

Anti-Fraud Bribery and Corruption Policy and Procedure

Version 1.0

Purpose:	To advise and inform Trust staff of guidance for employees who have suspicions of fraud or who find themselves having to deal with cases of fraud or corruption.
For use by:	All Trust staff
This document is compliant with/ supports compliance with:	n/a
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1.0	November 2018	Amalgamation of Ipswich and Colchester policies to create ESNEFT policy	Director of Finance

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Release of any strategy, policy, procedure, guideline or other such material must be agreed with the Lead Director or Deputy/Associate Director (for Trust -wide issues) or Business Unit/ Departmental Management Team (for Business Unit or Departmental specific issues). Any requests to share this document must be directed in the first instance to the Director of Finance.

For further advice see the Development and Management of Trust wide Procedural Documents Policy

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Section 1 – Introduction

1.1 Introduction

This document is intended to provide guidance to those employees who have suspicions of fraud or who find themselves having to deal with cases of fraud or corruption. It gives advice on what fraud is in the NHS, what everyone's responsibility is to prevent fraud, bribery and corruption, how to report it and information on various aspects and implications of an investigation.

The Board already has procedures in place that reduce the likelihood of fraud occurring. These include Standing Orders, Standing Financial Instructions, documented procedures, a system of internal control and a system of risk management. Employers of staff engaged in research are responsible for having systems in place to detect and address fraud. In addition the Board tries to ensure that a risk (and anti-fraud) awareness culture exists in the Trust.

One of the basic principles of public sector organisations is the proper use of public funds. It is important that all those who work in the public sector are aware of the risk and means of enforcing the rules against fraud, bribery and those illegal acts involving dishonesty. For simplicity, all such offences are thereafter referred to as "fraud, bribery and corruption", except where the context indicates otherwise.

This document sets out the East Suffolk and North Essex NHS Foundation Trust ("Trust") policy and response to instances where fraud and bribery is detected or suspected.

The Trust is committed to reducing fraud, bribery and corruption at the Trust and in the wider NHS and will seek the appropriate disciplinary, regulatory, civil and criminal sanctions against those who commit fraud, bribery and corruption and where possible will attempt to recover any losses.

The Trust's expectation on propriety and accountability is that Board members and staff at all levels will lead by example in ensuring adherence to rules. Given that we are handling public resources, all procedures and practices should be above reproach. (See Appendix D, Approach to counter fraud, bribery and corruption).

1.2 Scope

This policy should be read in conjunction with the organisation's Whistleblowing and Disciplinary policies, and applies to all Trust staff, Board members, including non-executives; contractors, temporary employees, agency employees, students, volunteers and any third parties working on behalf of the Trust.

All employees should familiarise themselves and comply with the organisation's financial regulations, with particular attention to the following policies:

- Standards of Business Conduct;
- NHS Code of Conduct; and
- Gifts and Hospitality/Declaration of Interests.

All employees at the Trust should also, at all times abide by their professional codes of conduct e.g. GMC and NMC codes of conduct.

Additional training and guidance will be provided to relevant individuals in these areas, although it is an individual's responsibility to seek clarification on any of the content where necessary.

In addition to the details set out in this Policy, Trust has an agreed Counter Fraud Strategy, setting out the further agreed steps in place for countering fraud, bribery and corruption. This is presented to and agreed by the Trust's Audit and Risk Committee every year

1.3 Key Related Documents

The below list is not exhaustive, many of the Trust's policies and procedures make reference to or are bound by the Trust's overall commitment to preventing fraud, bribery and corruption.

- Whistleblowing Policy
- Disciplinary and Performance Management Policy and Procedure
- Standards of Business Conduct Policy in Respect of Conflicts of Interests
- Provision of Gifts, Hospitality and/or Sponsorship
- Declarations of Interest Policy
- Social Media Policy
- Professional Codes of Conduct e.g. GMC and NMC codes of conduct

1.4 Definitions

NHS Counter Fraud Authority (NHSCFA)

The NHSCFA has responsibility for all policy and operational matters relating to the prevention, detection and investigation of fraud, bribery and corruption in the NHS and that any investigations will be handled in accordance with NHSCFA guidance and NHSCFA strategy; 'Leading the fight **against NHS** fraud.'

Where fraud and bribery is suspected at the Trust that is serious or complex in nature, the LCFS may refer the case to the NHSCFA's National Investigation Service (NIS) who have the authority to conduct criminal investigations.

The NIS may also be referred cases where the LCFS or DoF are suspected of fraud and bribery.

