

ANTI-FRAUD, BRIBERY AND CORRUPTION POLICY

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POLICY AMENDMENTS

Amendments to the policy will be issued from time to time. A new amendment history will be issued with each change.

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Contents

Section	Page No.
A guide to 'do's and don'ts	1
1. Introduction	2
1.1 General	2
1.2 Aims and objectives	2
1.3 Scope	2
2 Policy statement	2
2.1 Policy statement	3
2.2 Impact Analysis	3
3 Definitions	3
3.1 NHS Counter Fraud Authority	3
3.2 Fraud	3
3.3 Bribery and corruption	4
4 Roles and responsibilities	5
4.1 Chief Executive	5
4.2 Chief Finance Officer	5
4.3 Internal and external audit	6
4.4 Human Resources	6
4.5 Local Counter Fraud Specialist	6
4.6 Managers	7
4.7 All employees	8
4.8 Information management and technology	8
5. The response plan	8
5.1 Bribery and corruption	8
5.2 Reporting fraud, bribery or corruption	8
5.3 Sanctions and redress	9
6. Review	10
6.1 Monitoring and auditing of policy effectiveness	10
6.2 Dissemination of the policy	10
6.3 Review of the policy	10
7. Related Policies	10
8. External References	10
Referral form	11

NHS fraud, bribery and corruption: dos and don'ts. A guide for NHS Leeds CCG

DO

- **Report your suspicions immediately**

All referrals will be professionally investigated and confidentiality will be respected.

- **Note your concerns**

If it helps, record details such as what you have seen or heard, when this happened and who was involved.

- **Refer to the anti fraud, bribery and corruption policy on the intranet**

If you are unsure about what fraud, bribery or corruption is, guidance is available on the intranet. Alternatively, contact your Local Counter Fraud Specialists who will be happy to advise and support you.

DO NOT

- **Be afraid of raising your concerns**

Never be afraid to speak up about your suspicions even if you are unsure. We would rather investigate a suspicion which turns out not to be right rather than miss the chance to effectively deal with any wrongdoing.

- **Confront the person you think may be committing an offence or speak to anyone other than those listed below**

This could alert the person and give them the opportunity to hide what they have been doing.

- **Investigate this yourself**

Never attempt to gather further information yourself unless it is about to be destroyed. This is because evidence must be obtained in line with strict legal requirements by a Local Counter Fraud Specialist. If in doubt, please call for advice.

Please report any concerns you have immediately by either

- Directly contacting the **Local Counter Fraud Specialist (LCFS),**

Your Local Counter Fraud Specialists are Marie Hall & Steven Moss

who can be contacted by telephoning (**mobiles**) 07970 265017 and 07717 356707 (and/or landlines 01904 725145 & 01904 725166 when normal business arrangements are in operation) or emailing marie.hall15@nhs.net & steven.moss@nhs.net

Or

- Contacting the **NHS Fraud and Corruption Reporting Line** free on 0800 028 40 60. Calls will be treated in confidence and investigated by professionally trained staff or you can report to them online by visiting www.reportnhsfraud.nhs.uk or
- Contacting the **Chief Finance Officer.**

Tackling fraud

1 Introduction

1.1 General

This document sets out NHS Leeds Clinical Commissioning Group's (the CCG) policy and provides guidance and advice to employees in dealing with fraud or suspected fraud. This policy is supported and endorsed by the Governing Body and senior management and sets out the arrangements in place for concerns regarding suspected fraudulent activity to be raised by employees or members of the public and how they will be dealt with.

The CCG does not tolerate fraud and bribery within the NHS. The intention is to eliminate all NHS fraud and bribery as far as possible and the CCG is committed to taking all necessary steps to counter fraud and bribery in accordance with guidance and advice issued by NHS Counter Fraud Authority. This includes seeking appropriate disciplinary, regulatory, civil and criminal sanctions against fraudsters and where possible recovery of losses.

1.2 Aims and objectives

The purpose of this document is to provide guidance to staff on what fraud is, what everyone's responsibility is to prevent fraud, bribery and corruption and how to report suspicions of fraud, bribery or corruption. Specifically:

- Improve the knowledge and understanding of everyone in the organisation, 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 CCG'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 criminal prosecution, civil prosecution and/or internal/external disciplinary action (including professional/regulatory bodies)

1.3 Scope

This policy applies to all employees and members of the CCG, including seconded, temporary and agency staff, as well as consultants, vendors, contractors, and/or any other parties who have a business relationship with the organisation. It will be brought to the attention of all employees and form part of the induction process for new staff. It is incumbent on all of the above to report any concerns they may have concerning fraud and bribery.

