

Anti-Fraud, Bribery and Corruption Policy and Response Plan

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1 Introduction

- 1.1 North Staffordshire Clinical Commissioning Group & Stoke on Trent Clinical Commissioning Group (“the CCGs”) are committed to the anti-fraud, bribery and corruption procedures as laid down in this policy.
- 1.2 This document sets out the CCGs’ policy for dealing with detected or suspected fraud, bribery or corruption, and the avoidance of such activity as directed by NHS Protect.
- 1.3 The policy also includes a response plan, setting out the procedure to be followed when employees or members of the public wish to raise concerns in connection with suspected fraud, bribery or corruption.
- 1.4 The Governing Body of the CCGs wish to encourage anyone having reasonable suspicions of fraud, bribery or corruption to report those suspicions.
- 1.5 The CCGs will ensure that no employee will suffer in any way as a result of reporting reasonably held suspicions of fraud, bribery or corruption. For these purposes “a reasonably held suspicion” shall mean any suspicion other than those which are raised maliciously.
- 1.6 All suspicions of fraud committed against the CCGs will be investigated.
- 1.7 The ultimate aim of the policy is to protect the patients, staff, property, finances and reputation of the CCGs and wider NHS.

2 Scope

- 2.1 This policy applies to all employees and members of the CCGs and should also be used by interim staff, agency workers, contractors or suppliers, to report any concerns they may have.
- 2.2 The CCGs will adhere to the NHS Protect anti-fraud Standards and the NHS Anti-Fraud Manual when investigating cases and seeking to impose sanctions.
- 2.3 The CCGs will make every effort to investigate fully any suspicion of fraud. It is the policy of the CCGs to seek to recover all losses arising from any identified fraud-related activities, and to take such sanctions as are appropriate.

- 2.4 All investigations into fraud, bribery or corruption against the CCGs will be reported to the Chief Finance Officer and NHS Protect.

3 Policy Statement

- 3.1 All employees have a personal responsibility to protect the assets of the CCGs, including buildings, equipment and monies, against the loss from theft, fraud, corruption or any other irregularity.
- 3.2 The CCGs are committed to maintaining an honest, open culture, so as to best fulfil the objectives of the CCGs and of the NHS.
- 3.3 The CCGs are also committed to the elimination of any form of fraud, bribery or corruption, to the rigorous investigation of any related allegations and to taking appropriate sanctions when fraud, bribery or corruption are identified. This may include any appropriate combination of criminal prosecution, disciplinary action and undertaking steps to recover any assets lost as a result fraud, bribery or corruption.
- 3.4 It is the responsibility of each member of staff to report any reasonable suspicions to the nominated LCFS. No individual will suffer any detrimental treatment as a result of reporting reasonably held suspicions.

4 NHS Protect

- 4.1 NHS Protect is responsible for the prevention of crime within the NHS, and sets the standards that NHS organisations have to follow when tackling crime across NHS funded services.
- 4.2 As well as setting organisational standards, NHS Protect also sets the standards by which investigators must operate when combating crime within the NHS.
- 4.3 Only accredited NHS Protect Local Counter Fraud Specialists can be nominated by a NHS organisation to undertake their anti-fraud, bribery and corruption activities.

5 Local Counter Fraud Specialist

- 5.1 The CCGs will nominate an appropriate and accredited person to act as its Local Counter Fraud Specialist ("LCFS"). The roles and responsibilities of an LCFS are determined by NHS Protect and set out within the Anti-Fraud Standards and the NHS Anti-Fraud Manual.
- 5.2 The LCFS will actively promote an anti-fraud, bribery and corruption culture throughout the CCGs.

- 5.3 The LCFS will investigate all cases of fraud, bribery and corruption committed against the CCGs, in line with the NHS Anti-Fraud Manual, NHS Anti-Fraud Standards and mindful of the Data Protection Act 1998 and relevant criminal legislation.
- 5.4 The LCFS will report to CCGs' Chief Finance Officer, Audit Committee and NHS Protect.
- 5.5 The LCFS will produce an anti-fraud, bribery and corruption work plan with the CCGs' Chief Finance Officer, which will be ratified by the Audit Committee.
- 5.6 The LCFS will attend Audit Committee meetings of the CCGs, to report progress on the annual work plan and raise matters of concern.
- 5.7 The LCFS will regularly liaise with the Chief Finance officer of the CCG, to discuss matters including any investigations. The LCFS has direct access to the Audit Committee Chair.

6 Definitions

- 6.1 **Fraud** can be defined as *“wrongful or criminal deception intended to result in financial or personal gain, or to cause the loss or risk of loss to another.”*

The Fraud Act 2006 includes a number of offences relating to fraudulent and dishonest actions, the main ones being:-

- Fraud by false representation
- Fraud by failing to disclose information
- Fraud by abuse of position

Offences under the Fraud Act carry prison sentences of up to 10 years in addition to heavy fines.

