

Counter Fraud and Bribery Policy

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Version Control Summary

Version	Date	Author	Status	Comment
1	16 th April 2013	Zenda Butler	Approved by Audit Committee on the 14.10.2013	The previous policy did not adhere to the Trust's Policy for the Development of Procedural Documents. It also needed updating to reflect the provisions introduced under the Health and Social Care Act 2012 which mean that the arrangements to counter fraud are now set out in the standard commissioning contracts rather than the Secretary of State Directions. Title also changed from Fraud and Corruption Policy to Fraud and Bribery Policy
2	17 th February 2015	Zenda Butler	Approved by Audit Committee on the 26.05.2015	<p>Included Anti-Bribery Statement from Chief Executive.</p> <p>Amendments made to section 7 (the Investigation of Fraud and Bribery) and section 9 (Implementation of Policy).</p> <p>Included additional information on recovering monies where fraud is proven.</p> <p>Included further examples of fraud</p> <p>Removed reference to old corruption legislation</p> <p>Updated LCFS and DoF contact details</p>

3	6 th October 2016	Zenda Butler		Updated the name of the Chief Executive, added additional examples of fraud, and other minor amendments
4	22 nd November 2017	Zenda Butler		<p>Reference to NHS Protect changed to NHS Counter Fraud Authority. Director of Finance changed to Chief Finance Officer.</p> <p>Human Resource Manager changed to Human Resource Business Partner.</p> <p>Fraud loss figure updated.</p> <p>Some text removed from 3.4 as it duplicates information in the Standards of Business Conduct Policy.</p> <p>Reviewed by Head of IG in light of GDPR</p>
5	13 th January 2019	Zenda Butler		<p>Fraud loss figure updated.</p> <p>Amendment to 7.4</p> <p>DPA 1998 changed to DPA 2018</p> <p>Human Resource Business Partner changed to Employee Relations Manager/Advisor</p>

6	9 th January 2019	Zenda Butler		Amendments at request of the Audit Committee and to ensure compliance with the NHS CFA template.
7	21.4.2021	Zenda Butler		Updated to include the role of the Fraud Champion, updated fraud loss figure and amended the name of the CEO. Also updated in light of NHSCFA releasing their new strategy. Amendment to who policy applies to. Added ELFT's online reporting tool as an avenue to report concerns. Changes made in respect of the Bribery Act following a review of a CCG's anti-bribery policy.

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EXECUTIVE SUMMARY

This document provides East London NHS Foundation Trust with a policy and a response plan for dealing with suspected incidents of fraud and bribery. The policy is designed to minimise loss to the Trust by deterring, preventing and detecting fraud and bribery and providing effective action against it. The policy provides clear procedures for reporting suspected fraud and bribery and applies to all employees (regardless of position), temporary staff and non-executives and may also be used by locum, agency staff, contractors, consultants, patients, suppliers, committee members of organisations we fund, and other external stakeholders who have a professional or business relationship with the Trust, to report any concerns they may have.

The work to counter fraud and bribery within the Trust is extremely important. The vast majority of people who work in the NHS are honest and professional and they find it unacceptable that fraud and bribery committed by a minority ultimately leads to a reduction in resources available for patient care. The Trust is committed to protecting the public money it looks after and this means preventing fraud, bribery and corruption so that more money goes into health services. This policy is supported and endorsed by senior management.

Fraud involves dishonestly making a false representation, fraud by failing to disclose information, or fraud by abusing a position held with the intention of making a financial gain or causing a financial loss. Examples are detailed on page 11.

Effective Counter Fraud measures are an important part of ensuring that every pound spent on the NHS is used for its intended purpose

For more information refer to NHS Counter Fraud Authority's Strategy 2020-2023 Available at: https://cfa.nhs.uk/resources/downloads/documents/corporate-publications/NHSCFA_Strategy_2020-23.pdf

Statement from Paul Calaminus, Chief Executive

The Bribery Act 2010

The Bribery Act 2010 came into force on 1 July 2011 to make it easier for bribery and corruption to be tackled proactively in the public and private sectors.

East London NHS Foundation Trust supports the Bribery Act and is committed to ensuring we comply with its standards and six core principles, one of which requires top level commitment to the prevention of bribery.