2 Policy statement

2.1 NHS Leeds Clinical Commissioning Group is committed to taking all necessary steps to counter fraud and bribery. To meet this objective, the CCG has adopted NHS Counter Fraud Authority's national strategic approach to tackling crime against the NHS which encompasses:

- Strategic Governance – Ensuring compliance with NHSCFA Counter Fraud Standards
- Inform and Involve – Engaging those who work for or use the NHS about crime and how to tackle it.
- Prevent and Deter – reduce the opportunity for fraud, bribery and corruption to take place in the NHS and to discourage those individuals who may be tempted to commit crime.
- Hold to account – to investigate allegations of fraud and apply sanctions to those who have committed fraud, bribery or corruptions offences against the NHS.

Operationally the organisation's Local Counter Fraud Specialist (LCFS) will produce an annual Counter Fraud Plan for activity which will reflect this strategic approach and which will be formally approved by the Chief Financial Officer and presented to the Audit Committee.

All employees have a personal responsibility to protect the assets of the organisation, including all buildings, equipment and monies from fraud, theft, or bribery.

The CCG 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 should report the matter to their LCFS who will then ensure that procedures are followed.

The CCG's policy is that no individual will suffer any detrimental treatment as a result of reporting reasonably held suspicions. The Public Interest Disclosure Act 1998 came into force in July 1999 and gives statutory protection, within defined parameters, to staff members who make disclosures about a range of subjects, including fraud and bribery, which they believe to be happening within the organisation employing them. Within this context, 'reasonably held' means suspicions other than those which are raised maliciously and are subsequently found to be groundless.

Malicious allegations will be subject to a full investigation and appropriate disciplinary action.

All suspicions reported will be investigated by the LCFS in accordance with the NHS Anti-Fraud Manual and where appropriate sanctions, which may include any or all of criminal prosecution, civil prosecution, internal or regulatory disciplinary action and financial redress will be sought.

2.2 Impact Analysis

Equality

As a result of performing the screen analysis, the policy does not have any adverse effects on people who share Protected Characteristics and no further actions are recommended.

Sustainability

As a result of performing the assessment the policy does not have any effects in terms of sustainability.

3 Definitions

3.1 NHS Counter Fraud Authority

NHS Counter Fraud Authority is a special health authority charged with the identification, investigation and prevention of fraud, bribery and corruption within the NHS. Its service delivery model focuses upon standard setting, bench marking and assurance to enable local NHS organisations to take corrective action as appropriate.

3.2 Fraud

The Fraud Act 2006 came into force on 15th January 2007.

The offence of fraud can be committed in three ways:

- A) fraud by false representation (Section 2) – lying about something using any means, by words or actions, for example a patient saying they are on benefits in order to claim travel expenses.
- B) Fraud by failing to disclose (Section 3) – not saying something when you have a legal duty to do so, for example failing to declare a criminal conviction on an application form.
- C) Fraud by abuse of a position of the Trust (Section 4) – abusing a position where there is an expectation to safeguard the financial interests of another person or organisation, for example a carer abusing their access to patient monies.

All offences under the Fraud Act 2006 occur where the act or omission is committed dishonestly and with the intention to cause a gain or loss. The gain or loss does not have to succeed, so long as the intent is there.

It should be noted that successful prosecutions under the Fraud Act 2006 may result in an unlimited fine and/or a potential custodial sentence of up to 10 years.

3.3 Bribery and corruption

Bribery is defined as “*The offering, giving, receiving, or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his or her public or legal duties*”.

Corruption is defined as “*where someone is influenced by bribery, payment or benefit in kind to unreasonably use their position to give some advantage to themselves or to another*”.

On the 1st July 2011, the Bribery Act 2010 became law and introduced new offences in relation to bribery and corruption. The generic term “*corruption*” is accommodated into this Act. The main offences are listed below and a person is guilty of an offence if either of the following applies:

Section 1 - Offences of bribing another person –

a) Offers, promises or gives a financial or other advantage to another person, and

(b) Intends the advantage -

- (i) To induce a person to perform improperly a relevant function or activity, or*
- (ii) To reward a person for the improper performance of such a function or activity*

(c) Knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.”

