internal/external disciplinary action (including professional/regulatory bodies)
- 2.2 This policy applies to all employees, regardless of position held, and locum staff, agency staff, contractors, suppliers, volunteers, consultants, service users and employees and committee members of partner organisations or organisations funded by the Trust. It is incumbent on all the above to report any concerns they may have concerning fraud and bribery

- 2.3 In implementing this policy, managers must ensure that all staff are treated

fairly and within the provisions and spirit of the Trust's Equal Opportunities Policy. Special attention should be paid to ensuring the policy is understood where there may be barriers to understanding caused by the individual's circumstances, where the individual's literacy or use of English is weak, or where the individual has little experience of working life.

3 Policy

- 3.1 All employees have a personal responsibility to protect the assets of the Trust, including all buildings, equipment and monies from fraud, theft, corruption or any other irregularity.
- 3.2 The Trust is committed to reducing the level of fraud and corruption within the NHS to an absolute minimum and keeping it at that level, freeing up public resources for better patient care.
- 3.3 The Trust is absolutely committed to maintaining an honest, open and well-intentioned atmosphere within the Trust, so as to best fulfil the objectives of the Trust and of the NHS. It is, therefore, also committed to the elimination of fraud within the Trust and to the rigorous investigation of any such allegations and to taking appropriate action against wrong doers, including possible criminal prosecution, as well as undertaking steps to recover any assets lost as a result of fraud.
- 3.4 The Trust wishes to encourage anyone having reasonable suspicions of fraud to report them. The Trust's policy, which will be rigorously enforced, is that no individual will suffer any detrimental treatment as a result of reporting reasonably held suspicions. Harassment and criticism of employees raising concerns will not be tolerated and will invoke the disciplinary policy if necessary. Any making of false statements will also be subject to disciplinary investigation and sanctions as appropriate. The Public Interest Disclosure Act 1998 came into force in July 1999 and gives statutory protection, within defined parameters, to staff who make disclosures about a range of subjects, including fraud and corruption, which they believe to be happening within the Trust employing them. Within this context, 'reasonably held' means suspicions other than those which are raised maliciously and are subsequently found to be groundless.
- 3.5 Any unfounded or malicious allegations will be subject to a full investigation and appropriate disciplinary action.
- 3.6 The Trust expects anyone having reasonable suspicions of fraud to report them. It recognises that, while cases of theft are usually obvious, there may initially only be a suspicion regarding potential fraud and, thus, employees must report the matter to their Local Counter Fraud Specialist who will then ensure that the Trust's procedures are followed.
- 3.7 All employees should be aware that fraud (of finances, of the NHS or of patients in our care) will normally, dependent upon the circumstances of the

case, be regarded as gross misconduct thus warranting summary dismissal without previous warnings. However, no such action will be taken before a proper investigation and a disciplinary hearing have taken place. Such actions may be in addition to the possibility of criminal prosecution.

3.8 Recovery of any losses will always be sought.

4 Definitions

NHS Counter Fraud Authority (NHSCFA) - The NHSCFA has responsibility for the detection, investigation and prevention of fraud and economic crime within the NHS. Its aim is to lead the fight against fraud affecting the NHS and wider health service, by using intelligence to understand the nature of fraud risks, investigate serious and complex fraud, reduce its impact and drive forward improvements.

A copy of the NHSCFA strategy: Leading the fight against NHS fraud: Organisational strategy 2017-2020 is available at: <https://cfa.nhs.uk/about-nhscfa/corporate-publications>.

Counter fraud standards - A requirement in the NHS standard contract is that providers of NHS services (NHS Trusts, or organisations that hold an NHS Provider Licence) must take the necessary action to comply with the NHSCFA's counter fraud standards. The contract places a requirement on providers to have policies, procedures and processes in place to combat fraud, corruption and bribery to ensure compliance with the standards. The NHSCFA carries out regular assessments of health organisations in line with the counter fraud standards.

Fraud - any person who dishonestly makes a false representation to make a gain for himself or another or dishonestly fails to disclose to another person, information which he is under a legal duty to disclose, or commits fraud by abuse of position, including any offence as defined in the Fraud Act 2006. Examples of this (though not exhaustive) may include:

- Falsely claiming to be sick or working elsewhere whilst sick
- Falsifying time records e.g. claiming pay for time not worked
- Undertaking private work during NHS time
- Unauthorised private use of NHS equipment with intent to avoid a charge or payment
- Submitting altered/false invoices or claims for payment
- Making false claims for subsistence & expenses
- Using deception to steal NHS property
- Falsifying any official records
- Failing to declare criminal convictions to gain employment

Bribery – offering, promising, giving or receiving a financial or other advantage to influence others to use their position in an improper way to gain an advantage. Bribery does not have to involve cash or an actual payment exchanging hands and can take many forms such as a gift, lavish

treatment during a business trip or tickets to an event.

Bribery does not always result in a loss. The corrupt person may not benefit directly from their deeds; however, they may be unreasonably using their position to give some advantage to another.

It is a common law offence of bribery to bribe the holder of a public office and it is similarly an offence for the office holder to accept a bribe.

Bribery prosecutions tend to be most commonly brought using specific pieces of legislation dealing with bribery, i.e. under the following:

- Bribery Act 2010
- The Anti-terrorism, Crime and Security Act 2001.

Theft – the dishonest taking of property belonging to another with the intention of depriving that other permanently of its possession.

Irregularity - An irregularity may be any significant matter or issue, other than fraud or corruption, which may warrant consideration or investigation. An example of an irregularity may be where a member of staff makes a genuine error or mistake in the course of their duties/responsibilities, but where this error or mistake is subsequently hidden, perhaps to the on-going detriment to the NHS body. Additionally, an irregularity may also involve consideration of the possible inappropriate use of NHS funds or assets, which may or may not constitute fraud, theft or corruption.

