

Counter Fraud and Corruption Policy

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Purpose - The policy sets out the arrangements that the Trust will maintain to deter, prevent, detect and investigate instances of fraud, corruption and bribery carried out against the Trust and the wider NHS. It describes the function of the Trust's qualified Local Counter Fraud Specialist and the national role undertaken by NHS Protect.

Key messages in this policy

The Board is committed to deterring, preventing and detecting fraud and corruption, including bribery in the Trust. All staff have a responsibility to be alert to the risk of fraud and corruption and to follow procedures correctly, so as to minimise the opportunity for fraud and corruption to occur.

Where fraud or corruption is suspected, it will be investigated rigorously. Where it is proven, the Trust will press for criminal prosecution of the individual(s) involved and seek the maximum reparation possible.

You may also need to refer to the following policies and guidance –

This document forms the third of a three part policy on personal and organisational behavioural governance. The other policies are:

- Standards of business conduct, incorporating anti-bribery and corruption policy; and the recognition

and treatment of conflicting interests, gifts and hospitality.

- Policy for raising concerns, including whistleblowing

Other policies that may become relevant include:

- Extended Standing Orders
- Disciplinary policy

The significant Acts of Parliament comprise:

- Fraud Act, 2006
- Bribery Act, 2010
- Health and Social Care Act, 2012
- Freedom of Information Act, 2000

Other documents include:

- NHS fraud and corruption manual
- NHS Standard Contract (currently 2015-16)
- NHS Protect Standards for Providers (currently 2015-16)

Who should read this policy?

- All staff employed by the Trust, including those working in an unpaid capacity
- All individuals contracted to provide services to, or in the name of the Trust.

Core accountabilities

Policy drafting	Head of Compliance
Review and approval	Director of Finance
Ratification and adoption	Director of Finance
Dissemination	Head of Compliance
Compliance	All staff and individuals providing services in the name of the Trust

Version history

	2008	Version on intranet HR site
V1	2010	Version on HR portal
V2	Oct 2013	Review of behavioural governance
V2.1	Sep 2016	New contact details

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1. Policy statement

- 1.1. The Trust Board is committed to maintaining an honest, open and well intentioned atmosphere within the Trust. The Board has set out its expectations of all employees and individuals working in the name of the Trust, regarding the standards of personal and professional behaviour in its policy: “Standards of business conduct, incorporating anti-bribery and corruption policy; and the recognition and treatment of conflicting interests, gifts and hospitality”.
- 1.2. The Board has adopted a zero tolerance approach to wrongdoing and expects all staff to apply the same standard.
- 1.3. The Board will ensure that suitable arrangements are in place to provide it with sufficient assurance that there are reasonable deterrents in place prevent wrongdoing; and adequate arrangements in place to investigate instances of potential wrongdoing when they are identified.
- 1.4. If wrongdoing is proved, the Trust will normally seek criminal prosecution of the individual(s) involved and seek the maximum reparation possible.

2. Regulatory background

- 2.1. This policy sets out the Trust’s Strategy for dealing with detected or suspected fraud. The Trust endorses the NHS Counter Fraud Strategy as set out in the NHS Commissioning Board’s NHS Standard Contract General Conditions (currently 2015-16).
- 2.2. The foreword to the Trust’s **Standing Orders**, April 2015 states that:
- 2.3. “High standards of corporate and personal conduct are essential in the NHS. As the NHS is publicly funded, it is accountable to Parliament for the services it provides and for the effective and economical use of taxpayers’ money. The Standing Orders, Standing Financial Instructions, as well as procedures including financial procedures and the rules and instructions made under them, provide a framework and support for the public service values which are essential to the work of the NHS of:
 - Accountability – the ability to stand the test of Parliamentary scrutiny, public judgements on propriety and professional codes of conduct.
 - Probity – an absolute standard of honesty in dealing with the assets of the Trust; integrity in decisions affecting patients, staff and suppliers, and in the use of information acquired in the course of NHS duties.
 - Openness – transparency about NHS activities to promote confidence between the organisation and its staff, patients and the public.”
- 2.4. The **Bribery Act, 2010** reforms the criminal law of bribery, making it easier to tackle this offence proactively in the public and private sectors.
- 2.5. NHS organisations are included in the Bribery Act’s definition of “relevant commercial organisation” and they are required to put in place adequate preventative procedures in respect of acts of wrongdoing by persons associated with them in the course of their work.