- 6.2 **Bribery** can be 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”*

- 6.3 **Corruption** can be defined as being *“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.”*

The Bribery Act 2010, includes a number of offences in relation to bribery and corruption. The generic term “corruption” is accommodated into this act. The main offences listed in the Bribery Act 2010 involve:-

- Offering or paying a bribe

- Asking for or receiving a bribe
- Bribing a foreign public official
- Failing to prevent bribes being paid on behalf of an organisation.

The offences apply to all UK 'bodies corporate', which includes all NHS organisations.

The fourth offence is a corporate offence applicable where bribes are paid on behalf of an organisation that has not taken appropriate measures to prevent bribery from occurring. While there are few scenarios within the NHS where this might prove likely, the CCG and other NHS organisations are nevertheless required to be mindful of the risks that this offence poses.

7 Anti-Bribery Procedures

7.1 The guidance accompanying the Bribery Act features a number of principles that apply when considering the risk of bribery and corruption. Being able to demonstrate that these principles have been properly addressed provides some legal defence, should it be proven that bribery has taken place on behalf of the organisation. Although the risk of this occurring in an NHS context is generally considered to be low, the principles form a useful framework for any organisation to demonstrate that it has adequate procedures in place to prevent bribery.

7.2 The six principles are:

Proportionality

The CCGs must have procedures in place to prevent bribery by persons associated with it. These are proportionate to the bribery risks faced by the organisation and to the nature, scale and complexity of the organisation's activities. They are also clear, practical, accessible, effectively implemented and enforced.

Top Level Commitment

The CCGs' Accountable Officer and Directors should demonstrate that they are committed to preventing bribery by persons associated with the CCGs. They will foster a culture within the organisation in which bribery is never acceptable. They will foster a culture within the organisation in which bribery is never acceptable.

Risk Assessment

There are periodic and documented assessments undertaken of the nature and extent of the CCGs' exposure to potential external and internal risk of bribery on its behalf by persons associated with it is periodically assessed. This includes financial risks but also other risks such as reputational damage.

Due Diligence

The CCGs take a proportionate and risk based approach, in respect of persons who perform or will perform services for or on their behalf, in order to mitigate identified bribery risks.

Communication (including training)

The CCGs seek to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation, through internal and external communication, including training that is proportionate to the risks it faces.

Monitoring and Review

The CCG will monitor and review that its procedures designed to prevent bribery by persons associated with the CCGS and make improvements to minimise the risk where necessary.

8 Roles and Responsibilities

8.1 All Employees

Employees of the CCGs are expected to adhere to the policies and procedures of the Clinical Commissioning Groups and to the Public Service Values (“the Nolan Principles”). All employees also have a duty to protect the assets of the CCGs, including information and goodwill, in addition to property.

Employees are expected to act in accordance with the standards laid down by their Professional Institutes, where applicable.

The CCGs’ Prime Financial Policies place an obligation on all staff, to act in accordance with best practice. In addition, all senior staff, and Governing Body Members must declare and register any interests that might potentially conflict with those of the CCGs or the wider NHS.

When an employee suspects that there has been an incident of fraud, bribery or corruption, they must report the matter to the nominated Local Counter Fraud Specialist, or the Chief Finance Officer. (See Section 12 below)

Under no circumstances should staff attempt to investigate any instance of actual or suspected fraud, bribery or corruption nor subject any individual(s) to surveillance of any kind.

All employees should be aware that failure to gather evidence in an appropriate legal manner may undermine any potential criminal investigation and subsequent prosecution.

8.2 Managers

Managers must be vigilant and ensure that 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. Where they have any doubt they must seek advice from their nominated Local Counter Fraud Specialist.

They must establish an anti-fraud and corruption culture within their team and ensure that information on procedures is made available to all staff

Managers should make all members of staff aware of this policy and its contents.

8.3 Chief Finance Officer

The Chief Finance Officer is responsible for the funds of the CCGs.

The Chief Finance Officer will oversee the work of the nominated Local Counter Fraud Specialist for the CCGs, and will liaise and discuss with the nominated Local Counter Fraud Specialist the anti-fraud, bribery and corruption arrangements and any investigations undertaken.

The Chief Finance Officer will liaise with NHS Protect with regard to anti-fraud, bribery and corruption arrangements and investigations relating to the CCGs.

The Chief Finance Officer will authorise any prosecution, following discussion with the nominated Local Counter Fraud Specialist and NHS Protect. When investigations have been referred to the Police or the investigation is in conjunction with the Police, the Crown Prosecution Service will make the decision concerning any prosecution.

The Chief Finance Officer 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 CCGs and the Chair of the Audit Committee of cases, when deemed appropriate or necessary.

8.4 Local Counter Fraud Specialist

The nominated Local Counter Fraud Specialist is responsible for delivering all anti-fraud, bribery and corruption arrangements at the CCGs, in accordance with national standards as set by NHS Protect and the NHS Anti-Fraud Manual.

The LCFS reports directly to the Chief Finance Officer.

The nominated Local Counter Fraud Specialist will work with key colleagues and stakeholders to promote anti-fraud work and effectively respond to system weaknesses.

The LCFS will investigate allegations of fraud, bribery and corruption.

