



*Coastal West Sussex
Clinical Commissioning Group*

Fraud, Bribery and Corruption Policy

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Foreword

Coastal West Sussex Clinical Commissioning Group (CCG) is committed to reducing the level of fraud, bribery and corruption within the NHS to an absolute minimum and keeping it at that level, freeing up public resources for better patient care.

To this end, the CCG employs a specialist Counter Fraud service to undertake a comprehensive programme against fraud, bribery and corruption which is overseen by the CCG's Audit and Assurance Committee.

All anti-fraud, bribery and corruption legislation is complied with., Under the Bribery Act 2010 it is a criminal offence to receive, promise or offer a bribe, and to request, agree to receive, or accept a bribe. A bribe may take the form of any financial or other advantage to another person in order to induce a person to perform improperly.

Although the Bribery Act permits hospitality, all staff are required to consider on an individual basis whether accepting any hospitality offered is appropriate and should they then elect to take it, to record it within the CWS CCG's Gifts and Hospitality register so that it has been fully disclosed.

It is also important that all of our contractors and agents comply with our policies and procedures. NHS Healthcare Services are commissioned under the NHS Standard Contract. Under Service Condition 24.2 of the NHS Standard Contract, organisations meeting certain criteria that provide NHS services are required to put in place and maintain appropriate anti-fraud and security management arrangements. For more information see NHS Protect Standards for Providers:

http://www.nhsbsa.nhs.uk/Documents/CounterFraud/Standards_for_providers_2016-2017_Fraud_bribery_and_corruption.pdf

Under the contract, relevant providers of services are required to appoint their own Accredited Counter Fraud function, complete an annual Self-Review Tool which measures compliance with the NHS Protect Standards for Providers, and develop a work plan to ensure non-compliant standards are addressed.

We ask all who have dealings with CWS CCG, as employees, agents, trading partners, stakeholders and patients, to help us in our fight against fraud, bribery and corruption and to contact us immediately, if you have any concerns or suspicions we need to know about.

CWS CCG's Local Counter Fraud Manager can be contacted in confidence by phone on 07879 434976 / 01424 776750 or by post at TIAA, Regent House, Mitre Way, Station Approach, Battle, East Sussex TN33 0BQ, or by email chris.lovegrove@nhs.net / chris.lovegrove@ttaa.co.uk.

All genuine suspicions of Fraud, Bribery and Corruption can also be reported to the NHS Fraud and Corruption Reporting Line on free phone 0800 028 4060, again in strict confidence, or via the online reporting form at www.reportnhsfraud.nhs.uk.

1. Summary

CWS CCG does not tolerate fraud, bribery or corruption within the NHS. The aim is to eliminate all NHS fraud, bribery and corruption as far as possible. This policy has been produced by the Local Counter Fraud Specialist (LCFS) and is intended as a guide for all employees about counter fraud work within the NHS. All genuine suspicions of fraud, bribery and corruption can be reported to the LCFS directly, or through the NHS Fraud and Corruption Reporting Line (FCRL). Contact details for both are included in the foreword and Appendices A and B.

2. Introduction

2.1 General

One of the basic principles of public sector organisations is the proper use of public funds. The majority of people who work in the NHS are honest and professional and they find that fraud committed by a minority is wholly unacceptable as it ultimately leads to a reduction in the resources available for patient care.

NHS Protect is a business unit of the NHS Business Services Authority. It has responsibility for all policy and operational matters relating to the prevention, detection and investigation of fraud, bribery and corruption and the management of security in the NHS. All instances where fraud is suspected are properly investigated until their conclusion by staff trained by NHS Protect. Any investigations will be handled in accordance with NHS Protect guidance.

'Tackling crime against the NHS: A strategic approach' sets out how NHS Protect intends to reduce crime against the NHS. This is available from:

http://www.nhsbsa.nhs.uk/Documents/CounterFraud/NHS_Protect_Strategy.pdf

2.2 Generic areas of action

CWS CCG is committed to taking all necessary steps to counter Fraud, Bribery and Corruption. To meet their objectives they have adopted the three key principles which are set out in the NHS Protect strategy:

- Inform and involve – it is necessary to inform and involve those who work for or use the health service on the risks of crime and how to tackle it.
- Prevent and deter crime – to remove the opportunities for crime within the NHS to occur or to re-occur.
- Hold to account – those who commit crime will be detected, investigated, prosecuted and where appropriate redress sought where possible.