- 4.1 The Trust has procedures in place that reduce the likelihood of fraud occurring. These include Standing Orders, Standing Financial Instructions, documented procedures, a system of internal control (including Internal and External Audit) and a system of risk assessment. In addition, the Trust seeks to ensure that a comprehensive anti-fraud and corruption culture exists throughout the Trust via the appointment of a dedicated Local Counter Fraud Specialist, in accordance with the NHSCFA Standards for Providers.

Provisions under the Health and Social Care Act 2012 mean that such arrangements are now set out in the standard commissioning contract, which applies to all LCFS service providers. The NHSCFA provides guidance on standards for those providers of LCFS services in relation to counter fraud and corruption. The Trust will take all necessary steps to counter fraud, bribery and corruption in accordance the provisions in the act, as well as through guidance from the NHS Counter Fraud Authority. The Trust actively implements, through its LCFS, the NHS Counter Fraud Authority Standards for fraud, bribery and corruption as required in the four key areas below:

Strategic Governance:

The Trust will ensure that Strategic Governance arrangements are in place to ensure that anti-crime measures are embedded at all levels across the organisation.

Inform and Involve:

The Trust will raise awareness of crime risks against the NHS, work with NHS

staff and the public to publicise the risks and effects of crime against the NHS. This includes the provision of training to all relevant employees on a regular basis.

Prevent and Deter:

The Trust will discourage individuals who may be tempted to commit crime against the NHS and ensure that opportunities for crime to occur are minimised.

Hold to Account:

The Trust will proactively detect fraud in identified risk areas; ensure that all suspicions of fraud are investigated in a timely, professional manner and that all appropriate sanctions and redress actions are applied.

- 4.2 It is expected that Non-Executive Directors and staff at all levels will lead by example in acting with the utmost integrity and ensuring adherence to all relevant regulations, policies and procedures.
- 4.3 The relevant acts are the Fraud Act 2006, see appendix B, and the Bribery Act 2010, please see the Anti-Bribery Policy.

5 Public Service Values

- 5.1 High standards of corporate and personal conduct, based on the recognition that patients come first, have been a requirement throughout the NHS since its inception. The three fundamental public service values are:

<i>Accountability</i>	Everything done by those who work in the Trust must be able to stand the tests of parliamentary scrutiny, public judgements on property and professional
<i>Probity</i>	Absolute honesty and integrity should be exercised in dealing with NHS patients, assets, employees, suppliers and customers.
<i>Openness</i>	The Trust's actions should be sufficiently public and transparent to promote confidence between the Trust and its patients, our employees and the public.

In addition, all those who work for or are in contract with the Trust should exercise the following when undertaking their duties:

<i>Selflessness</i>	should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends
<i>Integrity</i>	should not place themselves under any financial or other obligation to outside individuals or organisations that

	might influence them in the performance of their official duties
<i>Objectivity</i>	should, in carrying out public business, (including making public appointments, awarding contracts, or recommending individuals for rewards and benefits), make choices on merit
<i>Accountability</i>	are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office
<i>Openness</i>	should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest demands
<i>Honesty</i>	have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest
<i>Leadership</i>	should promote and support these principles by leadership and example

- 5.2 These standards are national benchmarks that inform our local policies and procedures. The arrangements made in this policy have been designed to ensure compliance with the national standards.

6 Roles & Responsibilities

This section states the roles and responsibilities of Trust employees and other relevant parties in reporting fraud or other irregularities.

6.1. Employees

For the purposes of this policy, 'Employees' includes the Trust's staff, Board, Executive and Non-Executive Members (including Co-Opted Members) and Honorary Members to the Board.

- 6.1.1 Employees must act in accordance with the Trust's Conflicts of Interest Policy, which includes guidance on the receipt of gifts or hospitality as well as the Counter Fraud Policy and Anti-Bribery policies, and apply best practice to prevent fraud, bribery and corruption (for example in the areas of procurement, personal expenses and ethical business behaviour). Staff should be made aware of their own responsibilities in protecting the Trust from these crimes.

Employees also have a duty to protect the assets of the Trust, including information and goodwill, as well as property and have a duty to ensure that public funds are safeguarded, whether or not they are involved with cash or payment systems, receipts or dealing with contractors or suppliers. This

means, in addition to maintaining the normal standards of personal honesty and integrity, all employees should always:

- avoid acting in any way that might cause others to allege or suspect them of dishonesty;
- behave in a way that would not give cause for others to doubt that Trust employees deal fairly and impartially with official matters; and
- be alert to the possibility that others might be attempting to deceive.

6.1.2 Employees who are involved in or manage internal control systems should receive adequate training and support in order to carry out their responsibilities.

6.1.3 Employees are expected to act in accordance with the standards laid down by their Professional Institutes, where applicable.

6.1.4 The Trust's Standing Orders and Standing Financial Instructions place an obligation on all staff and Non-Executive Directors to act in accordance with best practice. In addition, all Trust staff and Non-Executive Directors must declare and register any interests that might potentially conflict with those of the Trust or the wider NHS.

6.1.5 In addition, all employees have a responsibility to comply with all applicable laws and regulations relating to ethical business behaviour, procurement, personal expenses, conflicts of interest, confidentiality and the acceptance of gifts and hospitality. This means, in addition to maintaining the normal standards of personal honesty and integrity, all employees should always:

- Act with honesty, integrity and in an ethical manner
- Behave in a way that would not give cause for others to doubt that the Trust's employees deal fairly and impartially with official matters
- Be alert to the possibility that others might be attempting to deceive.

6.1.6 When an employee suspects that there has been fraud or corruption, they must report the matter to the nominated Local Counter Fraud Specialist. See contact details Section 7.3 below.

6.1.7 All employees should be aware that fraud and bribery (of finances of the NHS or of patients in our care) will normally, dependent upon the circumstances of the case, be regarded as gross misconduct thus warranting summary dismissal without previous warnings. However, no such action will be taken before a proper investigation and a disciplinary hearing have taken place. Such actions may be in addition to the possibility of criminal prosecution.