- 2.6. The **Fraud Act, 2006** provides the statutory definition of the criminal act of fraud. Corruption is defined in the **Preventing Corruption Act, 1916**.
- 2.7. The **Health and Social Care Act, 2012** requires provider trusts to prove the adequacy of their arrangements for deterring, preventing and detecting fraud and corruption as part of the NHS Standard Contract terms.
- 2.8. The **NHS England Standard Contract (currently 2015-16)** sets the requirement for all NHS bodies to put in place and maintain appropriate counter fraud and security management arrangements. Organisations are required to appoint a qualified local counter fraud specialist and to give them access, independence and authority to carry out their functions; and to invite them to report the results of their work to directors, through the Audit Committee.
- 2.9. The **Regulation of Investigatory Powers Act, 2000** (RIPA) recognises that surveillance plays a necessary part in modern life and that members of the public expect investigatory bodies to use covert techniques as a means of detecting and preventing crime. The Trust can undertake “Directed Surveillance”, but has to be authorised by NHS Protect.

3. Definitions

- 3.1. **Bribery** - generally 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. The Bribery Act, 2010 describes two offences specific to the individual:
 - Active Bribery – the process of giving or offering a bribe. This offence encompasses:
 - bribes given or offered to benefit, ultimately, the individual giving the bribe
 - bribes given or offered to benefit the individual’s employer
 - bribes given or offered by a service supplier to the employer, for the direct or indirect benefit of the employer
 - Passive Bribery – the act of accepting a bribe, which includes actions encouraging a bribe to be given.
- 3.2. **Corruption** – abuse of powers, associated with the position of the individual, for personal gain.
- 3.3. **Extended Standing Orders** – comprises the Trust’s standing orders, standing financial instructions and scheme of delegations.
- 3.4. **Fraud** – dishonest use of a lie to seek to achieve personal gain, or to damage another individual: Seeking to make a benefit, or causing another to suffer a loss, from making a false representation, from failing to disclose relevant information, or from abusing their position.
- 3.5. **Local Counter Fraud Specialist (LCFS)** – qualified specialist, appointed by the Trust to undertake the full range of anti-fraud, bribery and corruption work, including proactive work to prevent and deter fraud, bribery and corruption and reactive work to hold those who commit fraud, bribery and corruption to account.

- 3.6. **NHS Protect** – Formerly known as the Counter Fraud and Security Management Service (CFSMS), is part of the NHS Business Services Authority. It leads on a wide range of work to protect NHS staff and resources from crime.
- 3.7. **Staff** – for the purposes of this policy, “staff” should be taken to include casual and temporary workers, volunteers and individuals employed by other organisations to deliver services in the Trust’s name. This is an important definition in terms of the scope of responsibilities placed on organisations by the Bribery Act.
- 3.8. **Wrongdoing** – for the purposes of this policy, should be taken to involve the criminal offences described in the Fraud Act, 2006 and Bribery Act, 2010. The criminal offences are as follows:
- Under the Fraud Act, 2006
 - Section 2 fraud by false representation
 - Section 3 failing to disclose information
 - Section 4 abuse of position
 - Section 11 obtaining services dishonestly
 - Under the Bribery Act, 2010
 - Section 1 bribing another
 - Section 2 accepting or requesting a bribe
 - Section 7 (employer) failing to take reasonable steps to prevent a bribe

Offences recorded in other Acts, such as the Theft Act, 1968 are also included here.