2.3 Aims and scope

This policy relates to all forms of fraud, bribery and corruption and is intended to provide direction and help to employees who may identify suspected fraud. It provides a framework for responding to suspicions of fraud, advice and information on various aspects of fraud and implications of an investigation. It is not intended to provide a comprehensive approach to preventing and detecting fraud, bribery and corruption.

The overall aims of this policy are to:

- improve the knowledge and understanding of everyone in the CCG, irrespective of their position, about the risk of Fraud, Bribery and Corruption 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 the CCG'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, which may include any or all of the following:
 - criminal prosecution
 - civil prosecution
 - internal disciplinary action
 - external action (i.e. referral to professional regulatory body).

This policy applies to all employees of the CCG, regardless of position held, as well as consultants, vendors, contractors, and/or any other parties who have a business relationship with the CCG; it will be brought to the attention of all employees and form part of the induction process for new staff.

3. Definitions

3.1. Fraud

The Fraud Act 2006 represented an entirely new way of investigating fraud. It is no longer necessary to prove that a person has been deceived. The focus is now on the **dishonest behaviour** of the suspect and their **intent** to make a **gain or cause a loss**.

The offences of fraud can be committed in three ways:

- 1) Fraud by false representation (s.2) – lying about something using any means, e.g. by words or actions
- 2) Fraud by failing to disclose (s.3) – not saying something when you have a legal duty to do so
- 3) 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.

It should be noted that all offences under the Fraud Act 2006 occur where the act or omission is committed dishonestly and with intent to cause gain or loss. The gain or loss does not have to succeed, so long as the intent is there.

3.2 Bribery

Very generally, this is defined as giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so. So this could, for example, cover seeking to influence a decision-maker by giving some kind of extra benefit to that decision maker rather than by what can legitimately be offered as part of a tender process.

Section 1 of The Bribery Act 2010 makes it an offence for a person ('P') to offer, promise or give a financial or other advantage to another person in one of two cases:

Case 1 applies where P intends the advantage to bring about the improper performance by another person of a relevant function or activity or to reward such improper performance.

Case 2 applies where P knows or believes that the acceptance of the advantage offered, promised or given in itself constitutes the improper performance of a relevant function or activity.

3.3 Corruption

This can be broadly defined as the offering or acceptance of inducements, gifts, favours, and payment or benefit-in-kind which may influence the action of any person. Corruption does not always result in a loss. The corrupt person may not benefit directly from their deeds; however, they may be unreasonably using their position to give some advantage to another.

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

- The Public Bodies Corrupt Practices Act 1889
- The Prevention of Corruption Acts 1889–1916
- The Anti-terrorism, Crime and Security Act 2001.
- The Bribery Act 2010.

3.4 Employees

For the purposes of this policy, ‘employees’ include all Coastal West Sussex CCG staff permanent, temporary agency and contract, as well as Governing Body and Committee members (executive and non-executive members including co-opted members) and honorary members.

4. Codes of Conduct

The codes of conduct for NHS Governing Bodies and NHS managers set out the key public service values. They state that 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. These values are summarised as:

<i>Accountability</i>	Everything done by those who work in the health body must be able to stand the tests of parliamentary scrutiny, public judgements on propriety and professional codes of conduct.
<i>Probity</i>	Absolute honesty and integrity should be exercised in dealing with NHS patients, assets, staff, suppliers and customers.
<i>Openness</i>	The health body’s activities should be sufficiently public and transparent to promote confidence between the authority and its staff and the public.

All staff should be aware of, and act in accordance with, these values.

5. Roles and responsibility

Through our day-to-day work, we are in the best position to recognise any specific risks within our own areas of responsibility. We also have a duty to ensure that those risks – however large or small – are identified and eliminated. Where you believe the opportunity for fraud exists, whether because of poor procedures or oversight, you should report it to your Local Counter Fraud Specialist, or the NHS Fraud and Corruption Reporting Line, or online reporting form.

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

5.1 Role of Coastal West Sussex Clinical Commissioning Group

The CCG will take all necessary steps to counter fraud, bribery and corruption in accordance with this policy, *NHS Protect Guidelines*, NHS Protect policy statement 'Applying Appropriate Sanctions Consistently' and any other relevant guidance or advice issued by NHS Protect.