8.5 Internal and External Audit

Internal and external auditors appointed by the CCGs have a duty to pass on any incident or suspicion of fraud, bribery or corruption that they identify as part of an audit, to the nominated Local Counter Fraud Specialist for the CCGs.

8.6 Human Resources (HR)

Human Resources will liaise closely with the nominated Local Counter Fraud Specialist, from the outset where an employee is suspected of being involved in fraud, bribery or corruption. Close liaison between the nominated Local Counter Fraud Specialist and HR is essential to ensure that any parallel sanctions (i.e. criminal and disciplinary) are applied effectively and in a coordinated manner.

9 Prevention Arrangements

9.1 Prevention arrangements are a key part of an organisation's defence against fraud, bribery or corruption. Therefore deterring and preventing dishonesty is a key component in combating internal or external fraud, bribery and corruption.

9.2 Prevention arrangements include revising and strengthening procedures, administrative processes and providing input for review of policies.

All referrals received will be treated in confidence. The Public Interest Disclosure Act 1998 came into force in July 1999 and provides statutory protection, within defined parameters, to staff that make disclosures about a range of concerns, including fraud, bribery or corruption, which they believe to be happening within the organisation employing them.

10 Investigating Fraud, Bribery and Corruption

10.1 A key aspect of an effective anti-fraud, bribery and corruption strategy is the ability to undertake a professional and objective investigation into allegations of fraud, bribery or corruption. Early detection both helps an investigation and will minimise the potential for further loss to the organisation.

10.2 Anyone who encounters behaviour, or finds documents that they suspect may constitute fraud, bribery or corruption, should take the following action:-

- You should report your suspicions to the nominated Local Counter Fraud Specialist for North Staffordshire Clinical Commissioning Group & Stoke on Trent Clinical Commissioning Group:-

Neil Mohan	Lead Counter Fraud Specialist
Telephone	01509 604029
Email	neil.mohan@nhs.net

- Alternatively, complete the online referral form which is located on the CCGs' website under the Anti-Fraud Section.
- You can also report your concerns to the CCGs' Chief Finance Officer:-

Alistair Mulvey	Chief Finance Officer
Email	Alistair.Mulvey@northstaffscg.nhs.uk

- You can also report your suspicions directly to NHS Protect via the **Fraud and Corruption Reporting Line on 0800 028 4060**,
- Alternatively, you can report your suspicions directly to NHS Protect on-line via www.reportnhsfraud.nhs.uk.

10.3 All referrals received will be treated in confidence. The Public Interest Disclosure Act 1998 came into force in July 1999 and provides statutory protection, within defined parameters, to staff that make disclosures about a range of concerns, including fraud, bribery or corruption, which they believe to be happening within the organisation employing them.

- 10.4 **On no account** should anyone seek to investigate suspicions of fraud, bribery or corruption, as this may cause difficulties later.
- You should retain any potential evidence and make notes of any issues and concerns immediately.
 - You should take no further action once suspicions have been raised in accordance with the policy.

11 Investigating Procedures and Methods

11.1 All investigations will be undertaken in a professional and objective manner in accordance with the criminal legislation and procedure, NHS Protect policy and the NHS Fraud and Corruption Manual.

- 11.2 The nominated Local Counter Fraud Specialist for the CCGs will be allowed access to all CCGs employees, directors, contractors, and providers, as well as to systems, processes, records, data and information, as is necessary, in order to progress any investigation. All information requests will be made in accordance with the relevant sections of the Data Protection Act 1998. During the course of an investigation all relevant legislation will be taken into account.

12 Disciplinary Sanctions

- 12.1 The CCGs will decide on the appropriate disciplinary action, in accordance with the applicable, in instances when fraud, bribery or corruption has taken place involving an employee.
- 12.2 There will be instances when it is appropriate to pursue more than one course of action at the same time e.g. a criminal investigation and a disciplinary investigation. In such instances close liaison must exist between those investigating criminal and disciplinary matters.
- 12.3 Criminal action should take precedence over disciplinary action.
However, care must be exercised as criminal investigations and prosecutions can take much longer to complete and the CCGs should avoid being in a position where they are paying for a member of staff to be suspended whilst awaiting a criminal trial.
- 12.4 Close liaison must exist between those investigating criminal and disciplinary matters. In situations where an investigation impacts on another the matter will be referred to the CCGs' Chief Finance Officer to consider the advice from each investigator and to agree which investigation takes priority.

13. Recovery

- 13.1 The CCGs will consider all forms of recovery available under both criminal and civil law, when seeking to obtain recovery. This could include the Proceeds of Crime Act 2002 or the use of debt collection agencies.
- 13.2 Methods available to recover monies lost to fraud include placing a charge on a property to take money when it is sold and taking back any NHS Pension Scheme entitlement for convicted fraudsters.
- 13.3 The Chief Finance Officer will consider the recovery options available and authorise the appropriate recovery action, dependent on the circumstances.

14. Conclusion

- 14.1 All employees of the CCGs have a duty to protect the assets of the NHS.
- 14.2 All employees should at all times comply with the CCGs' internal control systems and procedures, and report any reasonable suspicions of fraud,

bribery, corruption or serious criminal misconduct.