Fraud

The Fraud Act 2006 came into effect on 15 January 2007 and gave a statutory definition of the criminal offence of fraud, as classified under the following headings:

- Fraud by false representation (Section 2);
- Fraud by (wrongfully) failing to disclose information (Section 3);
- Fraud by abuse of position (Section 4);
- Possession of articles for use in frauds (Section 6); and
- Making or supplying articles for use in frauds (Section 7)

<p>Fraud by false representation</p> <p>A person is in breach of this section if he/she:</p> <ul style="list-style-type: none"> • Dishonestly makes a false representation, and • Intends, by making the representation to make a gain for themselves or another, or to cause loss to another or to expose another to a risk of loss. • A representation is false if: <ul style="list-style-type: none"> • It is untrue or misleading, and • The person making it knows that it is, or might be, untrue or misleading.
<p>Fraud by (wrongfully) failing to disclose information</p> <p>A person is in breach of this section if he/she:</p> <ul style="list-style-type: none"> • Dishonestly fails to disclose to another person information which they are under a legal duty to disclose, and • Intends, by failing to disclose the information to make a gain for themselves or another, or to cause loss to another or to expose another to a risk of loss.
<p>Fraud by abuse of position</p> <p>A person is in breach of this section if he/she:</p> <ul style="list-style-type: none"> • Occupies a position in which he/she is expected to safeguard, or not to act against, the financial interests of another person; • Dishonestly abuses that position, and • Intends, by means of the abuse of that position to make a gain for themselves or another, or to cause loss to another or to expose another to a risk of loss. <p>A person may be regarded as having abused their position even though their conduct consisted of an omission rather than an act.</p>
<p>Possession of articles for use in frauds</p> <p>A person is guilty of an offence if he has in his possession or under his control any article for use in the course of or in connection with any fraud.</p>
<p>Making or supplying articles for use in frauds</p> <p>A person is guilty of an offence if he makes, adapts, supplies or offers to supply any article—</p> <ul style="list-style-type: none"> • knowing that it is designed or adapted for use in the course of or in connection with fraud, or • intending it to be used to commit, or assist in the commission of, fraud.

The Act states that the terms “Gain” and “Loss” should be read in accordance with the following:

- As extending only to a gain or loss in money or other property; and
- As including any such gain or loss whether temporary or permanent.

“**Property**” means any property whether real or personal (including things in action and other intangible property).

“**Gain**” includes a gain by keeping what one has, as well as a gain by getting what one does not have.

“Loss” includes a loss by not getting what one might get, as well as a loss by parting with what one has.

Those found guilty under the Act are liable for a fine and or imprisonment, with a maximum sentence of up to 10 years.

Corruption

Corruption can be broadly defined as where someone offers or accepts the taking of inducements, gifts, favours, payment or benefit-in-kind which may influence the action of another person. Corruption does not always result in a loss; indeed 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 may also include offences under the Proceeds of Crime Act 2002 and the Theft Act 1968.

Bribery Act 2010

The Bribery Act came into force in April 2011. The offences are as follows:

	Section	Offence	Detail	Sanction
Individuals	Section 1	Bribing another person	Offering, promising or giving a bribe in the UK or abroad, in the public or private sector.	Individuals could face a 10 year prison sentence and unlimited fines.
	Section 2	Receiving a bribe	Requesting, agreeing to receive or accepting of a bribe in the UK or abroad, in the public or private sector.	
	Section 6	Bribery of foreign public officials	Bribery of a foreign public official in order to obtain or retain business.	
Organisations	Section 7	Failure to prevent bribery	Failure by an organisation to prevent a bribe being paid by those who perform services for, or on behalf of the organisation (“associated persons”).	Organisations could face unlimited fines and reputational damage could be significant.

Public Service Values

The Code of Conduct for NHS Boards published by the NHS Executive in April 1994 and revised in 2004 sets out the following public service values. It says 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;

Accountability: Everything done by those who work in the NHS must be able to stand the tests of Parliamentary scrutiny, public judgements on propriety and professional codes of conduct.

Probity: There should be an absolute standard of honesty in dealing with the assets of the NHS: integrity should be the hallmark of all personal conduct in decisions affecting patients, staff and suppliers and in the use of information acquired in the course of NHS duties.

Openness: There should be sufficient transparency about NHS activities to promote confidence between the NHS organisation and its staff, patients, and the public.

All those who work in the organisation should be aware of and act in accordance with these values.

1.4 The Board's Policy

The Board is committed to maintaining an honest, open and well-intentioned atmosphere within the Trust. It is committed to the elimination of any fraud within the Trust and to the rigorous investigation of any such cases.

To meet its objectives, the Trust has adopted the seven-stage approach developed by implemented a work plan which addresses the four key themes of counter fraud work contained within the Standards for Providers: Fraud, bribery and Corruption issued by the NHSCFA:

- Strategic governance;
- Inform and involve;
- Prevent and deter;
- Hold to account.