5.1.1. Inform and involve

The CCG will use Counter Fraud publicity material to persuade those who work in the CCG that fraud, bribery and corruption is serious and takes away resources from important services. Such activity will demonstrate that fraud, bribery and corruption are not acceptable and are being tackled.

5.1.2. Prevent and deter

Deterrence is about increasing the expectation that someone will be caught if they attempt to defraud – this is more than just tough sanctions. The CCG will introduce such measures to minimise the occurrence of fraud, bribery and corruption.

The CCG has policies and procedures in place to reduce the likelihood of fraud, bribery and corruption occurring. These include a system of internal controls, prime financial policies and documented procedures, which involve physical and supervisory checks, financial reconciliations, segregation and rotation of duties, and clear statements of roles and responsibilities. Where fraud, bribery and corruption has occurred the CCG will ensure that any necessary changes to systems and procedures take place immediately to prevent similar incidents from happening in the future.

The CCG will develop and maintain effective controls to prevent fraud, bribery and corruption and to ensure that if it does occur, it will be detected promptly and referred to the LCFS for investigation.

5.1.3. Hold to account

The LCFS will be professionally trained and accredited to carry out investigations into suspicions of fraud, bribery and corruption to the highest standards. In liaison with NHS Protect, the LCFS will professionally investigate all suspicions of fraud, bribery and corruption to prove or disprove the allegation.

Following the conclusion of an investigation, if there is evidence of fraud, available sanctions will be considered in accordance with the guidance issued by NHS Protect – 'Applying Appropriate Sanctions Consistently'. This may include criminal prosecution, civil proceedings and disciplinary action, as well as referral to a professional or regulatory body.

Recovery of any losses incurred will also be sought through civil proceedings, if appropriate, under the Proceeds of Crime Act 2002, to ensure losses to the CCG and the NHS are returned for their proper use.

The CCG also has a duty to ensure that they provide a secure environment in which to work, and one where people are confident about raising concerns without worrying that it will reflect badly on them. This extends to ensuring that staff feel protected when carrying out their official duties and are not placed in a vulnerable position. If staff members have concerns about any procedures or processes that they are asked to be involved in, the CCG has a duty to ensure that those concerns are listened to and addressed.

The CCG Chief Officer (CO) is liable to be called to account for specific failures in the CCG system of internal controls. However, responsibility for the operation and maintenance of controls falls directly to Line Managers and requires the involvement of all of CCG employees. The CCG, therefore, has a duty to ensure employees who are involved in, or who are managing internal control systems, receive adequate training and support in order to carry out their responsibilities. Therefore, the Chief Officer and Chief Finance Officer (CFO) will monitor and ensure compliance with this policy.

5.2 Employees

The CCG's Standing Orders, Standing Financial Instructions, policies and procedures place an obligation on all employees, non-executive directors and Governing Body Members (Lay and Clinical) to act in accordance with best practice in order to prevent fraud, bribery and corruption.

Employees are expected to act in accordance with the standards laid down by their professional institutes, where applicable, and have a personal responsibility to ensure that they are familiar with them.

Employees also have a duty to protect the assets of the CCG, including information, goodwill and property and the CCG operates a non-disclosure agreement to this effect.

In addition, all employees have a responsibility to comply with all applicable laws and regulations relating to ethical business behaviour, procurement, personal expenses, conflicts of interest, confidentiality and the acceptance of gifts and hospitality. Employees should familiarise themselves with the following associated Trust Policies:

- Conflicts of Interests Policy
- Gifts and Hospitality Policy
- Protocol for Parallel Criminal and Disciplinary Sanctions
- Freedom to Speak Up (Whistleblowing) Policy
- Disciplinary Policy.

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

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

All employees have a duty to ensure that public funds are safeguarded, whether or not they are involved with cash or payment systems, receipts or dealing with contractors or suppliers.

If an employee suspects that there has been fraud bribery or corruption, or has seen any suspicious acts or events, they must report the matter to their nominated LCFS (see *section 5.4*).

5.3 Managers

Managers must be vigilant and ensure that CCG policies and procedures to guard against fraud, bribery and corruption are followed. They should be alert to the possibility that unusual events or transactions could be symptoms of fraud, bribery and corruption. If they have any doubts, they must seek advice from their nominated LCFS.

