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# Operational Policy

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## Counter Fraud & Bribery Policy

The purpose of this policy is to define the Trust's position in terms of the prevention, detection and investigation of fraud and bribery and its counter fraud arrangements. It also provides direction to staff who suspect fraud or bribery on how to report suspicions, and offers a framework for advice, guidance and information on various aspects and implications of fraud.

Document Detail	
GTi page name	Countering fraud in the NHS
GTi page URL	<a href="http://gti/services/finance/counter_fraud/counterfraud.aspx">http://gti/services/finance/counter_fraud/counterfraud.aspx</a>
Sites covered	All Sites
Version	V6
Approving body	Audit and Risk Committee
Stakeholder Group	TEC
Owner	Chief Executive
Responsible Lead	Associate Director of Finance (Internal Audit)
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Superseded documents	V5
Related documents	Counter Fraud Procedure, Raising a Matter of Concern Policy (Whistleblowing)
Keywords	Fraud, suspicion, whistle blowing, concern, bribery

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## **1 SCOPE**

- 1.1 This policy applies to all Non-Executive Directors, Trust employees, contractors and other third parties working on behalf of the Trust. All staff have a role to play in protecting public funds from fraud and abuse. Certain individuals within the Trust have particular responsibilities which are set out in this policy and supporting documents.
- 1.2 The purpose of this policy (and supporting documents) is to set out the Trust's arrangements in relation to the prevention, detection and investigation of fraud and bribery. It also provides information on how to report suspicions, and offers a framework for advice, guidance and information on various aspects and implications of fraud and bribery.
- 1.3 The Board of Directors is committed to promoting and maintaining the highest standards of honesty and integrity in dealing with the assets of the NHS and those which are in Trust care and ensuring that NHS money is used for proper purposes. The Trust will not tolerate fraud and bribery, this means that all allegations will be investigated and action will be taken against individuals found to be committing fraud or acts of bribery. Such action may take the form of disciplinary, civil and/or criminal proceedings. The Trust will also take appropriate steps to recover any assets lost as a result of fraud and other illegal acts.
- 1.4 The Trust will establish and maintain effective counter fraud & bribery arrangements in accordance with the provider licence requirements, statute and principles of good practice.

## **2 RATIONALE**

- 2.1 Two of the Trust's primary values are to put patients first and act with integrity. Any funds lost to fraud mean less money for patient care hence, the Trust's goal in relation to fraud and bribery is to reduce losses to an absolute minimum, and to take a zero tolerance approach to staff who fail to act with integrity.
- 2.2 The counter fraud and bribery policy sets out the commitment of the Board to minimise fraud losses and ensure that there is no bribery within the Trust within a framework of wider good governance.

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### **3 POLICY OBJECTIVES**

3.1 This policy and the accompanying guidance documents are expected to achieve the following outcomes for the Trust:

- To establish, maintain and promote an anti-fraud culture within the Trust;
- To minimise losses from fraud and bribery;
- To ensure the Trust has adequate systems in place to prevent bribery;
- To ensure allegations of financial irregularity are referred to the appropriate staff;
- To encourage the implementation of preventative controls;
- To ensure investigation staff are appropriately qualified and that investigations and recommendations for sanction action are fair;
- To maximise recovery of losses;
- Ensure the Trust complies with the NHS Standard Contract, and the Government Counter Fraud Functional Standards

### **4 DUTIES**

- 4.1 The Trust Board is responsible for maintaining appropriate arrangements to address counter fraud issues in accordance with Service Condition 24 of the NHS provider contract and NHS Counter Fraud Authority guidance.
- 4.2 The Audit and Risk Committee provides assurance to the Board that this policy is effectively implemented.
- 4.3 The Chief Financial Officer and Chief Executive are jointly accountable to the Trust's Board for monitoring and implementing this policy.
- 4.4 All staff are responsible for reporting any suspicions of fraudulent activity within the Trust.
- 4.5 Detailed roles and responsibilities can be found within the supporting document section.