The Trust Board is committed to preventing bribery within the Trust and within organisations with whom the Trust contracts. We aim to foster a culture in which bribery is never acceptable. Work has been undertaken to ensure our policies are updated and consistent, in line with the requirements in the Bribery Act, and to ensure that our staff and partner organisations understand their importance.

On behalf of the Board of Directors, I confirm our commitment to ensuring that East London NHS Foundation Trust is free from bribery and corruption.

1. Introduction

- 1.1 As with other large public sector organisations, the size and nature of our services put us at risk to loss due to fraud and bribery both from within the Trust and outside it.
- 1.2 The Trust is committed to ensuring that fraud, bribery and corruption is reduced to the lowest level of risk. However, where fraud and corruption does occur the Trust will deal with it in a firm and controlled manner by rigorous investigation of such cases. An important part of this approach has been the introduction of a Counter Fraud and Bribery Policy.
- 1.3 It is estimated that the vulnerability to the NHS in England from fraud, bribery and corruption is £1.21 billion.(NHS Counter Fraud Authority).
- 1.4 The NHS Counter Fraud Authority is an organisation tasked to lead the fight against fraud, bribery and corruption in the NHS. Their vision is to lead and pro-actively support the NHS to understand, find, prevent and respond to fraud. They investigate the most serious, complex and high-profile cases of fraud, and work closely with the police and the Crown Prosecution Service to bring offenders to justice. Their specialist financial investigators have powers to recover NHS money lost to fraud, and they have a forensic computing team who collect and analyse digital evidence. They set standards for counter fraud work across the NHS and by raising awareness of fraud against the NHS and publicising the work of the NHSCFA they encourage NHS staff, other stakeholders and the public to join the fight against NHS fraud.
- 1.5 Provisions introduced under the Health and Social Care Act 2012 mean that arrangements to counter fraud within NHS health bodies are set out in the standard commissioning contract. The NHS Counter Fraud Authority requires each provider to adhere to the Government's Functional Standards for Counter Fraud.
- 1.6 In accordance with the NHS standard contract the Trust has nominated a Local Counter Fraud Specialist (LCFS).

2. Purpose

- 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 and bribery. It provides a framework for responding to suspicions of fraud and bribery, 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 purpose of this policy is to:
 - improve the knowledge and understanding of everyone in East London NHS Foundation 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 feel able to raise concerns sensibly and responsibly
 - set out East London NHS Foundation Trust's responsibilities in terms of the deterrence, prevention, detection and investigation of fraud, bribery and corruption

- ensure the appropriate sanctions are considered following an investigation and action taken to recover monies.

3. Duties

This section states the roles and responsibilities of NHS body's employees and other relevant parties in reporting fraud, bribery or other irregularities.

3.1 Chief Executive

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

3.2 Chief Finance Officer

The Chief Finance Officer has a legal responsibility to make sure fraud, bribery and corruption are prevented, detected and investigated. Combating fraud, bribery and corruption requires an understanding of how and why it happens, the ways in which it can be minimized and how to professionally investigate it; therefore the Chief Finance Officer nominates an LCFS to tackle fraud and bribery within the Trust.

3.3 Local Counter Fraud Specialist (LCFS)

The LCFS is an experienced and accredited (professionally qualified) counter fraud specialist. In essence, the role of the LCFS is to respond to and proactively tackle risks and occurrences of fraud and bribery at the Trust by providing a robust and effective prevention, detection and Investigation function.

The work undertaken by the LCFS is based on the Government Functional Standards as follows ;

- **Having an Accountable individual** – the aim is to ensure that anti- crime measures are embedded at all levels across the organisations
- **Counter fraud bribery and corruption strategy** - The organisation aligns counter fraud, bribery and corruption work to the NHSCFA counter fraud, bribery and corruption strategy.
- **Fraud bribery and corruption risk assessment** - The organisation carries out comprehensive local risk assessments to identify fraud, bribery and corruption risks, and has counter fraud, bribery and corruption provision that is proportionate to the level of risk identified.
- **Policy and response plan** - The organisation has a counter fraud, bribery and corruption policy and response plan (the policy and plan) that follows NHSCFA's strategic guidance and has been approved by the executive body or senior management team.
- **Annual action plan** - An annual work plan is maintained that is informed by national and local fraud, bribery and corruption risk assessment identifying activities to improve capability and resilience
- **Outcome-based metrics** - The organisation identifies and reports on annual outcome-based metrics with objectives to evidence improvement in performance.
- **Reporting routes for staff, contractors and members of the public** - There are well established and documented reporting routes for staff,

contractors and members of the public to report incidents of fraud, bribery and corruption.