Managers must instil and encourage an anti-fraud, bribery and corruption culture within their team and ensure that information on procedures is made available to all employees. The LCFS will proactively assist the encouragement of an anti-fraud culture by undertaking work that will raise fraud awareness.

All instances of actual or suspected fraud, bribery or corruption which come to the attention of a manager must be reported immediately. It is appreciated that some employees will initially raise concerns with their manager. However, in such cases, managers must not attempt to investigate the allegation themselves; they have the clear responsibility to refer the concerns to their nominated LCFS as soon as possible.

Line managers at all levels have a responsibility to ensure that an adequate system of internal control exists within their areas of responsibility, that controls operate effectively and are under constant review. The responsibility for the prevention and detection of fraud, bribery and corruption therefore primarily rests with managers but requires the co-operation of all employees.

As part of that responsibility, line managers need to:

- inform staff of the CCG's code of business conduct and fraud, bribery and corruption policy as part of their induction process, paying particular attention to the need for accurate completion of personal records and forms
- ensure that all employees for whom they are accountable are made aware of the requirements of the policy
- enforce disciplinary action for staff who do not comply with CCG policies and procedures
- 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
- ensure that any use of computers by employees is linked to the performance of their duties within the CCG and contact the LCFS immediately in all cases where there is suspicion that IT is being used for fraudulent purposes or where breaches of the Computer Misuse Act 1990 occur
- be aware of the CCG's Fraud, Bribery and Corruption 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 CCG and the Department of Health Accounting Officer's overall statements of accountability and internal control.

5.4 Local Counter Fraud Specialist (LCFS)

The Directions to NHS Bodies on Counter Fraud Measures 2013 require the CCG to appoint and nominate an LCFS. The LCFS's role is to ensure that all cases of actual or suspected Fraud, Bribery and Corruption are notified to the Chief Finance Officer (CFO) and reported accordingly.

The LCFS will regularly report to the CFO on the progress of the investigation and when/if referral to the police is required.

The LCFS will:

- ensure that the CFO is informed about all referrals/cases
- be responsible for the day-to-day implementation of the generic areas of counter fraud, bribery and corruption activity and, in particular, the investigation of all suspicions of fraud
- investigate all cases of fraud
- in consultation with the CFO, report any case to the police or NHS Protect as agreed and in accordance with the *NHS Counter Fraud and Corruption Manual*
- report any case and the outcome of the investigation through the NHS Protect national case management system (FIRST)
- ensure that other relevant parties are informed where necessary, e.g. Human Resources (HR) will be informed if an employee is the subject of a referral
- ensure that the CCG's incident and losses reporting systems are followed
- ensure that any system weaknesses identified as part of an investigation are followed up with management and reported to internal audit
- adhere to the Counter Fraud Professional Accreditation Board (CFPAB)'s Principles of Professional Conduct as set out in the *NHS Counter Fraud and Corruption Manual*
- not have responsibility for or be in any way engaged in the management of security for any NHS body
- ensure that the CFO is informed of regional team investigations, including progress updates
- ensure cases are handled appropriately, taking account of best practice and the employment relationship.

5.5 NHS Protect

NHS Protect has been subject to a review of its functions and services by the Department of Health (DH). The DH review concluded that during 2016-17 NHS Protect needed to undergo a transition and identify the functions required to deliver its agreed new remit and strategic direction.

A programme of work is under way to change NHS Protect's service delivery model from direct operational support to standard setting, bench marking and assurance which will enable local corrective action

As part of their new remit NHS Protect will:

- provide a single central expert anti-crime organisation at a national level
- provide intelligence-led crime prevention/reduction work
- maintain oversight of and monitor anti-crime work across the NHS
- define and set anti-crime standards and assess performance against them
- assess, bench mark and assure the performance of local anti-crime delivery against those standards
- provide anti-crime management information to the NHS to drive improvement
- drive improvement to the quality and consistency of outputs of local anti-crime provision
- provide a central investigation capacity for complex fraud cases that local NHS organisations are not able to pursue.

NHS Protect will continue to transition activity and aim to implement their new structure in shadow form in January 2017, with a view to starting to deliver a new operating model and services after that. As from December 2016 NHS Protect will be scaling back on a number of services it currently provides, and it will no longer provide them from 1 April 2017, this includes direct provision of operational support services by an Area Anti-Fraud Specialist.