6.1.8 Employees will not request or receive a bribe from anybody, nor imply that such an act might be considered. This means that you will not agree to receive or accept a financial or other advantage from a former, current or future client, business partner, contractor or supplier or any other person as an incentive or reward to perform improperly your function or activities.

6.2. Managers

- 6.2.1. Managers are responsible for ensuring that policies, procedures and processes within their local area are adhered to and kept under review. They have a responsibility to ensure that staff are aware of fraud, bribery and corruption and understand the importance of protecting the Trust from it. They are also responsible for the enforcement of disciplinary action against staff who do not comply with policies and procedures.
- 6.2.2 Managers must be vigilant and ensure that procedures to guard against fraud and corruption are followed. They should be alert to the possibility that unusual events or transactions could be symptoms of fraud. Where they have any doubt, they must seek advice from their nominated Local Counter Fraud Specialist.
- 6.2.3 Managers must instil and encourage a zero-tolerance culture within their team with regards to criminal wrongdoing. The LCFS will proactively assist in this endeavour by undertaking work to raise fraud awareness and create deterrence effects.
- 6.2.4 All instances of actual or suspected fraud or corruption, which come to the attention of a manager, must be reported immediately to the LCFS. It is appreciated that some employees will initially raise concerns with their manager, however, in such cases managers must not attempt to investigate the allegation themselves, and they have the clear responsibility to refer the concerns to the Local Counter Fraud Specialist as soon as possible. See Section 6.3 below.
- 6.2.5 Where staff have access to the Internet, managers need to ensure that any use is linked to the performance of their duties and any private use specifically agreed beforehand. Where internet usage is used to facilitate fraudulent activity, it must be reported to the LCFS immediately.
- 6.2.6 Managers also have a responsibility to ensure that an adequate system of internal control exists within their areas of responsibility and that controls operate effectively.

As part of that responsibility, line managers need to:

- Inform staff of the Trust's Standards of Business Conduct, gifts and hospitality, declaration of interest and counter fraud and bribery policies as part of their induction process, paying particular attention to the need for accurate completion of personal records and forms
- Ensure that all employees for whom they are accountable are made aware of the requirements of the policy
- Assess the types of risk involved in the operations for which they are responsible
- Ensure that adequate control measures are put in place to minimise the risks. This must include clear roles and responsibilities,

supervisory checks, staff rotation (particularly in key posts), separation of duties wherever possible so that control of a key function is not invested in one individual, and regular reviews, reconciliations and test checks to ensure that control measures continue to operate effectively

- Be aware of the Trust's Counter Fraud Policy and the rules and guidance covering the control of specific items of expenditure and receipts
- Identify financially sensitive posts
- Ensure that controls are being complied with
- Contribute to their director's assessment of the risks and controls within their business area, which feeds into the Trust's and the Department of Health Accounting Officer's overall statements of accountability and internal control.

6.3. Local Counter Fraud Specialist

6.3.1 The NHS Counter Fraud Authority Standards for Providers require the Trust to appoint and formally nominate a dedicated LCFS, who is fully accredited and compliant with NHSCFA regulations. The role of the LCFS is to take forward all anti-fraud work locally and ensure that all cases of actual or suspected fraud are notified to the Trust's Chief Financial Officer (CFO) and reported to the NHSCFA . Contact details for the LCFS in the Trust are as follows:

Gemma Higginson
RSM
07800 718 680
gemma.higginson1@nhs.net

6.3.2. The LCFS and the CFO, in conjunction with the NHSCFA , will decide who will conduct the investigation and when/if referral to the police is required. Cases, for instance, where more than one Trust is involved or where possible corruption is involved will usually be investigated by the NHSCFA themselves (though the LCFS may assist); otherwise the investigation will normally be undertaken by the Trust's own LCFS directly.

6.3.3. The LCFS will:

- Work with key colleagues and stakeholders to promote anti-fraud work and effectively respond to system weaknesses and investigate allegations of fraud and corruption. This will include the undertaking of risk assessments to identify fraud, bribery and corruption risks at the Trust.
- Ensure that the CFO is kept apprised of all referrals / cases.
- Investigate all cases of fraud, as per 6.3.2 above.
- In consultation with the CFO and the NHS Counter Fraud Authority, will report any case to the Police as agreed.

- Report any case and the outcome of the investigation to the NHS Counter Fraud Authority and CFO, and provide required reports to the NHS Counter Fraud Authority.
- Ensure that other relevant parties are informed where necessary e.g. Human Resources where an employee is a suspect.
- Ensure that the Trust's incident and losses reporting systems are followed.
- Ensure that any system weaknesses identified as part of the investigation are followed up with management or Internal Audit.

6.4. Chief Executive

The Chief Executive has the overall responsibility for funds entrusted to the organisation. This includes instances of fraud, bribery and corruption. The Chief Executive must ensure adequate policies and procedures are in place to protect the organisation and the public funds it receives.

The Trust's Chief Executive is liable to be called to account for specific failures in the Trust's system of internal controls. However, responsibility for the operation and maintenance of controls falls directly to line managers and requires the involvement of all of Trust employees. The Trust therefore has a duty to ensure employees who are involved in or who are managing internal control systems receive adequate training and support in order to carry out their responsibilities.

6.5. The Board

- 6.5.1 The board and non-executive directors provide clear and demonstrable support and strategic direction for counter fraud, bribery and corruption work.
- 6.5.2 The board will review the proactive management, control and the evaluation of counter fraud, bribery and corruption work.
- 6.5.3 The board and non-executive directors will scrutinise NHSCFA assessment reports, where applicable, and ensure that the recommendations are fully actioned.