To deliver these objectives, the Trust will:

- Investigate all suspected cases of fraud, bribery and corruption in a professional, effective and efficient manner.
- Integrate into systems, policies and procedures measures to prevent and detect fraud, bribery and corruption.
- Proactively review identified high risk areas.
- Work across the Trust to integrate an anti-fraud culture and maximise deterrence, detection, investigation, sanction and redress for all cases of fraud, bribery and corruption.
- Work with other organisations to identify those who commit fraud, bribery and corruption including full participation in all cross organisation fraud initiatives.
- Pursue and seek full redress from those who perpetrate fraud, bribery and corruption against the Trust.
- Learn the lessons from how the fraud, bribery and corruption was perpetrated.
- Publicise action taken against fraud, bribery and corruption including successful actions and prosecutions.

The Trust has conducted risk assessments in line with Ministry of Justice guidance to assess how bribery and corruption may affect the Trust. The proportionate procedures have been put in place to mitigate identified risks.

To mitigate Bribery and Corruption further, the Trust states that staff must notify them of any declarations of interest or gifts and hospitality received. Please refer to The Declarations of Interest Policy and Gifts and Hospitality which can be found on the Trusts intranet.

It is also the Board's policy, which will be rigorously enforced, that no employee will suffer in any way as a result of reporting reasonably held suspicions. All members of staff can therefore be confident that they will not suffer in any way as a result of reporting reasonably held suspicions of fraud. For these purposes "reasonably held suspicions" shall mean any suspicions other than those, which are groundless and/or raised maliciously.

Section 2 - Roles and Responsibilities

Chief Executive

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

Director of Finance (DoF)

- The Director of Finance (DoF) is provided with powers to approve financial transactions initiated by directorates across the organisation.
- The DoF prepares, documents and maintains detailed financial procedures and systems and they incorporate the principles of separation of duties and internal checks to supplement those procedures and systems.
- The DoF will report annually to the Board and the Council of Governors on the adequacy of internal financial control and risk management as part of the Board's overall responsibility to prepare a statement of internal control for inclusion in the NHS body's annual report.
- The DoF will inform appropriate senior management of suspected cases of fraud, bribery and corruption, especially in cases where the loss may be above an agreed limit or where the incident may lead to adverse publicity, depending on the outcome of initial investigations.
- Under Secretary of State Directions responsibility for investigating fraud has been delegated to the DoF. They will also be responsible for informing third parties such as the NHS Executive, external audit or NHSCFA, where appropriate.
- The DoF will be supported in this role by the Local Counter Fraud Specialist (LCFS) and the
- NHSCFA.
- The DoF, in conjunction with the Chief Executive, shall monitor and ensure compliance with Section 37 relating to the counter fraud in the Standard NHS Contract for Acute Services.
- The DoF 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 DoF, for informing third parties such as external audit or the police (whilst informing the NHSCFA) at the earliest opportunity, as circumstances dictate of instances of fraud, bribery and corruption.
- The DoF shall inform the Head of Internal Audit at the first opportunity; where a fraud, bribery and corruption investigation is deemed to be appropriate, the DoF will delegate to the Trust's LCFS, who has responsibility for leading the investigation, whilst retaining overall responsibility him/herself.

- The DoF or the LCFS shall consult and take advice from the Head of Human Resources (HR) where a member of staff is to be interviewed or disciplined. The DoF or LCFS will not conduct a disciplinary investigation, but the employee may be the subject of a separate investigation by HR.

Local Counter Fraud Specialist (LCFS)

- The LCFS will be professionally trained and accredited to carry out all counter fraud activity, which includes investigations into suspicions of fraud, bribery and corruption to the highest standards. They are responsible for taking forward all anti-fraud work locally in accordance with national standards and reports directly to the Director of Finance.
- Adhering to NHSCFA standards is important in ensuring that the organisation has appropriate anti-fraud, bribery and corruption arrangements in place and that the LCFS will look to achieve the highest standards possible in their work.
- The LCFS will work with key colleagues and stakeholders to promote anti-fraud work and effectively respond to system weaknesses and investigate allegations of fraud, bribery and corruption.
- It is the LCFS's role to investigate any allegations of fraud, bribery and corruption. When investigating, the LCFS will need to liaise with employees within the Trust such as Human Resources to obtain relevant documentations which may support allegations of fraud.
- The LCFS will conduct risk assessments in relation to their work to prevent fraud, bribery and corruption

Human Resources (HR) Department

- HR will liaise closely with managers and the LCFS from the outset, where an employee is suspected of being involved in fraud and/or corruption in accordance with agreed liaison protocols.
- HR is responsible for ensuring the appropriate use of the Trust's Disciplinary Policy and Procedure.
- The HR Department shall advise those involved in the investigation in matters of employment law and in 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) are applied effectively and in a coordinated manner. Appropriate protocols are in place between HR and the LCFS to cover this.
- 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.
- HR will be responsible, in conjunction, with the LCFS, for arranging training of fraud awareness within the Trust.