5.6. Chief Finance Officer

The Chief Finance Officer (CFO) is responsible for the system of financial control, and prepares documents and maintains detailed financial procedures and systems which apply the principles of separation of duties and internal checks. The CFO reports annually to the Governing Body on the adequacy of internal financial controls and risk management as part of the Governing Body's overall responsibility to prepare a Statement of Internal Control for inclusion in the Trusts Annual Report.

The CFO, in conjunction with the Clinical Chief Officer, monitors and ensures compliance with Secretary of State Directions regarding fraud, bribery and corruption. The CFO will, depending on the outcome of investigations (whether on an interim/ongoing or concluding basis) and/or the potential significance of suspicions that have been raised, inform appropriate senior management accordingly.

The LCFS shall be responsible, in discussion with the CFO, for informing third parties such as external audit or the police at the earliest opportunity, as circumstances dictate.

The CFO will inform and consult the Clinical Chief Officer in cases where the loss may be above the agreed limit or where the incident may lead to adverse publicity.

The CFO will inform the Head of Internal Audit at the first opportunity. If an investigation is deemed to be appropriate, the CFO will delegate to the CCG's LCFS, who has responsibility for leading the investigation, whilst retaining overall responsibility him/herself.

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

5.7 Internal and External Audit

Internal auditors will undertake a programme of audits as directed by the Audit and Assurance Committee, to include reviewing controls and systems and ensuring compliance with financial transactions.

The external auditors have a statutory duty to ensure that the CCG has in place adequate arrangements for the prevention and detection of fraud and corruption.

Any incident or suspicion that comes to internal or external audit's attention will be passed immediately to the nominated LCFS. The outcome of the investigation may necessitate further work by internal or external audit to review systems.

5.8 Human Resources

HR will liaise closely with managers and the LCFS from the outset if an employee is suspected of being involved in fraud and/or corruption, in accordance with agreed liaison protocols. HR staff are responsible for ensuring the appropriate use of the CCG's disciplinary procedure. The HR department will advise those involved in the investigation on matters of employment law and other procedural matters, such as disciplinary and complaints procedures, as requested. Close liaison between the LCFS and HR will be essential to ensure that any parallel sanctions (i.e. criminal, civil and disciplinary sanctions) are applied effectively and in a coordinated manner and that staff are at all times treated in accordance with CCG values.

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

5.9 Information Management and Technology

The LCFS will be contacted immediately in all cases where fraudulent use of information technology or breaches of the Computer Misuse Act 1990 is suspected. HR will also be informed if there is a suspicion that an employee is involved.

6. The response plan

The CCG has conducted risk assessments in line with Ministry of Justice guidelines to assess how bribery and corruption may affect the organisation, and to implement proportionate procedures to mitigate identified risks.

The CCG has implemented key policies and procedures covering declarations of interest, and hospitality and gifts, which all staff are required to adhere to.

6.1 Reporting fraud, bribery or corruption

This section outlines the action to be taken if fraud, bribery or corruption is discovered or suspected.

If an employee has any of the concerns mentioned in this document, they must inform the nominated LCFS or CCG's CFO immediately, unless the CFO or LCFS is implicated. If that is the case, they should report it to the Chair or Clinical Chief Officer, who will decide on the action to be taken. An employee can contact any non-executive director of the CCG to discuss their concerns if they feel unable, for any reason, to report the matter to the Chair or Clinical Chief Officer.

Appendix A provides a reminder of the key contacts and a checklist of the actions to follow if fraud, bribery and corruption, or other illegal acts, are discovered or suspected. Managers are encouraged to copy this to staff and to place it on staff notice boards in their department.

Employees can also call the NHS Fraud and Corruption Reporting Line on freephone 0800 028 4060, or complete the online fraud reporting form at www.reportnhsfraud.nhs.uk. This provides an easily accessible route for the reporting of genuine suspicions of fraud within or affecting the NHS. It allows NHS staff that are unsure of internal reporting procedures to report their concerns in the strictest confidence. All calls are dealt with by experienced trained staff and any caller who wishes to remain anonymous may do so.

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

The LCFS will make sufficient enquiries to establish whether or not there is any foundation to the suspicion that has been raised. If the allegations are found to be malicious, they will also be considered for further investigation to establish their source.

Staff should always be encouraged to report reasonably held suspicions directly to the LCFS. You can do this by filling in the NHS Fraud, Bribery and Corruption Referral Form (**Appendix**

B) or by contacting the LCFS by telephone or email using the contact details supplied in **Appendix A**.