6.6 Chief Financial Officer (CFO)

- 6.6.1 The Chief Financial Officer is provided with powers to approve financial transactions initiated across the Trust. As part of this role the Chief Financial Officer is responsible for the maintenance and implementation of detailed financial procedures and systems which incorporate the principles of separation of duties and internal checks.
- 6.6.2 The Chief Financial Officer will report annually to the Board on the adequacy of internal financial control and risk management as part of the Board's overall responsibility to prepare a statement of internal control for inclusion in the Trust's annual report.

- 6.6.3 The CFO, in conjunction with the Chief Executive, shall monitor and ensure compliance with the NHSCFA Standards for Providers.
- 6.6.4 The CFO, in consultation with the NHSCFA and the LCFS, will decide whether there is sufficient cause to conduct an investigation, and whether the Police and External Audit need to be informed.
- 6.6.5 The Chief Financial Officer or the LCFS will consult and take advice from the Head of HR if a member of staff is to be interviewed or disciplined. The Chief Financial Officer or LCFS will not conduct a disciplinary investigation, but the employee may be the subject of a separate investigation by HR.
- 6.6.6 The CFO will, depending on the outcome of investigations (whether on an interim/ongoing or a concluding basis) and/or the potential significance of suspicions that have been raised, inform the Chair of the Trust and the Chair of the Audit Committee of cases, as may be deemed appropriate or necessary, especially in cases where the loss may be significant or where the incident may lead to adverse publicity.
- 6.6.7 The CFO is also responsible for informing the Audit Committee of all categories of loss.

6.7. Audit Committee

- 6.7.1 The audit committee are responsible for seeking assurance that the Trust has adequate arrangements in place for countering fraud and bribery in compliance with NHSCFA Standards. This will include but is not limited to the review and approval of LCFS workplans, reports from the LCFS, the annual self-assessment submission to NHSCFA (self-review tool), and from NHSCFA inspection reports.
- 6.7.2 Further information on the responsibilities of the audit committee can be found in the NHS Audit Committee Handbook 2018 which can be accessed online via <https://www.hfma.org.uk/publications?Type=Guide>

6.8 Internal and External Audit

- 6.8.1 The role of internal and external audit includes reviewing controls and systems and ensuring compliance with financial instructions. While this role does not include uncovering instances of fraud, bribery and corruption, there is a duty for internal and external audit to pass on any suspicions to the LCFS.

6.9. Human Resources

- 6.9.1 Human Resources will liaise closely with Managers and the LCFS, from the outset, where an employee is suspected of being involved in fraud. Human Resources are responsible for ensuring the appropriate use of the Trust's Disciplinary Procedure. The Human Resources Department shall advise

those involved in the investigation in matters of employment law and in other procedural matters, such as disciplinary and complaints procedures. Close liaison between the LCFS and HR will be essential to ensure that any parallel sanctions (i.e. criminal and disciplinary) are applied effectively and in a coordinated manner.

- 6.9.2 Human Resources will take steps at the recruitment stage to establish, as far as possible, the previous record of potential employees as well as the veracity of required qualifications and memberships of professional bodies, in terms of their propriety and integrity. In this regard, temporary and fixed term contract employees are treated in the same manner as permanent employees.

6.10. Information Management & Technology

- 6.10.1 The Head of Information Security (or equivalent) will contact the LCFS immediately at all cases where there is suspicion that IT is being used for fraudulent purposes. This includes inappropriate Internet or email use and any offence under the Computer Misuse Act 1990. Human Resources will be informed if there is a suspicion that an employee is involved.

6.11. External Communications

- 6.11.1 Individuals (be they employees, agency staff, locums, contractors or suppliers) must not communicate with any member of the press, media or another third party about a suspected fraud as this may seriously damage the investigation and any subsequent actions to be taken. Anyone who wishes to raise such issues should discuss the matter with either the CFO or the Chief Executive.

6.12. External parties

- 6.12.1 Those organisations undertaking work on behalf of the Trust are expected to maintain strong anti-fraud principles and have adequate controls in place to prevent fraud when handling public funds and dealing with customers on behalf of the Trust. Contractors and sub-contractors acting on the Trust's behalf are responsible through contractual arrangements put in place during the tender process and through contracts, for compliance with the Bribery Act 2010.

NHS Counter Fraud Authority

- 6.13.1 The NHSCFA has responsibility for all policy and operational matters relating to the prevention, detection and investigation of fraud, bribery and corruption in the NHS and that any investigations will be handled in accordance with NHSCFA guidance.

- 6.13.2 The NHSCFA will only investigate cases which should not be dealt with by the Trust. Following receipt of all referrals, the NHSCFA will add any known

information or intelligence and based on this case acceptance criteria determine if a case should be investigated by the NHSCFA.

7 Bribery and corruption

7.1 The Trust will undertake risk assessments in line in line with Ministry of Justice guidance to assess how bribery may affect the organisation. This will be undertaken every three years, however this is not definitive, and circumstances may call for a risk assessment to be undertaken outside of this pattern, for example due to changes in legislation or a reported incident of bribery within the Trust. The risk assessment will be undertaken by a nominated officer such as the LCFS, who will report directly to the Chief Financial Officer.

7.2 Proportionate procedures in place to mitigate the identified risk include the following:

- all staff must disclose their business interests, prior to commencement of employment with Trust;
- all staff must disclose any new business interests immediately to Trust;
- all staff must declare hospitality (other than modest hospitality) received by or offered to them as Trust employees;
- all hospitality (other than extremely minor hospitality) provided by Trust staff to third parties must be declared; and
- staff must not solicit personal gifts and must declare all gifts received (more than £50 in value).
- Guidance regarding the above requirements can be found in the Conflicts of Interest Policy (including gifts, hospitality and sponsorship)

All staff must be aware of and comply with the Standing Financial Instructions, Scheme of Delegation (SFIs), Standards of Business Conduct, Code of Conduct, Secondary Employment Policy, Declaration of Interest and their related requirement to declare relevant information.