### **5 MONITORING AND ASSURANCE OF THIS POLICY**

- 5.1 The Trust's counter fraud arrangements are overseen by the Audit and Risk Committee.
- 5.2 The implementation of this policy is monitored by the Chief Financial Officer and Audit and Risk Committee.
- 5.3 The Trust's arrangements are annually self-assessed and, periodically, evaluated by NHS Counter Fraud Authority..

<b>Policy Objectives</b>	<b>Monitoring methods</b>	<b>Assurance</b>
To establish and maintain an anti-fraud culture within the Trust;	Annual awareness Survey, take up of e-learning	Survey results reported and e-learning completion to Audit and Risk Committee
To minimise losses through fraud and bribery;	Reports to Audit and Risk Committee	Counter Fraud Reports to Audit and Risk Committee
To ensure allegations of financial irregularity are referred to the appropriate staff;	Routine case management	Counter Fraud Report to Audit and Risk Committee
To encourage the implementation of preventative controls;	Internal Audit Reviews, Proactive Counter Fraud Plan, Local Proactive Fraud Exercises, and system control recommendations arising from counter fraud reports	Audit and Risk Committee
To ensure investigation staff are appropriately qualified and that investigations and recommendations for sanction action are fair;	Counter fraud functional standard self-assessment, quality control by HR advisors prior to disciplinary	Self-Assessment Review, sanction process
To maximise recovery of losses;	Internal monitoring of recovery	Audit and Risk Committee Reports

## 6 DOCUMENT HISTORY

<b>Document History</b>		
<b>Date</b>	<b>Comments</b>	<b>Approved by</b>
September 2023	Minor text changes, aligning HLCCCG and legacy GSTT approach. Reflecting Clinical Group structures. Reflects new NHS CFA strategy 2023 to 2026	TEC December 2023
April 2022	Minor updates, inclusion of Fraud Champion Role. Noting involvement of LCFS staff as disciplinary investigators where no prosecution being pursued	Chief Financial Officer
June 2021	Updated for new NHS CFA Strategy and new fraud standards. Addition of example of fraud being paid twice for same hours	
Sep 2019	Minor Updates, clarification of roles and responsibilities	Chief Financial Officer
April 2017	Significant rewrite setting out clear responsibilities, anti-fraud culture. Section added on Bribery; updated to reflect government UK counter fraud strategy; sanction policy introduced	
April 2014	Reformatted to comply with revised Trust standard for policy layout and content	
Jun 2013	Update to V2	TME
Jan 2010	v1.1 Minor terminology change, paragraph 5.2; no further changes required, following review.	Chief Financial Officer

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## COUNTER FRAUD AND BRIBERY POLICY

### 1 ANTI-FRAUD CULTURE

- 1.1 Fraud and corruption within the NHS is unacceptable. The public funds entrusted to the Trust are to be used for the benefit of patients. The Trust Board and Executive Team are committed to the highest standards of conduct in their financial dealings and will ensure that their own standards of conduct are beyond reproach and fully accountable. The Trust recognises its fiduciary duty to protect funds and will implement secure systems and instil high standards in all staff. The Trust will seek the strongest possible sanctions against those who seek to defraud the Trust or are party to corrupt practices.
- 1.2 This policy applies to all of the organisation's activities, its personnel, including all levels and grades, those permanently employed, temporary staff, agency staff, contractors, non-executive directors, agents, volunteers and consultants.
- 1.3 The Board of Directors takes ultimate responsibility for the protection of Trust finances and any cash or assets held on behalf of others. In turn, the Chief Executives of each clinical group and Corporate Services lead Executive Directors have a duty to protect their areas of responsibility from losses due to fraud and irregularity and are responsible for assessing the risk of fraud and bribery and implementing adequate internal controls to mitigate that risk.
- 1.4 Managers are expected to be fully familiar with the services they provide and are expected to have regard for the fraud and corruption risks in their areas. Fraud risks should be identified and held on local risk registers. Those with leadership roles within the Trust have a particular responsibility for upholding the values of public life as set out by the Committee on Standards of Public Life in 2013,