4. Roles and responsibilities

- 4.1. The **Trust Board** is responsible for gaining assurance that:
- the Trust has adopted and is operating adequate procedures and controls to deter and prevent wrongdoing from occurring, in compliance with the Secretary of State’s directions to NHS bodies on counter fraud measures
 - adequate arrangements are in place to ensure that all staff are aware of the standards of personal and professional behaviour expected of them; and that all staff have access to this policy.
- 4.2. The **Audit Committee** is responsible for gaining assurance that:
- the Trust has appointed a qualified Local Counter Fraud Specialist (LCFS) to lead the drive to maintain and improve the standards and processes for deterring, detecting and investigating wrongdoings; and seek prosecution where wrongdoing is discovered.
 - the annual counter fraud work-plan is adequate and provides a reasonable balance between raising fraud awareness across the Trust and evaluating the effectiveness of the Trust’s counter-fraud systems and controls.
 - It receives periodical reports from the LCFS on the progress against the work-plan and update of the progress of any investigations
 - It receives a formal annual report of the Trust’s compliance with the standards set by NHS Protect

4.3. The **Director of Finance** (or equivalent) is the executive director lead for all anti-fraud, bribery and corruption work in the Trust and is responsible for:

- ensuring that an annual wrongdoing risk assessment is carried out by the Trust, using the tools provided by NHS Protect
- managing the continuity of appointment of a qualified LCFS to the Trust; and ensuring that the counter-fraud service continues to be delivered in the event of the departure, or long term absence of the appointed LCFS
- overseeing the delivery of services from the LCFS
- providing the relevant required support to the LCFS in any investigations that they carry out
- ensuring the currency of this policy

4.4. **Managers** are responsible for ensuring that:

- their staff, including new staff, are aware of and understand the contents of this policy
- all instances of suspected wrongdoing are reported to the Director of Finance, or the appointed LCFS (Mazars LLP, 0117 3171590 or Mobile 07970 425275 or 07917 790112), or NHS Protect (**Fraud & Corruption Reporting Line: 0800 028 40 60**)

4.5. **Individual members of staff** are required to:

- carry out their tasks in accordance with the relevant policies and procedures of the Trust, so that their actions do not prevent the systems and controls against wrongdoing from operating effectively.
- be aware of the classification of wrongdoing and be alert to evidence that wrongdoing is occurring
- abide by the expected behaviours set out in the Trust's "Standards of business conduct, incorporating anti-bribery and corruption policy; and the recognition and treatment of conflicting interests, gifts and hospitality."
- understand the consequences of becoming involved in wrongdoing
- report any wrongdoings to the Director of Finance, or appointed LCFS (0117 3171590 or Mobile 07970 425275 or 07917 790112), or NHS Protect (**Fraud & Corruption Reporting Line: 0800 028 40 60**), when they become aware of them. The Director of Finance, NHS Protect and the appointed LCFS will, as far as is legally possible, respect the anonymity of the individual reporting the wrongdoing.

5. Consequences of not complying with this policy

5.1. The Trust risks failing to deliver compliance with the standards set out in the Health and Social Care Act, 2012 and the NHS Standard Contract (currently 2015-16). On instances of bribery, it risks prosecution for failing to maintain proportionate arrangements to deter and prevent bribery.

- 5.2. The Trust risks damage to its reputation: with its patients and catchment population; and within the NHS community. It risks services to patients being compromised by the impact of losses incurred due to wrongdoing by its staff.

6. Scope and objectives of this policy

- 6.1. One of the most basic principles of public sector organisations is the proper use of public funds. It is therefore important that all those working within the public sector are aware of the risk of wrongdoing and means of enforcing the rules against wrongdoing.
- 6.2. The Trust Board is committed to maintaining an honest, open and well-intentioned culture. These expectations are set out in the Trust's "Standards of business conduct, incorporating anti-bribery and corruption policy; and the recognition and treatment of conflicting interests, gifts and hospitality". The Board is committed to the elimination of any wrongdoing within the Trust by employees, service users, or contractors; and to the rigorous investigation and punishment of any such cases. The Trust wishes to encourage anyone having reasonable suspicions of wrongdoing to report them. It is also the Trust's policy that no employee will suffer in any way as a result of reporting reasonably held suspicions. These arrangements are described in the Trust's "Policy for raising concerns".
- 6.3. This document sets out the Trust's policy for deterring, detecting and dealing with suspected wrongdoing. The Trust has established procedures to reduce the likelihood of illegal acts occurring. These include standing orders, standing financial instructions, standards of business conduct and systems of internal control.
- 6.4. The Trust Board will seek assurance that it has established adequate arrangements to deter, prevent and detect wrongdoings carried out against the Trust, or in the Trust's name. The Board will seek to ensure that a risk and fraud awareness culture is maintained across the Trust.
- 6.5. These arrangements will satisfy the requirements laid down by the Bribery Act. They will also deliver against the expectations of the NHS Standard Contract, through complying with the strategic guidance set out by NHS Protect.