In circumstances of attempted bribes offered to Trust employees or associated persons, staff must refuse acceptance of the bribe in whatever form and must report this to the LCFS or Chief Financial Officer, immediately. If in doubt, contact either of the above for advice and for guidance on gifts and hospitality; please refer to the Conflicts of Interest Policy (including gifts, hospitality and sponsorship).

The Trust will refer to the Home Office's bribery and corruption assessment template to assess their response to bribery and corruption.

8 Reporting Fraud, Corruption or Other Illegal Acts

- 8.1 If any of the concerns mentioned in this document come to the attention of an employee, they must inform the LCFS or CFO immediately.

Employees can also call the NHS Fraud and Corruption Reporting Line or by filling in an online form at <https://cfa.nhs.uk/reportfraud>, as an alternative to internal reporting procedures and if staff wish to remain anonymous. This provides an easily accessible route for the reporting of genuine suspicions of fraud within or affecting the NHS. It allows NHS staff that are unsure of internal reporting procedures to report their concerns in the strictest confidence. Experienced, trained staff deal with all calls and any caller who wishes to remain anonymous may do so.

If it suspected that the LCFS or a member of the management team is implicated, reports should be made to the Chair of the Audit Committee. Alternatively, you can contact NHSCFA directly.

Contact information for the above are listed in Appendix A.

- 8.2. The attached Appendix A is designed to be a reminder of the key "what to do" steps - as well as contact details - to be taken where fraud or other illegal acts are discovered or suspected.

Managers are encouraged to copy this to staff and to place it on staff notice boards in their department.

- 8.3 Anonymous letters, telephone calls etc. are received from time to time from individuals who wish to raise matters of concern, but not through official channels. While the allegations may be erroneous or unsubstantiated, they may also reflect a genuine cause for concern and should always be taken seriously.

Sufficient enquiries will be made by the LCFS to establish whether or not there is any foundation to the allegations. If the allegations are found to be malicious, they will also be considered for further investigation as to their source.

The Trust wants all employees to feel confident that they can expose any wrongdoing without any risk to themselves. In accordance with the provisions of the Public Interest Disclosure Act 1998, the Trust has produced the Raising Concerns Policy and Procedure. This procedure is intended to complement the Trust's Counter Fraud Policy and Standards of Business conduct and ensures there is full provision for staff to raise any concerns with others if they do not feel able to raise them with their line manager/management chain.

9 Whistleblowing

- 9.1 The Trust wants all employees to feel confident that they can expose any wrongdoing without any risk to themselves. The Trust's Speaking Up Policy ensures there is full provision for staff to raise any concerns with others if they do not feel able to raise them with their line manager/management chain.

To support the reporting of fraud using the NHSCFA fraud reporting process all employees should be aware of NHS Improvement and NHS

England's: Freedom to speak up: raising concern's (whistleblowing) policy for the NHS, April 2016¹ and NHS England's Freedom to speak up in Primary Care: Guidance to primary care providers on supporting whistleblowing in the NHS, November 2017². These all form the minimum standards for raising of concerns in the NHS for the benefit of all patients in England.

10 Sanctions and redress

10.1 Sanctions

10.1.1 The Trust will in every instance consider seeking appropriate sanctions, including appropriate legal action and financial redress, against people who are found to be committing fraud and corruption. Investigations should be conducted from the offset of an investigation, with a view to any possible use of sanctions should sufficient evidence be gathered to show fraud and corruption has occurred. With consultation from the LCFS and consultation / guidance from other appropriate parties (NHSCFA / NHS Professionals / HR Director / Trust Board), it is the decision of the CFO to apply sanctions. The Trust will maintain a full record of every investigation as well as the outcome and action taken.

10.1.2 Each case will be considered individually on its own facts and merits; based on applying a consistent and thorough approach in all cases to ensure

- the most effective investigations are undertaken, including the gathering and assessment of all relevant material which may form evidence of fraud, bribery, corruption, misconduct and/or unfitness to practise;
- the most appropriate sanction or combination of sanctions is sought where fraud, bribery, corruption or related misconduct is/are identified.

¹ NHS Improvement and NHS England's Freedom to speak up: raising concern's (whistleblowing) policy for the NHS, April 2016 <https://improvement.nhs.uk/resources/freedom-to-speak-up-whistleblowing-policy-for-the-nhs/>

² NHS England's Guidance Freedom to speak up in primary care: Guidance to primary care providers on supporting whistleblowing in the NHS, November 2017 <https://www.england.nhs.uk/wp-content/uploads/2016/11/whistleblowing-guidance.pdf>

10.1.2 The NHS Anti-fraud manual provides in-depth details of how sanctions can be applied where fraud and corruption is proven. However, the range of available sanctions which may be pursued by the Trust includes:

- Criminal prosecution (potentially resulting in fine, imprisonment, community penalty, confiscation and/or compensation orders);
- Civil action, including action to preserve assets and recover losses;
- Disciplinary action by the employing body;
- Regulatory action by a relevant regulatory body.

10.1.3 In cases of serious or extensive fraud, the Trust may consider a criminal prosecution, the outcome of which can range from a criminal conviction to fines and imprisonment. The LCFS will work in partnership with the NHS Counter Fraud Authority, the Police and/or Crown Prosecution Service to bring a case to court (magistrates' court and Crown court) against the alleged offender.

10.1.4 The Trust will consider civil sanctions to be taken against those who commit fraud or corruption to recover money and/or assets fraudulently obtained, including interest and costs, if this is cost-effective and desirable for deterrence purposes. This could involve a number of options such as applying through the Small Claims Court and/or recovery through debt collection agencies. Each case will be discussed with Chief Finance Officer to determine the most appropriate action.

10.1.5 Disciplinary procedures will be initiated where an employee is suspected of being involved in a fraudulent or illegal act, or where their negligent action has led to a fraud being perpetrated. The appropriate senior manager, in conjunction with the HR department, will be responsible for initiating any necessary disciplinary action. The Trust's disciplinary procedure is separate from any police enquiries, legal proceedings or convictions regarding a criminal offence relating to employment. It should be noted that the duty to follow disciplinary procedures will not override the need for legal action to be taken (e.g. consideration of criminal action). In the event of doubt, legal statute shall prevail.