*"High standards of behaviour need to be understood as a matter of personal responsibility, embedded in organisational processes and actively and consistently demonstrated, especially by those in leadership positions"*

- 1.5 As individuals appointed to work within the health service, all staff are subject to the principles of public life as set out below:

<i>Selflessness</i>	Holders of public office should act solely in terms of the public interest.
<i>Integrity</i>	Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
<i>Objectivity</i>	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
<i>Accountability</i>	Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
<i>Openness</i>	Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
<i>Honesty</i>	Holders of public office should be truthful.
<i>Leadership</i>	Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

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## 2 FRAUD

- 2.1 Fraud is a dishonest act intended to cause a personal gain or gain for another person or to cause a loss to another party. Under the Fraud Act 2006, there are three main ways in which fraud offences can be committed
- Fraud by false representation (s.2) – lying about something to make a financial gain, i.e. submitting false time sheets.
  - Fraud by failing to disclose (s.3) – not saying something when you have a legal duty to do so, e.g. a Staff member not declaring a conflict of interest such as a company directorship or a majority share in a commercial business trading with the Trust.
  - Fraud by abuse of a position of trust (s.4) – abusing a position where there is an expectation to safeguard the financial interests of another person or organisation.

Examples of fraud committed within NHS organisations are set out in paragraph 7.2:

## 3 BRIBERY

- 3.1 A bribe is a financial or other advantage paid to an individual with the intention of inducing the individual to take a specific course of action. The giver or receiver can face up to 10 years in prison.
- 3.2 It is a criminal offence to offer, pay or receive a bribe. This applies to staff directly employed by the Trust and those acting on its behalf, for example, as consultants or agents.. The Trust and all those employed or working on the Trust's behalf will not pay bribes or offer improper inducements to anyone for any purpose, nor will bribes or improper inducements be accepted.
- 3.3 Partners, joint ventures and suppliers are expected to have in place adequate procedures to prevent bribery and corruption as set out in the NHS standard terms and conditions of contract when supplying goods or services to the Trust..
- 3.4 The Bribery Act 2010 introduced the criminal offence of failing to prevent bribery. This means, the Trust as a corporate entity, can face criminal prosecution if its staff or an agent has offered or paid a bribe in order to gain an advantage for the Trust. In addition to an unlimited fine, if found guilty, the reputation damage would be significant,.
- 3.5 As a corporate entity, the Trust defence in such a situation would be that it has adequate procedures designed to prevent persons associated with it from undertaking such conduct. The Act introduced guidance which organisations must follow in order to demonstrate that adequate procedures are in place. This sets out 6 principles to underpin the organisation's approach to bribery. These are set out below, together with a summary of how the Trust implements those principles.
- Proportionate Procedures – In general, the trust performs a public service and most of its income generating activity is within the UK with other public bodies. Hence, the risk of a representative paying a bribe to secure income to the Trust is low. However, within the Commercial Directorate of the Trust and the commercial company portfolio owned by the Trust, the Trust will seek to win contracts both nationally and internationally. Anti-bribery processes will, therefore, be more relevant in these areas.
  - Top Level Commitment – The senior leaders within the organisation are best placed to set a culture where bribery is seen to be unacceptable. The Trust will set out its commitment to integrity on the website and communicate this to staff and stakeholders and potential clients and have appropriate standards of business conduct.

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- Risk Assessment – The Trust will periodically assess the risk of bribery and when entering new commercial markets. The risk will be documented as part of the trust wide risk management process.
  - Due Diligence – The Trust will perform due diligence procedures on any agent / supplier acting on its behalf, particularly where third parties are used to assist in establishing business in international markets.
  - Communication and Training – The Trust will ensure that its anti-bribery measures are communicated internally, through senior management and via awareness publications through the internal IT system. The anti-fraud and bribery policy will be published on the Trust's website.
  - Monitoring and Review – The Trust will periodically review this policy and monitor compliance with the various underlying systems via internal audit reviews.