The Bribery Act, 2010

- 6.6. The Bribery Act establishes a criminal offence for an organisation to fail to prevent bribery being carried out in its name, or in the interests of its business. This offence can be mitigated against; and defended successfully, if the organisation has established adequate procedures to prevent bribery from occurring.
- 6.7. The Act identifies six principles to be considered in seeking to prevent bribery:
- **Proportionality** – the efforts to prevent should be reasonable, when considered against the extent of the risk faced
 - **Top level commitment** – showing that the risks are taken seriously and making sure that all staff managers understand that bribery will not be tolerated
 - **Risk assessment** – considering, as part of any planning appraisal, the specific risk of bribery, particularly in new ventures and new situations

- **Due diligence** – making sure that you can trust the people you work with, or who provide work for you
- **Communication** – ensuring that all staff, in the widest sense, are fully aware that bribery is not acceptable
- **Monitoring and review** - of the effectiveness and continued relevance of the anti-bribery arrangements that have been put in place

6.8. The Trust Board will seek assurance that these principles are applied adequately, to prevent bribery and other wrongdoing from occurring.

NHS Protect strategic guidance

6.9. The NHS Protect strategy, 2012 identifies, for providers of NHS services, four standards for fighting fraud, bribery and corruption. These are as follows:

- A **strategic governance framework** that supports a zero tolerance approach to wrongdoing; makes this clear to all staff; and monitors, at the very top of the organisation, the effectiveness of the arrangements in place. The Trust will appoint a qualified Local Counter Fraud Specialist (LCFS) to support this commitment.
- three key principles for action:
 - to **inform and involve**, through setting clear policies and a code of conduct for all staff; raising awareness of the risks; and liaising with other organisations to develop a shared resistance to wrongdoing
 - to **prevent and deter**, through focused assessment of risks in existing systems and processes; audit and review of records; proactive checks of new employees and new service suppliers
 - to **hold to account**, through audit of known higher risk areas; investigating allegations and indications of wrongdoing; and seeking maximum punishment and reparation if wrongdoing is shown.

6.10. These four standards are reflected in the NHS Standard Contract (2015-16 at the time of writing).

6.11. The Trust Board will seek assurance that these standards are applied adequately, to protect the Trust's good name and interests; and to prevent breaches of the NHS Standard Contract.

7. Arrangements for deterring, preventing, detecting and responding to instances of wrongdoing

7.1. The Trust will maintain procedures and controls designed to be effective in combatting wrongdoing carried out against it and carried out in its name. These arrangements will be sufficient to deliver the expectations set out in the relevant legislation and regulations.

Governance framework

- 7.2. The Trust Board will ensure that the Trust maintains a strong framework of governance that sets out clearly the behavioural and professional standards expected of all staff. The Trust's key governance documents will be kept up to date, through regular review and will be made easily accessible to all staff via the intranet.
- 7.3. The Director of Finance will ensure that the Trust's arrangements are appropriate to meet the expectations set out in the new NHS standard contract (currently 2015-16). As part of this, the Director of Finance will carry out annually a risk analysis of its existing arrangements, using the toolkit provided by NHS Protect.
- 7.4. The Trust Board will support the work of the appointed LCFS who will develop programmes of work that raise the profile of the Trust's anti-fraud culture and promote the Trust's principles to staff; review and test the adequacy of controls designed to deter and prevent wrongdoing from occurring; and investigate instances where wrongdoing is suspected. The Trust will allow the LCFS timely and unrestricted access to records and staff.
- 7.5. The Trust Board will give full support to the work of NHS Protect and will contribute, through the LCFS, to national reviews of transactions and processes that are considered to present a higher risk of wrongdoing