Section 2 Offences relating to being bribed –

(a) Request, agrees to receive or accepts a financial or other advantage and intending that, in consequence, a relevant function or activity should be performed improperly (whether by the recipient or another person)”

A simple example would include a candidate for a job offering the interviewer tickets to an event in order to secure the position. Under the Bribery Act 2010, two offences would be committed; one by the person offering the bribe and one by the person receiving the bribe.

Section 7 Failure of commercial organisations to prevent bribery – (The Corporate Offence)

(1) A relevant commercial organisation (a commercial organisation includes all NHS bodies), is guilty of an offence under this section if a person associated with it bribes another person intending –

(a) To obtain or retain business for the organisation or

(b) To obtain or retain an advantage in the conduct of business for the organisation.

Two simple examples of this would be:

i) Where an act of bribery has occurred, for a director, manager or officer of an organisation to ignore the act or acts of bribery within the organisation. Under the Bribery Act 2010, the corporate offence would have been committed.

ii) Where an act of bribery has occurred, it was subsequently established that the organisation employing the individual failed to have adequate procedures in place to identify and prevent the act of bribery by its employee. Again, under the Bribery Act 2010, the corporate offence would have been committed.

4 Roles and responsibilities

4.1 Chief Executive

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

4.2 Chief Finance Officer

The Chief Financial Officer (CFO) is provided with powers to approve financial transactions initiated by departments across the CCG. As part of this role the CFO is responsible for the maintenance and implementation of detailed financial procedures and systems which incorporate the principles of separation of duties and internal checks.

The CFO will report annually to the Governing Body on the adequacy of internal financial control and risk management as part of the Governing Body's overall responsibility to prepare an Annual Governance Statement for inclusion in the CCG's annual report.

The CFO will ensure the LCFS, or specialist investigators, are given access to staff and records where required / necessary.

The CFO, in consultation with NHS Counter Fraud Authority and the LCFS, will decide whether there is sufficient cause to conduct an investigation, whether the Police and External Audit need to be informed and, depending on the investigation outcome, authorise any prosecution or other sanctions to be pursued.

The CFO or the LCFS will consult and take advice from Human Resources if a member of staff is to be interviewed or disciplined. The CFO or LCFS will not conduct a disciplinary investigation, but the employee may be the subject of a separate investigation by HR.

The CFO will, depending on the outcome of investigations (whether on an interim/on-going or a concluding basis) and/or the potential significance of suspicions that have been raised, inform the Chair of the Audit Committee of cases, as may be deemed appropriate or necessary.

The CFO is also responsible for informing the Audit Committee of all categories of loss.

4.3 Internal and external audit

The role of internal and external includes the review of internal controls and systems and the provision of an opinion and assurance on their adequacy and effectiveness.

Internal and External Audit have a duty to bring any incident or suspicion of fraud, bribery or corruption to the attention of the CCG's LCFS.

4.4 Human Resources

When Human Resources staff are advised of suspected cases of fraud, bribery or corruption, they undertake to advise the LCFS as soon as possible.

Workforce staff and the LCFS will liaise during the conduct of any investigation to ensure information is shared, duplication avoided and the actions of neither party compromises each other's work.

The CCG's Human Resource Lead will be responsible for invoking all elements of the disciplinary process in respect of suspension from duty and / or dismissal. It will, however, be the responsibility of the LCFS at all times to investigate, interview or gather evidence associated with any suspected fraudulent activity. As far as is practically possible, the disciplinary process will only be invoked after discussions between Human Resources and the LCFS on the needs / merits of the case but it is recognised that there will be occasions when suspension of a member of staff is considered paramount.

4.5 Local Counter Fraud Specialist

The LCFS is responsible for taking forward all anti-fraud work locally in accordance with national standards and reports directly to the Chief Finance Officer.

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.

The LCFS will investigate allegations of fraud and corruption in accordance with the instructions of NHS Counter Fraud Authority.

The LCFS will play an active part in raising fraud awareness and enforcing the message that fraud within the CCG is not acceptable and will not be tolerated.

The LCFS will provide regular updates on counter fraud work to the Chief Finance Officer and the Audit Committee and is responsible for all external reporting requirements. An annual report will reflect the work undertaken to deliver the agreed annual counter fraud plan which will have been developed to reflect both the NHS Counter Fraud Authority's strategic approach and local risk assessments undertaken by the LCFS in respect of fraud, bribery and corruption. The LCFS will also work with the CCG in the annual review of the CCG's compliance with the counter fraud standards and the completion of the annual Self Review Tool.