#### **4 MONEY LAUNDERING**

- 4.1 The Trust is not a relevant business for the purposes of the Money Laundering Regulations 2007. However, the Trust and its staff are covered by the Proceeds of Crime Act 2002 and the Terrorism Act 2000 (and subsequent amendments). These acts make it illegal to conceal, transfer or convert criminal property i.e. converting the cash proceeds of crime into the banking system or into an asset. In practice, the only circumstance where large cash transactions may occur is in relation to payments for private treatment. In order to minimise the likelihood of this occurring the Trust has various processes in place within cashiers. Cashiers staff are aware of their responsibilities in relation to money laundering. Should staff have any concerns they should contact the Head of Internal Audit.

#### **5 REPORTING SUSPICIONS**

- 5.1 The Trust places upon all staff a responsibility for maintaining an anti-fraud culture and for ensuring that all fraudulent or potentially fraudulent activity is reported. The Trust recognises the importance of staff feeling safe in raising their concerns and is determined that no employee will suffer in any way for raising genuine concerns, even if these concerns prove unfounded. Staff should consult the Trust's Speaking Up / Whistleblowing Policy for further information in this regard.
- 5.2 If you have a suspicion, discuss it directly with the Trust's Local Counter Fraud Specialist (LCFS) or Head of Internal Audit. If you notify your manager or a member of the Workforce Directorate, or if you have been told of a suspected fraud by someone else, please ensure that the LCFS is notified as soon as possible. If initial enquiries support the suspicions, the matter will be reported to the Chief Financial Officer. It will then be investigated and dealt with in accordance with NHS Counter Fraud Authority guidance for countering fraud in the NHS.
- 5.3 The LCFS for the Trust is based within the Finance Team. Contact numbers are available on the Trust intranet.
- 5.4 Alternatively, if for any reason you do not wish to report your concern within the Trust, you can use the NHS Fraud and Corruption Reporting Line: 0800 028 4060 (available 24/7) or you can upload your report anonymously on [www.reportnhsfraud.nhs.uk](http://www.reportnhsfraud.nhs.uk)
- 5.5 If you feel it is necessary to report your concerns elsewhere, rather than use any of the above processes, the Public Interest Disclosure Act 1998 gives protection to employees who disclose information to a third party, provided the disclosures meet certain criteria. You should refer to the Trust's 'Raising a Matter of Concern Policy', which is based on the Act, before you take such action.

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## 6 STRATEGY

- 6.1 The Trust Strategy to drive down the risk of fraud has four pillars: Understanding how fraud and bribery affects the Trust; Preventing future losses by implementing prevention controls; Responding through professional investigation and effective sanctions and; providing assurance to the Trust that the response is robust. all within the overarching anti-fraud culture. This is aligned with the Fraud Bribery and Corruption Standards set out by the cross government functional fraud standards and the NHS Counter Fraud Authority strategy to reduce NHS Fraud for 2023 to 2026.

<b>Counter Fraud &amp; Bribery Culture</b>			
Leadership; organisation values and behaviours; induction; fraud awareness training; standards of business conduct; clear disciplinary code			
<b>Understand</b> Identify fraud risks by department Support management to conduct fraud risk assessments within new projects/ processes	<b>Prevent</b> Recruitment checks Appropriate fraud prevention controls within financial systems Standards of Business Conduct policy and related guidance Conduct proactive fraud exercises, implement awareness campaigns and disseminate threat intelligence	<b>Respond</b> Professional investigation independent from line management Collaboration with other organisations Disciplinary Prosecution Recovery Working with our partners in the CFA to deliver sanctions	<b>Assure</b> Comply with the government functional fraud standard Provide performance information to the Audit and Risk Committee Provide assurance to key partners that the Trust response is robust