- **Report identified loss** - Use of the approved NHS fraud case management system to record all fraud, bribery and corruption investigative activity, including all outcomes, recoveries and system weaknesses identified during the course of investigations and/or proactive prevention and detection exercises. **Access to trained investigators** – Employs or contracts in an accredited, person (or persons) to undertake the full range of counter fraud, bribery and corruption work, including proactive work to prevent and deter fraud, bribery and corruption and reactive work to hold those who commit fraud, bribery or corruption to account
- **Undertake detection activity** - Undertake proactive work to detect fraud using relevant information and intelligence to identify anomalies that may be indicative of fraud, bribery and corruption and takes the appropriate action, including local exercises and participation or response to national exercises.
- **Access to and completion of training** - Have an ongoing programme of work to raise awareness of fraud, bribery and corruption and to create a counter fraud, bribery and corruption culture among all staff, across all sites, using all available media.
- **Policies and registers for gifts and hospitality and COI** - Have an organisation has a managing conflicts of interest policy and registers that include gifts and hospitality with reference to fraud, bribery and corruption, and the requirements of the Bribery Act 2010 and test the effectiveness of the implementation of the process and staff awareness of the requirements.

The LCFS reports to the Chief Finance Officer, but any member of the Trust staff can speak to and ask for advice from the LCFS. The LCFS is authorised to receive reports of suspected fraud, bribery and corruption from anyone, whether an employee of the Trust, independent contractors, patients and other third parties, and staff have a responsibility to the Trust to raise their genuine concerns. Under the NHS Standard Contract and the Trust's Standing Orders and Standing Financial Instructions, the LCFS is responsible for investigating allegations of fraud and bribery at the Trust.

The LCFS employs a risk-based methodology to enable the Trust to target resources at high risk areas and throughout the year undertakes proactive reviews in these areas which can detect fraud. Such reviews, together with Investigations, ensure the LCFS identifies and counters vulnerabilities within the Trust's systems by implementing effective prevention, detection and corrective controls to reduce the likelihood of fraud and bribery

The LCFS will create and manage the Trust's LCFS records.

3.4 **Audit Committee**

One of the purposes of the Audit Committee is to provide an independent check on the financial management of the Trust. The Committee meets, receives and considers reports by the internal and external auditors on all aspects of financial processes and procedures. Both the LCFS and Chief Finance Officer attend the Committee and the LCFS presents Progress Reports on the counter fraud work undertaken at the Trust. The Audit Committee can question and ask for further explanation in relation to any aspect of the counter fraud work. The role of the Audit Committee is to review, approve and monitor counter fraud workplans, receiving

regular updates on counter fraud activity, monitoring the implementation of action plans, providing direct access and liaison with those responsible for counter fraud, reviewing annual reports on counter fraud, and discussing NHSCFA quality assessment reports. For more information refer to the NHS Audit Committee Handbook 2018 <https://www.hfma.org.uk/publications?Type=Guide>

3.5 **Board**

The organisation's Board and non-executive directors should provide a clear and demonstrable support and strategic direction for counter fraud, bribery and corruption work. They should review the proactive management, control and the evaluation of counter fraud, bribery and corruption work. The Board and non-executive directors should scrutinise NHSCFA assessment reports, where applicable, and ensure that the recommendations are fully actioned.

3.6 **Employees and Contractors**

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

All employees and contractors of the Trust are individually responsible for:

- Securing the property of the Trust
- Avoiding loss
- Conforming with the rules and regulations contained in the Trust's Policies & Procedures

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

Trust employees are required to follow any Code of Conduct related to their personal professional qualifications.

Acceptance of offers of gifts or hospitality and declaration of business interests must be registered in line with Trust policy.

Please refer to the Trust's '*Standards of Business Conduct Policy*' for more guidance on the standards of business conduct expected of all employees.

When an employee suspects that there has been fraud, bribery or corruption, they must report the matter to the nominated LCFS. See Section 7.3 below.

Any employee in breach of these regulations may be liable to disciplinary action including summary dismissal.

3.7 **Internal and External Audit**

Any incident or suspicion that comes to Internal or External Audit's attention will be passed immediately to the NHS body's LCFS.

Auditors perform thorough checks on systems which detect any anomalies.