4.6 Managers

All managers are responsible for ensuring that policies, procedures and processes are adhered to and those within their local area kept up to date.

Managers have a responsibility to ensure that staff are aware of fraud, bribery and corruption and understand the importance of protecting the CCG from it.

As part of that responsibility line managers need to:

- Inform staff of the CCG's standards of business conduct, declaration of interest and anti-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 policies
- 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 organisation's Anti-Fraud and Bribery 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 organisation's and the Department of Health Accounting Officer's overall statements of accountability and internal control.

Managers will also be responsible for the enforcement of disciplinary action for staff who do not comply with policies and procedures.

If any instances of actual or suspected fraud, bribery or corruption are brought to the attention of a manager, they must report the matter immediately to the LCFS taking note of anything they hear or see relating to the suspicion including dates, times, descriptions, etc. It is important that managers do not investigate any suspected or actual frauds themselves as a case can be jeopardised if evidence is not collected in the proper manner. Evidence also includes witness statements. In view of the complexity and importance of complying with all the conditions of the Police and Criminal Evidence Act 1984 (PACE), Line Managers or other staff **must not** carry out any investigations or interviews.

Managers must co-operate fully with the LCFS and provide any evidence required during the course of the enquiries, including statements.

4.7 All employees

All employees of the CCG are expected to adhere to the policies and procedures of the CCG and to the Public Sector Values (Nolan Principles). Staff must comply with the national guidance contained in HSG(93)5 "Standards of Business Conduct for NHS staff", the CCG's Standards of Business Conduct Policy and Declaration of interests and potential conflicts of interest policy.

All employees should also be aware of their responsibility to protect the CCG from crime, and in doing so protect the assets of the CCG, including information and goodwill, in addition to property. Where an employee suspects there has been fraud, bribery or corruption they must report the matter to the nominated LCFS or Chief Finance Officer or via one of the reporting channels available through NHS Counter Fraud Authority identified below.

Under no circumstances should an employee attempt to investigate suspected or actual incidents of fraud, bribery or corruption themselves as this could jeopardise any potential criminal investigation and subsequent prosecution.

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

4.9 Information management and technology

The Computer Misuse Act (1990) made three new offences:

- Accessing computer material without permission, e.g. looking at someone else's files.
- Accessing computer material without permission with intent to commit further criminal offences
- Altering computer data without permission, e.g. to hide misappropriation

The fraudulent use of information technology will be reported by the Head of Information Service to the LCFS.

5 The response plan

5.1 Bribery and corruption

In response to the Bribery Act 2010 the CCG has put in place what it considers to be proportionate and adequate procedures to address the level of risk it has assessed that it may face.

The CCG's Declaration of interests and potential conflicts of interest policy and Standards of Business Conduct policy provide guidance and details on staff responsibilities relating to conduct, particularly in relation to commercial sponsorship (including posts), gifts, honoraria and charitable donations and conflicts of interest and how to declare them. This policy and other relevant policies such as the Procurement Policy are available to staff on the CCG's website.

5.2. Reporting fraud, bribery or corruption

Suspected fraud can be discovered in a number of ways, but in all cases it is important that staff are able to report their concerns and are aware of the means by which they are able to do so.

All staff should report their suspicions to the LCFSs or the Chief Financial Officer. The LCFSs are authorised to treat concerns raised in the strictest confidence and anonymously if so requested. A referral form can be found below (form 2) and on the CCG's extranet site.

To report any suspicions of fraud and/or corruption please contact Steven Moss or Marie Hall, via the following:

E-mail: Steven.Moss@nhs.net or marie.hall15@nhs.net

Post: Steven Moss/Marie Hall, Internal Audit, Park House, Bridge Lane, Wigginton Road, York, YO31 8ZZ.

Mobile: 07970 265017 or 07717 356707

Landline: 01904 725145 or 01904 725 (when normal business working arrangements are in operation.)

If staff, for any reason, feel unable to report the matter internally, or wish to remain anonymous, they prefer to call the NHS Fraud and Corruption Reporting Line on 0800 028 40 60 between 8am and 6pm Monday to Friday or report online at www.reportnhsfraud.nhs.uk This would also be the suggested contact if there is a concern

that the LCFSs or the Chief Financial Officer themselves may be implicated in suspected fraud, bribery or corruption.

The LCFSs will inform the Chief Financial Officer if the suspicion seems well founded and will conduct a thorough investigation.

Reports received will be investigated by the LCFS in a professional manner aimed at ensuring that the current and future interests of the CCG and the suspected individual(s) are protected. The latter is equally important as a suspicion should not be seen as guilt to be proven.