- 6.2 Through the implementation of this policy the Trust undertakes to promote counter fraud activity by:

- Informing and involving staff and other stakeholders by raising their awareness of fraud and creating and promoting an anti-fraud culture
- Deterring fraudulent actions and preventing fraudulent activity through both proactive and reactive means
- Holding fraudsters to account through detection and investigation of fraudulent activity, seeking appropriate sanctions and obtaining redress where appropriate

- 6.3 The Trust has already established a framework which will help to reduce the risk of fraud losses and bribery. This has a number of elements:

- The Standing Financial Instructions and the Schemes of Delegation.
- Standards of Business Conduct Policy
- An Audit and Risk Committee
- Effective employee vetting procedures (recruitment checks and DBS where appropriate and a set of values and behaviours which staff are expected to observe
- An induction programme for all staff
- Effective disciplinary procedures
- Internal controls
- Periodic checks by Internal Audit
- A confidential reporting code (Speaking Up)
- A counter fraud and bribery policy



- Dedicated Local Counter Fraud Specialists whose work programme includes proactive work, determined by a formal risk assessment and any requirements as set out by NHS Counter Fraud Authority.
- Participation in national anti-fraud initiatives.
- The promotion of awareness of anti-fraud and bribery issues, reinforced by training and publicity.

6.4 In relation to bribery the Trust will: Maintain adequate and proportionate procedures to prevent bribery; undertake anti-bribery risk assessments; make all employees aware of their responsibilities to adhere strictly to this policy; maintain appropriate gifts and hospitality procedures; encourage employees to report any suspicions of bribery; investigate instances of alleged bribery and assist the police and other authorities in their investigations; take a robust line against individuals found to have breached this policy or to have committed or facilitated bribery.

## 7 RESPONSIBILITIES

7.1 Responsibilities in relation to fraud and bribery are summarised in the table below:

<b>Chairman and Non-Executive Directors</b>	<ul style="list-style-type: none"> <li>• Uphold the principles of public life, working with Executive Directors to set the tone of the organisation and promote an anti-fraud culture</li> </ul>
<b>Chief Executive</b>	<ul style="list-style-type: none"> <li>• Is the Accounting Officer for the Trust and, as such, has responsibility to ensure the proper stewardship of public funds and that the resources and assets of the Trust are safeguarded taking reasonable steps for the prevention and detection of fraud.</li> </ul>
<b>Chief Financial Officer</b>	<ul style="list-style-type: none"> <li>• Is accountable for provision of strategic management of all counter fraud, bribery and corruption work within the organisation</li> <li>• Will determine whether or not a file shall be submitted to the CPS for prosecution</li> <li>• Holds the role of Fraud Champion for the Trust</li> </ul>
<b>Clinical Group Chief Executive, Corporate Services Executive Directors and Senior Leadership</b>	<ul style="list-style-type: none"> <li>• There is a particular onus upon the senior leadership to maintain high standards of integrity when dealing with financial matters, conflicts of interest and offers of gifts and hospitality.</li> <li>• Where new policies and systems are being implemented, senior managers are required to consider the fraud risk and seek guidance from Internal Audit where they have concerns. Where Internal Audit or Counter Fraud Officers have identified system weaknesses, management are required to implement the agreed control improvements within agreed timescales</li> </ul>
<b>Line Managers</b>	<ul style="list-style-type: none"> <li>• Are responsible for ensuring that their staff are aware of, and adhere to, this policy and others relating to standards of business conduct;</li> <li>• Report all instances of actual or suspected fraud or bribery as soon as practicable to the LCFS.</li> <li>• Ensure adequate controls are in place within their systems to minimise the risk of fraud and bribery.</li> <li>• Assess the risk of fraud in the operations for which they are responsible and put measures in place to mitigate those risk.</li> </ul>
<b>Chair of the Audit and Risk Committee (Non-Executive Director)</b>	<ul style="list-style-type: none"> <li>• Is to be made aware of suspicions of fraud and bribery involving Non-Executive Directors/Executive Directors;</li> <li>• Liaises with the LCFS on the investigation of suspicions of fraud and bribery.</li> </ul>