Informing and involving staff

- 7.6. The Director of Finance will, through its appointed LCFS, deliver a programme of awareness training to staff. This will be delivered through a range of media, including direct training and presentations and promotional materials, such as leaflets, posters, emails, website links and so on.
- 7.7. The Trust Board will provide the LCFS with access to staff groups and to publication and distribution facilities for delivering messages to all staff.
- 7.8. The Head of Compliance will promote to all staff the three behavioural governance policies:
 - **Standards of business conduct, incorporating anti-bribery and corruption policy; and the recognition and treatment of conflicting interests, gifts and hospitality** – which sets out the standards of personal and professional behaviour expected of all staff.
 - **Counter fraud and corruption policy** – (this policy) which describes the Trust's stance on wrongdoing and the arrangements it puts in place to deter, prevent and investigate wrongdoing.
 - **Policy for raising concerns, including whistleblowing** – which stipulates the Trust's stance that all staff have a responsibility to report any suspicions of unacceptable practice, across the whole of the work of the Trust. This includes instances of suspected wrongdoing.
- 7.9. Through the LCFS, the Trust will assess the effectiveness of its efforts to promote the counter fraud culture to all staff and will report the results of this assessment in the annual counter fraud report to the Audit Committee.

Deterring and preventing wrongdoing

- 7.10. The Director of Finance will ensure that effective systems, checks and controls are operating over the financial transactions of the Trust.
- 7.11. The Director of Finance will ensure that internal audit is sufficiently resourced to deliver an annual audit programme, which includes risk focused review and testing of key controls operating in the Trust's key financial systems. The Director of Finance will make internal and external audit reports available to the LCFS and will share findings from audit that indicate systems and controls weaknesses and lapses that might have been exploited by wrongdoers.
- 7.12. The Director of Finance will monitor the effectiveness of the controls put in place to deter wrongdoing, through the annual work programme agreed with the LCFS. The Director of Finance will agree an annual programme of review and testing of controls to be completed by the LCFS. This programme will focus on systems and controls assessed locally to be at higher risk of abuse by wrongdoers and specific projects given priority by NHS Protect for attention nationally.
- 7.13. The LCFS will be expected to bring new guidance and alerts to the attention of the Director of Finance; and to agree revisions to the annual programme, when required, in the light of them. The Director of Finance and LCFS will agree which staff within the Trust will need to receive individual counter fraud alerts.
- 7.14. Policies and procedures, including the extended standing orders, will be reviewed periodically. This review process will include analysis of the level of wrongdoing risk that the Trust faces in the policy area.
- 7.15. Relevant policies and procedures will be reviewed in the light of incidences of wrongdoing uncovered at the Trust and in response to system and control threats identified within the local NHS community by the LCFS and nationally, by NHS Protect.
- 7.16. The Director of Workforce and Organisational Development will ensure that the process of employment and reference checks is carried out adequately for all new employees and volunteers. Agencies supplying temporary staff will be required to provide evidence that adequate employment checks are completed for all temporary staff candidates offered to the Trust.
- 7.17. The Head of Procurement will ensure that special regard is paid to the requirements of the Bribery Act, 2010: that all organisations from which services are procured have proportionate controls and checks on their staff to deter and prevent all forms of wrongdoing, including bribery in favour of the Trust and bribery that does not benefit the Trust.

Investigating and holding to account

- 7.18. The Director of Finance will seek assurance from the LCFS that any relevant incidents uncovered at the Trust are reported to NHS Protect for inclusion on the national database of incidents.
- 7.19. The Trust Board will seek assurance that appropriately qualified LCFS staff investigate all reported potential wrongdoings.
- 7.20. If wrongdoing is proven, the Trust Board will support, or on the advice of NHS Protect and the LCFS, pursue the full range of available sanctions, including internal

disciplinary procedures, civil recovery proceedings and submission of evidence for criminal investigation. Successful cases will be publicised as an additional deterrent.