3.8 **Human Resources (People & Culture)**

Human Resources (HR) should immediately alert the LCFS to any allegations of fraud, bribery or corruption that they become aware of. There should be regular liaison between HR and the LCFS in respect of investigations. HR, in conjunction with Trust management, are responsible for instigating the necessary disciplinary action against those who fail to comply with the policies, procedures and processes.

3.9 **Fraud Champions**

The Fraud Champion's role is to support and promote the fight against fraud at a strategic level and with other colleagues within their own organisation. Fraud Champions support the LCFS in the work that they already do. The role of a Fraud Champion includes:

- Promoting awareness of fraud, bribery and corruption within the Trust at which they are employed and nominated for.
- Understanding the threat posed by fraud, bribery and corruption; and,
- Understanding best practice to countering fraud, bribery and corruption.

At ELFT the LCFS/Head of Counter has been nominated as the Fraud Champion.

3.10 **Information Management and Technology**

The Computer Misuse Act 1990 is relevant to electronic records and creates an offence of unlawfully gaining access to computer programmes. This includes access with intent to commit or facilitate the commission of further offences and unauthorised acts with intent to impair, or with recklessness as to impairing, operation of a computer system. It is also an offence to make, adapt, supply or obtain articles for use in unlawfully gaining access to computer material or impairing the operation of a computer.

Any fraudulent use of information technology will be reported to the LCFS.

4. **Policy**

4.1 Those who are exploiting the system are not only cheating taxpayers, they are depriving patients of the care they need. Fraud and bribery against the Trust means less money to spend on health services.

4.2 The Trust needs everyone's help to stop it so if you know of a fraud, bribery or corruption, tell the 'nominated officers' about it and give them the details, so they can investigate it. Every case is treated in strict confidence and you can provide information anonymously - but it's much more helpful if the 'nominated officers' can contact you for a bit more information. If you have any concerns about suspected fraud or corruption within the Trust, please report it by:

- Contacting the LCFS: Zenda Butler 0207 655 4289 or 07908194431 or email zenda.butler@nhs.net
- Reporting fraud to the LCFS via the on-line fraud reporting tool on the intranet homepage
- Contacting the Chief Finance Officer: Steven Course 0207 655 4000
- Calling the national NHS Counter Fraud Authority's 24 hour Fraud & Corruption Reporting Line on 0800 028 40 60
- Using NHS Counter Fraud Authority's online reporting tool <https://cfa.nhs.uk/reportfraud>

4.3 The Trust's Board wishes to encourage anyone having 'reasonable suspicions' of fraud or bribery to report them (i.e. any suspicions other than those which are raised maliciously). It is Trust policy, which will be rigorously enforced, that no employee or independent contractor will suffer in any way because of reporting reasonably held suspicions.

5. Definitions

5.1 **Fraud** is not a victimless crime. In fact, defrauding NHS organisations of money takes vital resources away from patient care.

5.2 Fraudulent activity manifests itself in many different ways including deception, bribery, forgery, counterfeiting, extortion, corruption, theft, conspiracy, collusion, embezzlement, misappropriation of assets, false representation and concealment of material facts.

5.3 The Fraud Act 2006 came into force on the 15 January 2007 and, therefore, is applicable for offences occurring on or after that date. The Fraud Act is important because for the first time we have a legal definition of fraud. The Act provides for a general offence of fraud with three ways of committing it which are: by false representation, by failing to disclose information and by abuse of position. It creates new offences of obtaining services dishonestly and of possessing, making and supplying articles for use in frauds. See Appendix A for more details on these explanations.

5.4 Previous legislation must be applied to offences occurring before 15 January 2007. Before the Fraud Act, there was no legal definition of fraud, but the generally held view was that fraud is:

'Causing loss or making a gain at the expense of someone by deception and dishonest means' (Fraud Review 2005:23).

As there was no specific law for fraud, fraudulent behaviour encompasses a variety of offences under such legislation as: Theft Acts 1968, 1978, 1996; Forgery and Counterfeiting Act 1981; Criminal Attempts Act 1981; Conspiracy to defraud etc.