<b>Audit and Risk Committee</b>	<ul style="list-style-type: none"> <li>• Receives progress reports from the LCFS on the counter fraud work undertaken in the Trust and details of specific investigations;</li> <li>• Periodically assesses the effectiveness of the Trust's counter fraud arrangements and ensures any actions arising from NHS CFA recommendations are implemented;</li> <li>• Ratifies the annual Counter Fraud work plan.</li> </ul>
<b>Associate Director of Finance (Internal Audit and Counter Fraud)</b>	<ul style="list-style-type: none"> <li>• Manages the Counter Fraud Function</li> <li>• Attends Audit and Risk Committee as the designated LCFS</li> </ul>
<b>Local Counter Fraud Specialists (LCFS)</b>	<ul style="list-style-type: none"> <li>• Are responsible for delivery of all counter fraud work within the Trust in accordance with an agreed annual work plan and investigating allegations of fraud and bribery at the Trust in accordance with NHS CFA requirements and legislation.</li> <li>• Provides regular update reports for the Trust Audit and Risk Committee.</li> </ul>
<b>NHS Counter Fraud Authority</b>	<ul style="list-style-type: none"> <li>• Develop and issue national policy and guidance to NHS Trusts in relation to counter fraud matters including the setting and monitoring of standards.</li> <li>• The Trust must take the necessary action to comply with the Functional Fraud Standards.</li> </ul>
<b>All Staff</b>	<ul style="list-style-type: none"> <li>• All staff must ensure that they have read, understand and comply with this policy. The prevention, detection and reporting of fraud and bribery are the responsibility of all those working for or under the control of the Trust;</li> <li>• Report any concerns as soon as possible;</li> <li>• Understand the rules concerning the acceptance of gifts and hospitality and declaring conflicts of interest.</li> </ul>

7.2 Staff must comply with this policy, the Trust's values and behaviours framework and their own professional body requirements. Staff must act at all times with integrity and honesty and must not commit fraud against the Trust or any of its partners or patients or be party to corrupt act/practices. This includes but is not limited to:

- Providing false information when applying for a job with the Trust
- Failing to disclose changes which affect your right to work in the Trust
- Making false expense claims
- Submitting false overtime / additional hours / bank duty claims
- Claiming bank pay whilst working substantive / contracted hours or working for two or more employers during the same hours (i.e. being paid twice for the same hours)
- Conducting work for other employers or private work when expected to be working for the Trust or whilst on sick leave
- Providing false information or failing to disclose the correct information to make a personal gain
- Failing to declare a conflict of interest
- Accepting hospitality, a gift or inducement from a third party that you know or suspect is offered with or provided the expectation that it will obtain a business advantage for them
- Giving, promising or offering an inducement to secure an advantage, including to individuals outside the UK
- Accepting gifts or hospitality outside those permitted within the Standards of Business Conduct Policy

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- Fraudulently claiming any free or reduced cost NHS service, including prescriptions, when not entitled
  - Using more than one identity to obtain excess prescription drugs
  - Stealing from patients, staff or the public