Where it is the wish of the individual to report suspicions anonymously this will be respected. However, the Governing Body will always encourage individuals to give their name as this allows suspicions to be acted upon with greater effectiveness and efficiency.

It is recognised that individuals may wish to raise concerns / suspicions that may be erroneous or unsubstantiated and the LCFS will conduct sufficient enquiries to establish whether or not there is any foundation to the suspicion raised. If allegations are found to be malicious they will be considered for further investigation to establish their source and if related to a CCG employee disciplinary action may be instigated.

The guide included in the appendix (form 1) provides a reminder of the key contacts and a checklist of the actions to follow if fraud, bribery and/or corruption, is discovered or suspected. Managers are encouraged to copy this to staff and to place it on staff notice boards.

5.3 Sanctions and redress

Sanctions

Where a staff member is suspected of fraud, bribery or corruption or any other illegal act the CCG will determine on the appropriate disciplinary action, in accordance with its Disciplinary Policy and Procedure.

It should be noted that the duty to follow disciplinary procedures will not preclude consideration of the application of other available sanctions. The full range of sanctions is:

Criminal – whereby proceedings may be brought against alleged offenders and the case heard in Court with the view to obtaining a criminal conviction, an appropriate fine, imprisonment, confiscation, compensation order and award of costs.

Civil – whereby proceedings are undertaken to recover money or assets fraudulently obtained including interest and costs.

Disciplinary – whereby the employee will be dealt with internally via Human Resources and, where the individual is a professional, it may also be necessary to notify their professional body for the matter to be dealt with externally.

It should be recognised that whilst each sanction stands-alone potentially all three could be pursued. The decision on the sanctions to be pursued will be determined by the Chief Finance Officer in conjunction with the NHS Counter Fraud Authority and the Crown Prosecution Service as appropriate.

Redress

The seeking of financial redress or recovery of losses will always be considered in cases of fraud, bribery and corruption that are investigated by the LCFS or the NHS Counter Fraud Authority where a loss is identified. As a general rule, recovery of the loss caused by the perpetrator will always be sought. The decision will be made in the light of the

particular circumstances of each case by the Chief Finance Officer in conjunction with the NHS Counter Fraud Authority and the Crown Prosecution Service as appropriate.

6 Review

6.1 Monitoring and auditing of policy effectiveness

The Audit Committee is responsible for monitoring the effectiveness of this policy to provide assurance to the Governing Body that the business of the CCG is being conducted in line with this policy, the associated policy documents, relevant legislation and other statutory requirements.

Continuous 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 CCG should explain how appropriate recommendations and action plans are developed and how any recommendations made should be implemented.

6.2 Dissemination of the policy

The organisation's Anti-Fraud and Bribery Policy should be available to all members of staff. The policy will be disseminated to all line managers to ensure staff are aware of the policy. The policy should also be available via the CCG's website.

6.3 Review of the policy

This Policy will be reviewed by the LCFS every two years, or sooner where changes in legislation require it.

7 Related Policies

Whistleblowing Policy
Standards of Business Conduct Policy (which includes gifts and hospitality and commercial sponsorship)
Code of Conduct for Managers
Disciplinary Policy
Declaration of Interests

8 External references

Fraud Act 2006
Bribery Act 2010
NHS Counter Fraud Authority
The Computer Misuse Act 1990

If you wish to report a potential fraud, bribery or corruption please print out and complete this form, and post it to the **Local Counter Fraud Specialist, York Teaching Hospital NHS Foundation Trust, Internal Audit, Park House, Bridge Lane, Wigginton Road, York, YO31 8ZZ**

YOUR DETAILS

It is not necessary to provide your contact details; however it is possible that more information may be required in order for any investigation to take place. All reported incidents will be investigated, and where appropriate the offenders prosecuted. As a result the Police may also be contacted. All concerns will be treated sensitively and in the strictest confidence. You will not suffer any recriminations as a result of raising a reasonable and justified suspicion.

Your Name:

Address:

Telephone:

E-mail:

SUSPECT DETAILS

Name:

Description:

FRAUD, BRIBERY OR CORRUPTION DETAILS

Location:

Details:
**(Please attach
any available
information)**

(please continue on a separate piece of paper and attach if necessary)

Signed:

Dated:

The CCG Local Counter Fraud Specialist will undertake to acknowledge receipt of this referral within 5 working days unless otherwise requested.