10.1.6 Medical councils and other regulators or professional bodies (including NHS England) have statutory powers to place conditions on, suspend or remove the registration of professionals whose fitness to practice has been impaired by virtue of a criminal conviction or serious professional misconduct. Trust employees that have memberships with relevant professional bodies may be reported to those bodies as a result of an investigation relating to fraud or corruption.

10.1.7 In cases of serious fraud or corruption, the Trust may decide to apply parallel sanctions where possible (for example, both criminal and civil proceedings). The NHSCFA document 'Applying Appropriate Sanctions Consistently' provides further detail on how sanctions can be applied effectively in parallel. While multiple sanctions may be pursued at the same time in relation to the

same incident, the processes involved should be run separately, to maintain their integrity and ensure that all decision making is impartial and independent. This is because the purposes, rules of evidence, standards of proof and outcomes for different types of sanction differ significantly.

10.1.8 In some cases, in consideration of the facts of the case, the Trust may decide, under guidance from the LCFS and the NHSCFA, no further action is taken. The particulars of the fraud will be maintained by the LCFS in a fraud register and any relevant improvements to systems or procedure to prevent this from occurring in future will be actioned.

10.2 Redress

10.2.1 The Trust will seek financial redress whenever possible to recover losses from fraud and corruption. It is the decision of the CFO, after consultation from the LCFS and other relevant parties (e.g. NHS Counter Fraud Authority / legal advisors / Board) to take action to seek redress. The CFO is also responsible for supervising the recovery action, which will be commenced as soon as is practicable after the loss has been identified.

10.2.2 Redress can take the form of confiscation and compensation orders, a civil order for repayment, or a local agreement between the organisation and the offender to repay monies lost. The decisions for redress will be taken in the light of the circumstances of each case.

10.2.3 Redress allows resources that are lost to fraud and bribery to be returned to the NHS for use as intended, for provision of high-quality patient care and services. Depending on the extent of the loss and the proceedings in the case, it may be suitable for the recovery of losses to be considered under Proceeds of Crime Act 2002 (POCA). This means that a person's money or assets are taken away from them if it is believed that the person benefited from the crime.

10.2.4 It could also include restraining assets during the investigation. When considering seeking redress recovery may also be sought from on-going salary payments or pensions.

10.2.5 Sections 10 and 11 of the NHS Counter Fraud and Corruption Manual and the NHSCFA document 'Applying Appropriate Sanctions consistently' provides further details of how redress can be sought, however redress can be sought by way of a Confiscation Order (Proceeds of Crime) or Compensation Order in cases of criminal proceedings. Depending on the extent of the loss and the proceedings in the case, it may be suitable for the recovery of losses to be considered under Proceeds of Crime Act 2002 (POCA). This means that a person's money or assets are taken away from them if it is believed that the person benefited from the crime. It could also include restraining assets during the course of the investigation.

10.2.6 Redress may also be sought through a civil order of repayment. A civil claim with the objective of financial recovery can be brought where financial redress through criminal proceedings is not appropriate, or if there is no

financial compensation following a criminal conviction. The NHS Counter Fraud Authority engage law firms that provide civil recovery services to support Trusts seeking to recover NHS funds lost through fraud and corruption.

10.2.7 Additionally, the Trust may enter into a local agreement for repayment by the offender, particularly if the offender is willing to recompense the Trust. Alternatively, recovery may also be sought from on-going salary payments or pensions.

10.2.8 Consideration must be given to the amount of loss, the further costs involved, and the likelihood (and level) of recoveries when making any decision in relation to redress. This may, on occasion, mean that no further action is taken. The LCFS will maintain a full record of all decisions regarding redress for each case.

10.2.9 In order to provide assurance that policies were adhered to, the Chief Financial Officer will maintain a record highlighting when recovery action was required and issued and when action taken. This will be reviewed and updated on a regular basis.

11 Disciplinary Action

11.1 The disciplinary procedures of the Trust must be followed where an employee is suspected of being involved in a fraudulent or other illegal act, or where their negligent action has led to a fraud being perpetrated.

11.2 It should be noted, however, that the duty to follow disciplinary procedures will not override the need for legal action to be taken. In the event of doubt, legal statute shall prevail.

12 Police Involvement

12.1 In accordance with the NHS Counter Fraud & Corruption Manual, the CFO, in conjunction with the LCFS and the NHSCFA, will decide whether or not a case should be referred to the police. Human Resources and line managers will be involved as necessary. Any referral to the police will not prohibit action being taken under the Trust's disciplinary procedures.

13 Evaluation Measures

13.1 Monitoring

Any abuse or non-compliance with this policy or procedures will be subject to a full investigation and appropriate disciplinary action, as well as being subject to criminal investigation and appropriate criminal sanctions.

Monitoring is essential to ensuring that controls are appropriate and robust enough to prevent or reduce fraud. Arrangements might include reviewing system controls on an on-going basis and identifying weaknesses in processes. Where deficiencies are identified as a result of monitoring, the Trust

will ensure that appropriate recommendations and action plans are developed and progress of the implementation of recommendations is tracked.

The policy will be tested for effectiveness on an annual basis. When measuring the effectiveness of the policy the LCFS will consider the number of referrals received, the source of referrals and any initiatives undertaken to increase readership. The policy may be subject to amendment following an incident of fraud, bribery or corruption where necessary to improve its effectiveness.

As a result of reactive and proactive work completed throughout the financial year, closure reports are prepared and issued by the LCFS. System and procedural weaknesses are identified in each report and suggested recommendations for improvement are highlighted. The Trust, together with the LCFS will track the recommendations to ensure that they have been implemented.