## **8 INVESTIGATION PROCESS**

- 8.1 The Trust encourages anyone having reasonable suspicions of fraud, bribery or corruption to report them to the Local Counter Fraud Specialist. The Trust is committed to ensuring that concerns are investigated in confidence and that firm, but appropriate action is taken where acts of dishonesty are substantiated.
- 8.2 Concerns about fraud, bribery and corruption can also be raised through the Trust's Speaking Up process. The Public Interest Disclosure Act 1998 gives statutory protection, within defined parameters, to Staff who make disclosures about a range of subjects, including fraud, bribery and corruption, which they believe to be happening within the Trust. Within this context, 'reasonably held' means suspicions other than those which are raised maliciously and are subsequently found to be groundless. Any unfounded or malicious allegations will be subject to a full investigation and appropriate disciplinary action.
- 8.3 Details of suspected fraud, bribery and corruption can also be reported via the NHS Fraud and Corruption Reporting Line on Freephone 0800 028 4060, or online at <https://cfa.nhs.uk/reportfraud>. All calls are dealt with by experienced trained staff and any caller who wishes to remain anonymous may do so.
- 8.4 The LCFS will investigate all allegations in accordance with procedures documented in the NHS Anti-Fraud Manual issued by the NHS Counter Fraud Authority and within the primary legislation and associated guidance, principally the Criminal Procedure and Investigations Act 1996 and the Police and Criminal Evidence Act 1984.
- 8.5 In certain circumstances, evidence may best be protected by the LCFS recommending to the Trust that the staff member is suspended from duty. The Trust will make a decision based on advice from Workforce Relations on the disciplinary options, which include suspension.
- 8.6 At the conclusion of each criminal investigation a recommendation will be made to the Chief Financial Officer with regard to prosecution. Files will only be submitted to the Crown Prosecution Service on the authority of the Chief Financial Officer. As part of any criminal proceedings the Trust will seek recovery of losses through compensation and confiscation routes.
- 8.7 At any point during a criminal investigation, the LCFS may determine that a criminal investigation is not required and will refer the issue back to management for consideration as to whether a disciplinary investigation should commence in parallel with the criminal investigation. The LCFS will produce a report for management to consider. Management will take advice from the workforce directorate and follow the Trust's disciplinary process as required.
- 8.8 Should the LCFS determine that, for any reason, a criminal investigation is not appropriate then that investigation will be discontinued. In these circumstances, following the normal decision making route (i.e. Just Culture Panel) the LCFS may be appointed by management to conduct the disciplinary investigation and the normal disciplinary process will then be followed with the LCFS acting as the appointed investigator.
- 8.9 Responsibility for disciplinary investigation rests with management with support from the workforce directorate. In circumstances where the LCFS is conducting a criminal investigation they may attend a disciplinary hearing as a witness and provide details as to the outcome of

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their investigation. Where no criminal action is being considered, the LCFS may undertake the role of investigating officer for the disciplinary at the instruction of management via the HR team

- 8.10 A disciplinary process may run in parallel with a criminal investigation and a hearing carried out prior to the conclusion of the criminal investigation. The decision of whether or not to prosecute will be based on the facts established during the investigation, regardless of co-operation or otherwise from the employee during the disciplinary process, although co-operation in the disciplinary process is expected and a contractual obligation on all employees.
- 8.11 The manager whose responsibility encompasses the area of that investigation will consider the report and take the appropriate action (disciplinary or other). If the Head of Internal Audit is not satisfied that the appropriate action has been undertaken they will refer the matter to relevant Clinical Group Chief Executive or to the Chief Financial Officer.
- 8.12 As with all disciplinary matters, the level of proof required is that of the balance of probability. Disciplinary cases involving allegations of fraud, bribery and financial malpractice will be handled on this basis.
- 8.13 The investigation report will highlight any system weaknesses that are identified as a result of an investigation. These will be addressed through an agreed action plan. Failure to implement adequate system controls following a loss to fraud will be the subject of a report to the relevant Clinical Group Chief Executive, Chief Financial Officer and/or Audit and Risk Committee. The Audit and Risk Committee will monitor the implementation of recommendations arising from counter fraud reports.
- 8.14 The Trust will seek to use the Proceeds of Crime Act 2002 and the Criminal Justice Act 1988 to obtain Confiscation Orders to include Compensation Orders as well as recovery of the full benefit figure where possible. Where appropriate, the Trust will utilise accredited financial investigators attached to NHS CFA or other law enforcement agencies to conduct investigations, obtain orders and present evidence.