5.5 Examples of NHS Fraud

There is no one type of NHS fraud – there is in fact an enormous variation in the types of fraud that are committed, as there are in the people who commit them. Among the more recurrent kinds of fraud are:

- Timesheet fraud (e.g. staff and professionals claiming money for shifts they have not worked)

- False expense claims (e.g. false travel or subsistence claims)
- Fraudulent job applications (e.g. false qualifications, immigration status, misrepresentations and failing to disclose information i.e. criminal convictions or dismissals)
- Working whilst sick (e.g. usually working for another organisation without informing the Trust)
- Undertaking private work during NHS time
- Working whilst on carers leave, compassionate leave etc.
- Working Two Places at Once (e.g. failing to declare they are working for another organisation)
- Studying or attending a course, placement or training whilst on sick leave
- Advertising scams (e.g. false invoices for placing adverts in publications)
- Patient Fraud (e.g. false travel claims, using false identities, prescription fraud, fraudulently claiming exemptions for pharmaceutical charges)
- Misappropriation of assets (e.g. falsely ordering goods for own use/ to sell)
- Procurement Fraud (e.g. the ordering and contracting of goods and services)
- Fraud by professionals (such as false claims for treatment, unauthorised use of NHS facilities/ equipment)
- Pharmaceutical Fraud by companies (e.g. overcharging for drugs, supplying inferior or reduced quantities of drugs etc).
- Falsely claiming to be sick.

5.6 **Bribery and Corruption**

The Bribery Act 2010 was introduced in July 2011.

5.7 In the Act the offence of bribery is outlined as the receipt or acceptance of a bribe, or the offer to, promise or giving of a bribe, which assists in obtaining/ retaining business or financial advantage, or the inducement or reward of someone for the “improper performance” of a relevant function.

5.8 The Act creates four categories of offence, which address the following:

- Offering, promising or giving a bribe to another person;
- Requesting, agreeing to receive or accepting a bribe from another person;
- Bribing a foreign official; and
- A corporate offence of failing to prevent bribery.

See Appendix B for more detail on these offences.

5.9 Under the corporate offence, a commercial organisation (including a Foundation Trust) is now liable for the activities of associated third parties as well as its own staff, and corporate ignorance offers no protection from prosecution. Associated third parties include anyone who performs services for the Trust, or on the Trust’s behalf, or provides the Trust with goods. It includes agents, subsidiaries, contractors and suppliers.

5.10 The Trust could potentially be liable if an associated person intending to retain or obtain business pays a bribe, and the Trust failed to have in place “adequate procedures” to prevent bribery. Senior Management, directors and officers, including non-board level managers could also be held personally liable for a commercial organisation’s bribery offences.

- 5.11 The only defence available to the Trust would be therefore to prove that they 'had in place adequate procedures designed to prevent a person associated with it from undertaking such conduct'.
- 5.12 The Act provides for unlimited fines and individuals are liable to a prison sentence of up to ten years. A director convicted of a bribery offence is also likely to be disqualified from holding a director position for up to 15 years. The Act is not retrospective.
- 5.13 The offences under the Act are known as strict liability offences meaning there is no need to prove intention, dishonesty or recklessness. This means it is not necessary for the prosecution to prove that the Trust intended to make the bribe in bad faith, or that it was negligent as to whether any bribery activity took place.
- 5.14 Under the Bribery Act a person is considered to be associated with a commercial organisation if they perform services for it and on its behalf. It does not matter in what capacity they do this. This definition therefore includes employees, agents and contractors.
- 5.15 Any member of staff, including Board members and senior staff, who are involved in the decision making regarding the allocation of contracts, Trust funds, and business are potentially vulnerable to the risk of being offered bribes to influence their decision making.
- 5.16 This risk also extends to any partner organisations, limited companies or charitable organisations connected to the Trust, and subcontractors building on the Trust's behalf, bribing other sub-contractors.
- 5.17 Examples of bribery in the NHS context could be a contractor attempting to influence a procurement decision maker by giving them an extra benefit or gift as part of a tender exercise; or medical or pharmaceutical company providing holidays or other excessive hospitality to a clinician in order to influence them to persuade their NHS employer to purchase that company's particular clinical supplies.
- 5.18 A bribe does not have to be cash; it may be the awarding of a contract, the provision of gifts, hospitality, sponsorship, the promise of work or some other benefit.
- 5.19 The Bribery Act 2010 is extra-territorial in nature. This means that anyone involved in bribery activity overseas may be liable to prosecution in the UK if the bribe is in respect of any UK activity, contract or organisation. Therefore, the Bribery Act 2010 also includes an offence of bribing a foreign public official.