The CCG wants all employees to feel confident that they can expose any wrongdoing without any risk to themselves. In accordance with the provisions of the Public Interest Disclosure Act 1998, the CCG has implemented a Freedom to Speak Up (or Whistle blowing) Policy in line with NHS England/NHS Improvement guidelines. This procedure is intended to complement the CCG's Fraud, Bribery and Corruption Policy and code of business conduct and ensures there is full provision for staff to raise any concerns with others if they do not feel able to raise them with their line manager/management chain.

6.2 Disciplinary action

The disciplinary procedures of the CCG must be followed if an employee is suspected of being involved in a fraudulent or otherwise illegal act.

It should be noted, however, that the duty to follow disciplinary procedures would not override the need for legal action to be taken (e.g. consideration of criminal action). In the event of doubt, legal statute will prevail.

6.3 Police involvement

In accordance with the *NHS Protect Guidelines*, the CFO, in conjunction with the LCFS, will decide whether or not a case should be referred to the police. Any referral to the police will not prohibit action being taken under the local disciplinary procedures of the CCG.

6.4 Managing the investigation

The LCFS, in consultation with the CCG's CFO, will investigate allegations in accordance with procedures documented in the *NHS Protect Guidelines*.

The LCFS must be aware that staff under an investigation which could lead to disciplinary action have the right to be represented at all stages. In certain circumstances, evidence may best be protected by the LCFS recommending to the CCG that the staff member is suspended from duty. The CCG will make a decision based on HR advice on the disciplinary options, which include suspension.

The CCG will follow their disciplinary procedure if there is evidence that an employee has committed an act of fraud or corruption.

6.5 Gathering evidence

The LCFS will take control of any physical evidence, and record this in accordance with the procedures outlined in the *NHS Counter Fraud and Corruption Manual*. If evidence consists of several items, such as many documents, LCFS's should record each one with a separate reference number corresponding to the written record.

Interviews under caution or to gather evidence will only be carried out by the LCFS, if appropriate, or the investigating police officer in accordance with the Police and Criminal Evidence Act 1984 (PACE). The LCFS will take written statements where necessary.

All employees have a right to be represented at internal disciplinary interviews by a trade union representative or accompanied by a friend, colleague or any other person of their choice, not acting in a legal capacity in connection with the case.

The application of the Counter Fraud, Bribery and Corruption Policy will at all times be in tandem with all other appropriate CCG policies, e.g. Conflict of Interests Policy.

6.6 Reporting the results of the investigation

The investigation process requires the LCFS to review the systems in operation to determine whether there are any inherent weaknesses. Any such weaknesses identified should be corrected immediately.

If fraud bribery or corruption is found to have occurred, the LCFS will prepare a report for the CFO and the next CCG Audit and Assurance Committee, the report will also be available to the CCG's Governing Body, setting out the following details:

- the circumstances
- the investigation process
- the estimated loss
- the steps taken to prevent a recurrence
- the steps taken to recover the loss.

7. Recovery of losses incurred to fraud, bribery and corruption

The seeking of financial redress or recovery of losses will always be considered in cases of fraud bribery or corruption that are investigated by either the LCFS or NHS Protect where a loss is identified. As a general rule, recovery of the loss caused by the perpetrator will always be sought which may involve action under the Proceeds of Crime Act 2002. The decisions will be taken in the light of the particular circumstances of each case.

Redress allows resources that are lost to fraud, bribery and corruption to be returned to the NHS for use as intended, for provision of high-quality patient care and services.

7.1. Action to be taken

Chapter 6 of the NHS Protect Anti-Fraud Manual provides in-depth details of how sanctions can be applied where fraud, bribery and corruption is proven and how redress can be sought. To summarise, local action can be taken to recover money by using the administrative procedures of the CCG or civil law.

In cases of serious fraud, bribery and corruption, it is recommended that parallel sanctions are applied. For example: disciplinary action relating to the status of the employee in the NHS; use of civil law to recover lost funds; and use of criminal law to apply an appropriate criminal penalty upon the individual(s), and/or a possible referral of information and evidence to external bodies – for example, professional bodies – if appropriate.

NHS Protect can also apply to the courts to make a restraining order or confiscation order under the Proceeds of Crime Act 2002 (POCA). This means that a person's money is taken away from them if it is believed that the person benefited from the crime. It could also include restraining assets during the course of the investigation.