## **9 SANCTION POLICY**

- 9.1 This part of the Counter Fraud and Bribery Policy sets out the Trust's approach to sanctions and is designed to ensure that sanctions are applied in a consistent manner and that decision making is transparent and fair.
- 9.2 The Trust will use the full range of sanctions available, including criminal prosecution, civil recovery, internal disciplinary action and referral to professional bodies in order to deter fraud, bribery and associated offences.
- 9.3 Where cases are considered suitable for prosecution, the Trust will refer these to the Crown Prosecution Service (CPS) via NHS Counter Fraud Authority. The CPS are responsible for determining charges and progressing the case. In deciding whether or not to pass a case for prosecution the Trust will have regard to the tests used by the CPS known as the evidential and public interest tests.
- 9.4 The Trust will refer matters to other law enforcement agencies should matters arise which fall under the remit of those organisations. Decisions to refer matters to these agencies will be taken by the Head of Internal Audit in consultation with the LCFS.
- 9.5 The sanction decision will have regard at all times to the Trust's counter fraud and bribery policy objectives, the individual circumstances of each case and the overall impact of the punishment.

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- 9.6 The Trust recognises that prosecution is a serious step to take. Hence, there are a number of different individuals involved in the decision to refer for prosecution. Recommendations for prosecution will be made by the Investigator. These are reviewed by the Head of Internal Audit and, if the decision is made to proceed, the Chief Financial Officer has to authorise onward referral to NHS Counter Fraud Authority. The ultimate decision on prosecution will be taken by the prosecuting body, normally the CPS.
- 9.7 In some circumstances, such as complex high value fraud or where multiple NHS organisations are impacted, the case will be investigated by NHS Counter Fraud Authority. In addition cases may be referred directly to local police where police powers are necessary for effective investigation.

#### **Non-Executive Directors/Staff/Agency/Interims/ Volunteers/ Work experience**

- 9.8 In all cases of fraud, bribery, theft, financial misconduct, serious and intentional breach of Standing Financial Instructions or Standards of Business Conduct the Trust will utilise a range of sanctions. The normal recommendation for directly employed staff would be to seek disciplinary action on the grounds of gross misconduct. For bank staff, termination of bank contract and removal from the bank will be considered. Where a financial loss has been identified the Trust will seek to recover this loss either through the civil or criminal process. In addition, where staff are members of professional bodies or are subject to professional codes of conduct and ethics, cases will be referred to the relevant professional body. Cases may also be referred to the relevant prosecuting authority for criminal prosecution. For agency/interim/contractor staff the engagement will be terminated immediately and prosecution considered as for permanent staff. In addition to recovery of losses from the individual, the Trust may also seek recovery from the supplying agency/company.

#### **Public / Patients**

- 9.9 Fraud threats from the public primarily arise from scams which apply to all large organisations, such as mandate fraud, theft of data etc. The Trust will seek prosecution in all cases and will refer attempts to the national Action Fraud Reporting Line.
- 9.10 In relation to patients, threats exist within the area of obtaining free treatment when not entitled or obtaining treatment for which a charge is due and having no intention to pay. This may involve providing false identity or false address details. In addition patients may claim travel expenses where they are not entitled or use false identities to obtain multiple prescriptions. The Trust will liaise with other agencies such as UKBA, DWP and local authorities to verify entitlement to free treatment and / or identity and address details.

Where there is sufficient evidence of fraud, the Trust will seek civil recovery and prosecution applying the evidential and public interest tests and taking account of mitigating and aggravating factors. The circumstances of each individual case will ultimately determine the eventual sanction route.

#### **Contractors/ suppliers**

- 9.11 Contractors who defraud the Trust through deliberate overcharging, duplicate charging etc will have any contracts terminated and relevant information will be shared with other NHS bodies. The Trust will seek prosecution and civil recovery in all cases.