6. Public Service Values

- 6.1 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:

Accountability	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 codes of conduct.
Probity	Absolute honesty and integrity should be exercised in dealing with NHS patients, assets, employees, suppliers and customers.

Openness 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:

Selflessness 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

Integrity ...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

Objectivity ... should, in carrying out public business, (including making public appointments , awarding contracts, or recommending individuals for rewards and benefits), make choices on merit

Accountability ...are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office

Openness ...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

Honesty ...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

Leadership ...should promote and support these principles by leadership and example

7. Fraud and Bribery Response Plan

7.1 The Trust is committed to tackling fraud and bribery. When fraud or bribery is discovered there is a need for clear, prompt and appropriate action. Therefore, having a Response plan increases the likelihood that the crisis will be managed effectively. The response will be effective and organised and will rely on the principles contained within this section.

7.2 The Trust will be robust in dealing with any fraud or bribery, and can be expected to deal timely and thoroughly with any person who attempts to defraud the Trust or who engages in corrupt practices, whether they are non-executives, employees, suppliers, patients or unrelated third parties. **Appendix C** is an overview of the fraud response process.

REPORTING FRAUD OR BRIBERY

7.3 ***What to do if you suspect a fraud or bribery:***

If you discover or suspect a colleague, patient or other person of committing fraud or bribery, you must:

- Immediately tell the 'nominated officers': Chief Finance Officer or LCFS
- Secure records in your possession
- Record details of relevant events
- Await further advice (the nominated officers will decide on the next course of action and advise you accordingly).
- If the concern or query involves an executive director, the matter should be reported to the Chair of the Audit Committee and passed to the LCFS to investigate.

Time may be of the utmost importance to prevent further loss to the Trust and to secure evidence, including CCTV. Staff/contractors should report their first suspicions and not undertake lengthy consideration of alternative explanations – be assured that any subsequent investigation will be of the highest professional standard.

In addition, everything reported to the 'nominated officers' is treated in the strictest confidence and an employee can request to remain anonymous. Well-intentioned employees making a referral will be protected from any unacceptable behaviour from the subject of the referral or anyone else.

7.4 What not to do if you discover or suspect a colleague, patient or other person of committing fraud, bribery or corruption and a decision is taken to formally report the matter in accordance with this policy

- Do not confront the person you have the suspicion about
- Do not talk about your suspicions, concerns or queries, except to the persons detailed in 7.3 or as permitted by the Trust's Whistleblowing (Raising Concerns at Work) Policy
- With the exception of the NHS Counter Fraud Authority, do not contact any external organisation

The reason for the above is twofold:

- to ensure evidence is secured against loss, destruction and contamination
- to ensure that nothing is done that could give rise to an action for slander or libel

MOST IMPORTANTLY: Do not worry about being mistaken and do not do nothing!

7.5 Whistleblowing/ Public Interests Disclosure Act 1998

Whistleblowing is when an employee blows the whistle by informing their employer, a regulator, customers, the police or the media about a dangerous or illegal activity that they are aware of through their work e.g. concerns about health and safety risks, potential environmental problems, fraud, corruption, deficiencies in the care of vulnerable people, cover-ups and many other problems. Often it is only through whistleblowing that this information comes to light and can be addressed before real damage is done. Whistleblowing is a valuable activity which can positively influence all of our lives. The Trust fully endorses the provisions of the Public Interest Disclosure Act 1998 and wishes to encourage anyone having reasonable suspicions of fraud to report them. The Trust's Whistleblowing Policy, which will be rigorously enforced, is that no employee should suffer because of reporting reasonably held suspicions under the provisions of the Act.

7.6 NHS Counter Fraud Authority's 24 hour fraud reporting Hotline

If unable to talk to anyone within the Trust or the LCFS then staff/contractors can contact the 24 hour fraud reporting hotline which is run by Crimestoppers by telephoning 0800 028 4060. Your call will be treated in confidence and you can remain anonymous. Alternatively you can report concerns on-line at <https://cfa.nhs.uk/reportfraud>

7.7 Independent Advice

Public Concern at Work is an independent charity and legal advice centre which provides free confidential advice to people concerned about wrongdoing in the workplace but who are unsure whether or how to raise the matter. Further information can be found at <http://www.pcaw.co.uk> or telephone 020 7404 6609.