Actions which may be taken when considering seeking redress include:

- no further action
- criminal investigation
- civil recovery
- disciplinary action
- confiscation order under POCA
- recovery sought from ongoing salary payments.

In some cases (taking into consideration all the facts of a case), it may be that the CCG, under guidance from the LCFS and with the approval of the CFO, decides that no further recovery action is taken.

Criminal investigations are primarily used for dealing with any criminal activity. The main purpose is to determine if activity was undertaken with criminal intent. Following such an investigation, it may be necessary to bring this activity to the attention of the criminal courts (Magistrates' and/or Crown court). Depending on the extent of the loss and the proceedings in the case, it may be suitable for the recovery of losses to be considered under POCA.

The civil recovery route is also available to the CCG if this is cost-effective and desirable for deterrence purposes. This could involve a number of options such as applying through the Small Claims Court and/or recovery through debt collection agencies. Each case will be discussed with the CFO to determine the most appropriate action.

Arrangements may be made to recover losses via payroll if the subject is still employed by the CCG. In all cases, current legislation must be complied with.

The appropriate senior manager, in conjunction with the HR department, will be responsible for initiating any necessary disciplinary action.

The LCFS remit should cover criminal investigations only, and NHS Protect does not endorse the use of LCFS provision for carrying out disciplinary investigations at a health body.

Where both criminal and disciplinary investigations are conducted regarding the same incident, close and supportive liaison between the two is needed

It is important that sanctions are applied in a consistent manner according to the seriousness of the crime involved. A policy statement on applying appropriate sanctions consistently has been produced by NHS Protect. This is available at:
http://www.nhsbsa.nhs.uk/Documents/CounterFraud/Applying_appropriate_sanctions_consistently_-_Policy_statement_April_2013.pdf

The CCG have developed a Parallel Sanctions Protocol based on NHS Protect guidelines to set out the roles and responsibilities of interaction between HR and the LCFS.

7.2 Timescales

Action to recover losses will be commenced as soon as practicable after the loss has been identified. Given the various options open to the CCG, it may be necessary for various departments to liaise about the most appropriate option.

7.3 Recording

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

8. Review

8.1 Monitoring and auditing of policy effectiveness

Monitoring of policy effectiveness is essential to ensure that controls are appropriate and robust enough to prevent or reduce fraud. Ongoing review of system controls and identification of weaknesses in processes, resulting in action plans or recommendations that are implemented, will all be taken into consideration when this policy is reviewed to ensure the policy remains up to date.

8.2 Dissemination of the Policy

This policy applies to all CCG staff; permanent, temporary/agency and contract as well as executive and non-executive members of the Governing Body and Committees. The policy will be referenced at all staff inductions, anti-fraud training and is available to all staff via the CCG intranet.

8.3 Review of the Policy

The Policy will be reviewed annually by the CCG in conjunction with the LCFS.

9. Equality Impact Assessment

The CCG recognises the diversity of the local community and those in its employment. The organisation aims to provide a safe environment free from discrimination and a place where all individuals are treated fairly, with dignity and appropriately to their need. This policy is therefore subject to an Equality Impact Assessment checklist which can be found in appendix C of this policy.

10. Further Reading

- NHS Protect <http://www.nhsbsa.nhs.uk/Protect.aspx>
- NHS England Guidance on Anti-Fraud Arrangements: <http://www.england.nhs.uk/wp-content/uploads/2012/09/fin-qov-tool.pdf>
- NHS Protect Standards for Providers 2016/17 http://www.nhsbsa.nhs.uk/Documents/CounterFraud/Standards_for_providers_2016-2017_Fraud_bribery_and_corruption.pdf
- NHS Protect Business Plan 2016/17 http://www.nhsbsa.nhs.uk/Documents/CounterFraud/NHS_Protect_business_plan_2016-17_Final.pdf