Reporting suspected wrongdoing

7.21. All members of staff have a responsibility to report suspicions of wrong-doing. These suspicions must be reported immediately to one of the following (see appendix A for contact details):

- The Trust's qualified LCFS
- The Director of Finance
- The national fraud hotline: **0800 028 40 60** or see the NHS Protect website on:
<http://www.nhsbsa.nhs.uk/Protect.aspx>

7.22. Responses to any reported incidents or suspicions of wrongdoing must be carried out in accordance with the NHS Counter Fraud and Corruption Manual. All investigations will normally be carried out by the Trust's qualified LCFS, or their nominated qualified cover LCFS. In exceptional circumstances, the Director of Finance will seek the services of an alternative qualified LCFS, through NHS Protect.

7.23. The types of incidents and suspicions to be raised include the following (but this is not an exclusive list)

- Suspicious looking transactions and activities with potential for direct pecuniary loss to the NHS (e.g. submission of invalid travel claims, illicit use of NHS or other official stationery)
- Evidence of receipt of inappropriate gifts or hospitality from a contractor, potential contractor, employee or any other person.
- Evidence of staff failing to declare a direct pecuniary or otherwise conflicting interest in a contractor or potential or potential contractor, or relationship with a potential employee.
- Evidence of staff providing inappropriate gifts or hospitality in order to influence the actions of any third party in their relationship with the organisation.
- Instances of theft which appear to be indicate links with wider fraud or corruption

8. Monitoring compliance and effectiveness

8.1. The Director of Finance and the LCFS will agree annual and specific measures of the effectiveness of this policy.

8.2. As a minimum, the LCFS will report annually on the number and nature of instances of suspected wrongdoing reported. This report will include details of outcomes and consequences to the individuals involved.

8.3. The Director of Finance will commission the LCFS to carry out a review, annually at least, of the levels of awareness of this policy and its contents amongst staff.

- 8.4. The LCFS will, through the annual programme of work, determine the effectiveness of the Trust's controls and other efforts to deter and prevent wrongdoing.
- 8.5. The results of these audits will be reported in the LCFS annual report to the Audit Committee. Delivery of actions agreed to address weaknesses and lapses identified in the implementation of the policy will be monitored by the Audit Committee.

9. Consultation and approval

- 9.1. The review period for this document is three years from the date it was last ratified, or earlier if developments within or external to the Trust indicate the need for a significant revision to the policy.
- 9.2. The review and revision of this document will be monitored through the Audit Committee.
- 9.3. Non-significant amendments to this policy may be made, under delegated authority from the Director of Finance, by the nominated author. These must be agreed in advance with the LCFS and ratified by the Director of Finance and should be reported, retrospectively, to the Audit Committee.
- 9.4. Significant reviews and revisions to this policy will involve consultation with relevant managers and staff across the Trust, internal and external audit and trades union representatives. Where possible, the consultation process will include discussion with the Policy Review sub-group of the Joint Consultative and Negotiating Committee (JCNC).

10. Dissemination and implementation

- 10.1. Following approval and ratification, this policy will be published on the Trust's intranet library of policies. All staff will be notified through one of the Trust's current communications vehicles.
- 10.2. Implementation is immediate on ratification.
- 10.3. Other than the LCFS programme of promotions to staff, no formal training is proposed. All staff will be encouraged to read and understand the whole policy. The Director of Finance, or the LCFS may also, from time to time, issue reminders about the main messages in the policy, or about specific elements of the policy.

Appendix A: Key contact details

The Trust's qualified LCFS's

Brendan Harper

Email - brendan.harper@nhs.net

Telephone - 07917 790112

Katie Miles

Email - Katie.miles2@nhs.net

Telephone - 07881 283 928

The Director of Finance

Catherine Phillips

Email - Catherine.Phillips@nbt.nhs.uk

Telephone - 0117 4143818

The national fraud hotline

Telephone - 0800 028 4060

NHS Protect website - <http://www.nhsbsa.nhs.uk/Protect.aspx>