INVESTIGATION OF FRAUD OR BRIBERY

7.8 Where a referral concerning fraud or bribery has been made to the Chief Finance Officer, the Chief Finance Officer shall inform the LCFS at the first opportunity. There is a protocol for the referral, acknowledgement, investigation and reporting of allegations.

7.9 On receipt of a referral/ allegation of suspected fraud or bribery, the LCFS will assess the allegation to determine a course of action. This may involve making preliminary inquiries such as obtaining information from the Trust systems.

7.10 Where appropriate, the LCFS will notify the Chief Finance Officer that an investigation will be carried out.

7.11 The LCFS is responsible for investigating all instances of fraud or bribery in the Trust on behalf of the Chief Finance Officer.

7.12 The LCFS will regularly report to the Chief Finance Officer on all fraud, bribery or corruption cases they investigate and at particular stages of individual investigations. In addition, the LCFS will provide the Audit Committee with quarterly updates as to the progression of investigations.

7.13 Depending upon the nature of the investigation, the LCFS will normally work closely with management and other agencies such as the Police, to ensure that all matters are properly investigated and reported upon. Basically, the circumstances of each case will dictate who will be involved and when.

7.14 The detailed arrangements for the investigations of any suspected fraud or bribery are contained in the National Fraud and Corruption Manual and within Trust's policies e.g. Disciplinary, Standing Financial Orders. The LCFS will record the progress of the investigation and conduct the investigation in accordance with the legal codes of practices (Police and Criminal Evidence Act 1994, Regulation of Investigatory Powers Act 2000, Criminal Procedures and Investigation Act 1996. and other legislative requirements (e.g. Data Protection Act 2018).

7.15 On the conclusion of the investigation the LCFS will report their findings and recommendations to the Chief Finance Officer and if appropriate the relevant Employee Relations Manager/Advisor. The Chief Finance Officer is the sole person who can determine whether or not any criminal action is pursued, however guidance will be sought from the LCFS.

7.16 Where there is sufficient evidence to warrant formal action against the subject(s) of an investigation, the LCFS will comply with NHS Counter Fraud Authority's Applying Appropriate Sanctions Consistently Policy. This will involve using an appropriate combination of the sanctions described below:

- Disciplinary action - Trust and/or professional regulatory body (warning, striking off order, dismissal etc)
- Civil remedy – recover money, interest and costs
- Criminal prosecution – which may result in imprisonment, community penalty, a fine, confiscation or compensation
- Alternative criminal sanction such as formal police caution.

The use of parallel sanctions or 'triple-track' approach helps to maximise the recovery of NHS funds and assets while minimising duplication of work.

7.17 The Trust's Disciplinary Procedures will be used where the outcome of the investigation indicates improper behaviour on part of employees. The LCFS shall liaise with the relevant Employee Relations Manager/Advisor to provide evidence for Disciplinary Hearings.

7.18 Where financial loss has been suffered through fraudulent activity, the Trust will pursue the perpetrator for recovery, including taking appropriate legal action. The LCFS shall liaise with legal representatives and attend court as required.

7.19 Where fraud is proven following a formal disciplinary process and the value of the fraud can be quantified, monies will be deducted from the employee's salary. Where the debt is greater than the amount Payroll can deduct from the employee's salary, either an invoice will be sent to the employee requesting that the sum is repaid or monies will be recovered from subsequent months' salary payments.

7.20 Where fraud is upheld by a panel but a subsequent appeal does not uphold the disciplinary sanction, the Trust will ensure that the employee is reimbursed the monies which were withheld.

7.21 Depending on the extent of the loss, it may be suitable for the recovery of losses to be considered under POCA.

7.22 The civil recovery route is also available 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 needs to be discussed with the Chief Finance Officer to determine the most appropriate action.

7.23 The LCFS will seek authorisation from the Chief Finance Officer if a matter is to be reported to the Crown Prosecution Service (CPS) or Police. The LCFS shall liaise with the CPS or police by providing a MG (Prosecution) File and participate in interviews, searches in an advisory capacity etc. The LCFS shall attend court to give evidence and liaise with the Crown Prosecution Service as required.

7.24 The LCFS acts on behalf of the Trust in the event of any formal action and must ensure there is co-ordination between the various parties involved such as where external legal advisors are used.