13.2 Assurance

Adherence to this policy is assured through progress reporting by the LCFS to the CFO and Audit Committee on a bi-monthly basis. Progress reports cover the status of current investigations; allegations / referrals received; and the nature and extent of proactive activity performed by the LCFS against the annual counter fraud plan. In addition, the Trust is required to complete the NHSCFA Self Review Tool and submit this annually to NHSCFA and the lead commissioner. The Trust must mark themselves against each standard in the Standards for Providers as either Compliant (green), Partially Compliant (Amber) or Non-Compliant (Red). A work-plan is required to address all non-compliant standards which will be monitored by the Audit Committee. An assessment process may be conducted by NHSCFA Quality and Compliance which will evaluate the Trust's effectiveness in dealing with the fraud, bribery and corruption risks it faces through one of four types of assessment: Full, Focused, Thematic or Triggered.

13.3 Review

This policy will be reviewed every two years by the LCFS, or sooner where a legislative change or incident of fraud, bribery or corruption requires such action.

14 Dissemination of the policy

The policy will be referenced within fraud awareness materials, presentations and on staff induction. The policy will be available to all staff via the intranet.

15 Related Policies

The Counter Fraud Policy should be read in conjunction with the following policies:

- Conflicts of Interest Policy (including gifts, hospitality and sponsorship)

- Speaking Up Policy (Raising Concerns/Whistleblowing)
- Disciplinary Policy
- Policy and Procedure in Cases of Under / Overpayment of Salary, Allowances and Entitlement
- Anti-Bribery Policy

16 Equality Impact Assessment

		Yes/No	Comments
1.	Does the policy/guidance affect one group less or more favourably than another on the basis of:		
	Race	No	
	Ethnic origins (including gypsies and travellers)	No	
	Nationality	No	
	Gender	No	
	Culture	No	
	Religion or belief	No	
	Sexual orientation including lesbian, gay and bisexual people	No	
	Age	No	
	Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
	Marriage & Civil partnership	No	
	Pregnancy & maternity	No	
2.	Is there any evidence that some groups are affected differently?	No	
3.	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?	No	
4.	Is the impact of the policy/guidance likely to be negative?	No	
5.	If so can the impact be avoided?	No	
6.	What alternatives are there to achieving the policy/guidance without the impact?	No	
7.	Can we reduce the impact by taking different action?	No	

If you have identified a potential discriminatory impact of this procedural document, please refer it to (Insert name and position) together with any suggestions as to the action required to avoid/reduce this impact.

For advice in respect of answering the above questions, please contact (Insert name and position).

Appendix A

ACTION TO BE TAKEN IF YOU DISCOVER OR SUSPECT ANY FRAUDULENT ACTIVITY

This includes:	What to do:	DO
1.1 Fraud <ul style="list-style-type: none"> Any dishonestly made false representation, failure to disclose information or abuse of a position held, with the intention of making a financial gain or causing a financial loss. 	<p>If any of these concerns come to light you must immediately report your suspicions and what you have discovered to one of the following:</p> <p>The Local Counter Fraud Specialist (LCFS): 07800 718 680</p> <p>Or</p> <p>The Trust Senior Compliance Officer (Chief Financial Officer) on: 01923 436 368</p> <p>Or</p> <p>The NHS Fraud Reporting Line: 0800 028 4060</p>	<ul style="list-style-type: none"> Tell the LCFS or CFO Confidentiality will be respected. Any delay might cause the organisation to suffer further financial loss. Make a note of your concerns! Note all relevant details, what was said, the date time and names of all parties involved. Keep a record or copy any documentation that arouses your suspicion.
1.2 Bribery and Corruption <ul style="list-style-type: none"> Where someone offers, promises or gives a payment or benefit-in-kind in order to influence others to use their position in an improper way to gain an advantage. 	<p>Confidentiality will be maintained and all matters will be dealt with in accordance with the NHS Counter Fraud Authority Standards for Providers.</p>	<p>DO NOT</p>
1.3 Irregularity <ul style="list-style-type: none"> For example, viewing offensive material via the internet and inappropriate use of phones and mobile phones. 	<p>You will not suffer any recriminations as a result of raising concerns – you have protection under the Public Interest Disclosure Act 1998.</p>	<ul style="list-style-type: none"> Confront the individual(s) with your suspicions. Try to investigate the matter yourself. Contact the police directly. Convey your suspicions to anyone other than those with the proper authority as listed. Do nothing!

Appendix B

THE FRAUD ACT 2006

Summary

Section 1 of The Fraud Act sets out provisions for a general offence of fraud. There are several new offences created the main three being sections 2, 3 and 4. The act also creates new offences of obtaining services dishonestly and of possessing, making and supplying articles for use in fraud, as well as containing a new offence of fraudulent trading applicable to non-corporate traders.

Section 2: Fraud by False Representation

It is an offence to commit fraud by false representation. The representation must be made dishonestly.

The person must make the representation with the intention of making a gain or causing loss or risk of loss to another. The gain or loss does not actually have to take place.

A representation is defined as false if it is untrue or misleading and the person making it knows that it is, or might be, untrue or misleading. A representation means any representation as to fact or law, including a representation as to a person's state of mind.

A representation may be express or implied. It can be stated in words or communicated by conduct. There is no limitation on the way in which the representation must be expressed. It could be written or spoken or posted on a website.

A representation may also be implied by conduct. An example of a representation by conduct is where a person dishonestly misuses a credit card to pay for items. By tendering the card, he is falsely representing that he has the authority to use it for that transaction. It is immaterial whether the merchant accepting the card for payment is deceived by the representation.

This offence would also be committed by someone who engages in "phishing": i.e. where a person disseminates an email to large groups of people falsely representing that the email has been sent by a legitimate financial institution. The email prompts the reader to provide information such as credit card and bank account numbers so that the "phisher" can gain access to others' personal financial information.

A representation may be regarded as being made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention). The main purpose of this provision is to ensure that fraud can be committed where a person makes a representation to a machine and a response can be produced without any need for human involvement. (An example is where a person enters a number into a "CHIP and PIN" machine.)