- NHS Protect Strategy; Tackling crime against the NHS, A Strategic Approach
http://www.nhsbsa.nhs.uk/Documents/CounterFraud/NHS_Protect_Strategy.pdf
- Countering Fraud in the NHS – the Professional and Ethical Approach - Department of Health 1999
[http://62.164.179.2/CounterFraud/Documents/counterfraudethical\(1\).pdf](http://62.164.179.2/CounterFraud/Documents/counterfraudethical(1).pdf)
- The Code of Conduct for NHS Manager 2002
http://www.nhsemployers.org/SiteCollectionDocuments/Code_of_conduct_for_NHS_managers_2002.pdf
- Standards for members of NHS boards and CCG Governing Bodies in England 2012
<http://www.professionalstandards.org.uk/docs/psa-library/november-2012---standards-for-board-members.pdf?sfvrsn=0>
- Applying Appropriate Sanctions Consistently
http://www.nhsbsa.nhs.uk/Documents/CounterFraud/Applying_appropriate_sanctions_consistently_-_Policy_statement_April_2013.pdf

Appendix A- NHS Fraud, Bribery and Corruption: do's and don'ts

FRAUD is the dishonest intent to obtain a financial gain from, or cause a financial loss to, a person or party through false representation, failing to disclose information or abuse of position.

BRIBERY / CORRUPTION is the deliberate use of bribery or payment of benefit-in-kind to influence an individual to use their position in an unreasonable way to help gain advantage for another.

DO

- **Note your concerns**

Record details such as your concerns, names, dates, times, details of conversations and possible witnesses. Time, date and sign your notes.

- **Retain evidence**

Retain any evidence that may be destroyed, or make a note and advise your LCFS.

- **Report your suspicion**

Confidentiality will be respected – delays may lead to further financial loss.

Complete a fraud report and submit in a sealed envelope marked 'Restricted – Management' and 'Confidential' for the personal attention of the LCFS.

DO NOT

- **Confront the suspect or convey concerns to anyone other than those authorised, as listed below**

Never attempt to question a suspect yourself; this could alert a fraudster or accuse an innocent person.

- **Try to investigate, or contact the police directly**

Never attempt to gather evidence yourself unless it is about to be destroyed; gathering evidence must take into account legal procedures in order for it to be useful. Your LCFS can conduct an investigation in accordance with legislation.

- **Be afraid of raising your concerns**

The Public Interest Disclosure Act 1998 protects employees who have reasonable concerns. You will not suffer discrimination or victimisation by following the correct procedures.

- **Do nothing!**

If you suspect that fraud against the NHS has taken place, you must report it immediately, by:

- directly contacting the **Local Counter Fraud Specialist**, or
- telephoning the **freephone NHS Fraud and Corruption Reporting Line**, or
- contacting the **Chief Finance Officer**.

If you have concerns about a fraud taking place in the NHS, information can be passed to:

NHS Fraud Bribery & Corruption Reporting Line:

0800 028 40 60 (all calls in confidence investigated by professionally trained staff)

Or via the NHS Fraud reporting form at www.reportnhsfraud.nhs.uk

Your Local Counter Fraud Manager is Chris Lovegrove who can be contacted by emailing chris.lovegrove@nhs.net or by phone on 07879 434976

If you would like further information about NHS Protect, please visit www.nhsprotect.nhs.uk

Appendix B- NHS Fraud, Bribery and Corruption referral form

All referrals will be treated in confidence and investigated by professionally trained staff

1. Date

2. Anonymous application <Delete as appropriate>

Yes (If 'Yes' go to section 6) or No (If 'No' complete sections 3–5)

3. Your name

4. Your organisation/profession

5. Your contact details

6. Suspicion

7. Please provide details including the name, address and date of birth (if known) of the person to whom the allegation relates.

8. Possible useful contacts

9. Please attach any additional information available.

Submit the completed form (in a sealed envelope marked 'Restricted – Management' and 'Confidential') for the personal attention of the LCFS, Tiaa Ltd, Regent House, Mitre Way, Station Approach, Battle, East Sussex TN33 0BQ

Appendix C- Equality Impact Assessment

1	Does the policy /guidance affect one group less or more favourably than another on the basis of:	Yes/No	Comments
	Race	No	
	Ethnic Origin	No	
	Nationality	No	
	Gender	No	
	Culture	No	
	Religion or belief	No	
	Sexual orientation including lesbian gay and bi-sexual people.	No	
	Age	No	
	Disability (e.g. physical, sensory or learning)	No	
	Mental Health	No	
2	Is there any evidence that some groups are affected differently?	No	
3	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable.	No	
4	Is the impact of the policy/guidance likely to be negative.	No	
5	If so can the impact be avoided?	N/A	
6	What alternatives are there to achieving the policy/guidance without the impact?	N/A	