- 7.25 When fraud, bribery or corruption has occurred at the Trust, the LCFS will strengthen the control environment in which the event occurred by identifying and addressing any system weaknesses to reduce the risk of any such an event happening again.
- 7.26 The LCFS is required to advise the NHS Counter Fraud Authority of every investigation and refer appropriate matters to them.
- 7.27 The LCFS shall maintain a record of:
- details of all reported suspicions;
 - details of subsequent actions taken and conclusions reached.
- 7.28 The record will be a confidential document and accessible only by authorised officers.
- 7.29 An anonymised record will be reviewed by the Audit Committee at least once a year and any significant matters will be reported to the Trust Board.
- 7.30 The Chief Finance Officer is responsible for the smooth running of this protocol and where clarification is required his or her decision will be final.

8. Review

- 8.1 This policy will be reviewed by the LCFS every three years unless there is a need to review it more frequently.

9. Implementation of policy

The policy will be published on the Trust intranet and all staff made aware of it during the LCFS' fraud and bribery awareness training sessions. New staff joining the Trust staff will be informed of the policy via the corporate induction handbook and reference is made to it in the terms and conditions of employment which are emailed to all new staff.

10. References

NHS COUNTER FRAUD AUTHORITY Government Functional Standards
<https://cfa.nhs.uk/government-functional-standard>

NHS PROTECT (Unpublished, date not specified). Tackling crime against the NHS. A COMMITTEE ON STANDARDS IN PUBLIC LIFE. (Unpublished, 1995) First Report of the Committee on Standards for Public Life May 1995

NHS COUNTER FRAUD AUTHORITY Strategy 2020-2023

Records Management Code of Practice (2016)

Data Protection Policy

Appendix A: Fraud Act 2006

A person is guilty of fraud if he is in breach of any of the sections listed below (*which provide for different ways of committing the offence*).

- section 2 (fraud by false representation)
- section 3 (fraud by failing to disclose information)
- section 4 (fraud by abuse of position).

A person who is guilty of fraud is liable:

- on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);
- on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).

2: Fraud by false representation

- A person is in breach of this section if he/she:
 - (a) dishonestly makes a false representation, and
 - (b) intends, by making the representation:
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.
- A representation is false if:
 - (a) it is untrue or misleading, and
 - (b) the person making it knows that it is, or might be, untrue or misleading.
- “Representation” means any representation as to fact or law, including a representation as to the state of mind of:
 - (a) the person making the representation, or
 - (b) any other person.
- A representation may be express or implied.
- For the purposes of this section a representation may be regarded as 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).

3: Fraud by failing to disclose information

- A person is in breach of this section if he/ she:
 - (a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and
 - (b) intends, by failing to disclose the information:
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

4: Fraud by abuse of position

- A person is in breach of this section if he/she:
 - (a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,
 - (b) dishonestly abuses that position, and
 - (c) intends, by means of the abuse of that position:
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

- A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

Appendix B: Bribery Act 2010

The Act sets out four offences:

1. Offering, promising or giving a bribe to another person to perform improperly a relevant function or activity, or to reward a person for the improper performance of such a function or activity (the active offence). It does not matter whether the person to whom the bribe is offered or given is the same person who is to perform the function or activity concerned. This applies to both public and private functions.

2. Requesting, agreeing to receive or accepting a bribe to perform a function or activity improperly. It does not matter whether the recipient of the bribe requests or receives it directly or through a third party, or whether it is for the recipient's benefit or not. In some cases, it is not necessary for the recipient to know or believe that the performance of the function or activity is improper. This applies to both public and private functions.

3. Bribing a foreign public official – where a person directly, or through a third party, offers, promises or gives any financial or other advantage to a foreign public official ("FPO") (or to a third party at the request or acquiescence of the FPO) in an attempt to influence them in their capacity as a FPO in order to obtain or retain business, or to obtain an advantage in the conduct of business. To constitute bribery under the Act the FPO must be neither permitted nor required by applicable law to be influenced by the offer, promise or gift.

4. Failure of a commercial organisation to prevent bribery (the "Corporate Offence"). A commercial organisation will commit an offence if a person associated with it bribes another (in the UK or overseas) intending to obtain or retain business or a business advantage for that commercial organisation. An associated person includes any person who performs services for the commercial organisation. So, for example, an associated person may include not only employees, agents and subsidiaries, but also entities over which the organisation has no ownership or control

Appendix C: Fraud, Bribery and Corruption Response Plan – A simple Overview