Section 3: Fraud by Failing to Disclose Information

Section 3 makes it an offence to commit fraud by failing to disclose information to another person where there is a legal duty to disclose the information. A legal duty to disclose information may include duties under oral contracts as well as written contracts.

For example, the failure of a solicitor to share vital information with a client within the context of their work relationship, in order to perpetrate a fraud upon that client, would be covered by this section. Similarly, an offence could be committed under this section if for example an NHS employee failed to disclose to the Trust that certain patients referred by him for private treatment are private patients, thereby avoiding a charge for the services provided by that NHS employee during NHS time.

Section 4: Fraud by Abuse of Position

Section 4 makes it an offence to commit a fraud by dishonestly abusing one's position. It applies in situations where the defendant has been put in a privileged position, and by virtue of this position is expected to safeguard another's financial interests or not act against those interests.

The necessary relationship will be present between trustee and beneficiary, director and company, professional person and client, agent and principal, employee and employer, or between partners. It may arise otherwise, for example within a family, or in the context of voluntary work, or in any context where the parties are not at arm's length.

The term "abuse" is not limited by a definition, because it is intended to cover a wide range of conduct. The offence can be committed by omission as well as by positive action. For example, an employee who fails to take up the chance of a crucial contract in order that an associate or rival company can take it up instead at the expense of the employer commits an offence under this section.

An employee of a software company who uses his position to clone software products with the intention of selling the products on would commit an offence under this section.

Another example covered by this section is where a person who is employed to care for an elderly or disabled person has access to that person's bank account and abuses his position by removing funds for his own personal use.

Note: It is now no longer necessary to prove a person has been deceived in the above offences. The focus is now on the dishonest behaviour of the suspect and their intent to make a gain or cause a loss.

Section 5: (not relevant for the purposes of this document)

Section 6: Possession etc. of Articles for Use in Frauds

Section 6 makes it an offence for a person to possess or have under his control any article for use in the course of or in connection with any fraud. This wording draws on that of the existing law in section 25 of the Theft Act 1968 (These provisions make it an offence for a person to "go equipped" to commit a burglary, theft or cheat, although they apply only when the offender is not at his place of abode).

Proof is required that the defendant had the article for the purpose or with the intention that it be used in the course of or in connection with the offence, and that a general intention to commit fraud will suffice.

Section 7: Making or Supplying Articles for Use in Frauds

Section 7 makes it an offence to make, adapt, supply or offer to supply any article knowing that it is designed or adapted for use in the course of or in connection with fraud, or intending it to be used to commit or facilitate fraud. For example, a person makes devices which when attached to electricity meters cause the meter to malfunction.

Section 8: "Article"

Section 8 extends the meaning of "article" for the purposes of sections 6 and 7 and certain other connected provisions so as to include any program or data held in electronic form. Examples of cases where electronic programs or data could be used in fraud are: a computer program can generate credit card numbers; computer templates can be used for producing blank utility bills; computer files can contain lists of other peoples' credit card details or draft letters

Section 9: Participating in fraudulent business carried on by sole trader etc.

Section 9 makes it an offence for a person knowingly to be a party to the carrying on of fraudulent business where the business is not carried on by a company or (broadly speaking) a corporate body.

- A person commits the offence of fraudulent trading
- dishonesty is an essential ingredient of the offence;
- the mischief aimed at is fraudulent trading generally, and not just in so far as it affects creditors;
- the offence is aimed at carrying on a business but that can be constituted by a single transaction;
- It can only be committed by persons who exercise some kind of controlling or managerial function within the company.

Section 10: (not relevant for the purposes of this document)

Section 11: Obtaining Services Dishonestly

Section 11 makes it an offence for any person, by any dishonest act, to obtain services for which payment is required, with intent to avoid payment. The person must know that the services are made available on the basis that they are chargeable, or that they might be. It is not possible to commit the offence by omission alone and it can be committed only where the dishonest act was done with the intent not to pay for the services as expected.

It requires the actual obtaining of the service. For example, data or software may be made available on the Internet to a certain category of person who has paid for access rights to that service. A person dishonestly using false credit card details or

other false personal information to obtain the service would be committing an offence under this section. The section would also cover a situation where a person climbs over a wall and watches a football match without paying the entrance fee - such a person is not deceiving the provider of the service directly, but is obtaining a service which is provided on the basis that people will pay for it.

Section 11 also covers the situation where a person attaches a decoder to her television to enable viewing access to cable / satellite television channels for which they have no intention of paying for.

Section 12: Liability of Company Officers for Offences by Company

This section repeats the effect of section 18 of the Theft Act 1968. It provides that company officers who are party to the commission of an offence under the Bill by their body corporate will be liable to be charged for the offence as well as the company. It applies to directors, managers, secretaries and other similar officers of a company. If the body corporate charged with an offence is managed by its members the members involved in management can be prosecuted too.

The Fraud Act 2006 repeals the following Theft Act offences:

Theft Act 1968

- Section 15 (obtaining property by deception).
- Section 15A (obtaining a money transfer by deception).
- Section 15B (Section 15A: supplementary).
- Section 16 (obtaining a pecuniary advantage by deception).
- Section 20(2) (procuring the execution of a valuable security by deception).

Theft Act 1978

- Section 1 (Obtaining services by deception).
- Section 2 (Evasion of liability).

The Act came into force on 15th January 2007 and carries a maximum sentence of 10 yrs imprisonment with the exception of the 'going equipped offence' which is 5yrs. Any suspicions of fraud against the Trust should be reported to the Local Counter Fraud Specialist or CFO:

Telephone: 07800 718 680 Email: gemma.higginson1@nhs.net

or

Telephone: 01923 436368 Email: don.richards@whht.nhs.uk

or

Alternatively, you can telephone the NHS Fraud & Corruption Line anonymously on 0800 028 40 60 or online at <https://cfa.nhs.uk/reportfraud>.