Responsibilities of Managers

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

- Managers must instill 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 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, and they have the clear responsibility to refer the concerns to the 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 and that controls operate effectively. 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 are required to:
 - Inform staff of the Trust code of business conduct and counter 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;
- Attend the mandatory training updates for this area;
- 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 Trust;
 - Be aware of the Trust's Anti-Fraud Bribery and Corruption Policy and procedure 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; and
 - Contribute to their Director's assessment of the risks and controls within their business area, which feeds into the Trust and Department of Health Accounting Officer's overall statements of accountability and internal control.

Head of Information Security

- The Head of Information Security (or equivalent) will contact the LCFS immediately in all cases where there is suspicion that IT is being used for fraudulent purposes. HR will also be informed if there is a suspicion that an employee is involved. This will be investigated in line with the Computer Misuse Act 1990.

Internal and External Audit

- Internal and External audit should include reviewing controls and systems and ensuring compliance with financial instructions. Any incident or suspicion of fraud bribery or corruption 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.

- Internal Audit should liaise with the LCFS on a regular basis to discuss their planned audit works and establish how this can feed into, and assist with counter fraud at the Trust.

Responsibilities of Staff Day to Day

- The Trust's Standing Orders, Standing Financial Instructions, Policies and Procedures place an obligation on all employees and Non-Executive Directors 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 Trust, including information, goodwill and property.
- 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. This means in addition to maintaining the normal standards of personal honesty and integrity, all employees should always:
 - avoid acting in any way which might cause others to allege or suspect them of dishonesty.
 - behave in a way which would not give cause for others to doubt that Trust employees deal fairly and impartially with official matters.
 - be alert to the possibility that others might be attempting to deceive.
- Any employees who are involved in or manage internal control systems should receive
- Adequate training and support in order to carry out their responsibilities.
- 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 or corruption, or has seen any suspicious acts or events, they must report the matter to the LCFS.

Section 3 - Process

Guidance to Staff

Introduction

If an employee discovers or suspects fraud, bribery or corruption, they must inform the nominated LCFS or the Trust's DoF immediately, unless the DoF or LCFS is implicated. If that is the case, they should report it to the NHSCFA

Suspected Fraud, bribery and corruption can also be reported using the NHS Fraud, bribery and corruption Reporting Line on Freephone 0800 028 40 60 or by filling in an online form at www.reportnhsfraud.nhs.uk , as an alternative to internal reporting procedures or if staff wish to remain anonymous.

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

Sufficient enquiries will be made by the LCFS 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 as to 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 C) or contacting the LCFS by telephone or email using the contact details supplied on Appendix A: ***“Reporting Fraud or Suspected Fraud Notice”***.

Appendix A is a notice to be displayed in all staff common areas.

This notice gives the nominated points of contact for reporting a fraud and the telephone numbers of other organisations, which provide support or information about reporting fraud.

Disclosure Under the Public Interest Disclosure Act 1998

An Act of Parliament, the Public Interest Disclosure Act 1998, will protect you from any reprisals as long as they meet the rules set out in the Act. The Act commenced on 2 July 1999 and gives statutory protection, within defined parameters, to staff who make disclosures about a range of subjects, including fraud, bribery and corruption, which they believe to be happening within the Trust employing them. NHSCFA has established a Fraud, bribery and corruption Reporting Line if staff are unwilling to make the disclosure internally.

The Act has rules for making a protected disclosure:

- Staff must disclose the information in good faith;
- Staff must believe it to be substantially true;
- Staff must not act maliciously or make false allegations; and Staff must not seek any personal gain.

The Trust 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 Trust has produced a Policy and Procedure for Raising Concerns in the Public Interest

Any member of staff who raises an allegation maliciously or one they know not to be true, may be disciplined in line with the Trusts Disciplinary Policy.

Whistleblowing. This Policy and Procedure is intended to complement the Trust Counter Fraud Policy and Procedure and Code of Business Conduct and ensures there is full provision for raising your concerns with others if you do not feel able to raise them with your line manager/management chain. It can be found on the Trust's intranet site.

Acting Upon your Suspicions – the Do's and Don'ts

If you suspect fraud or corruption within the workplace, there are a few simple guidelines that should be followed:

Do:

- Make an immediate note of your concerns.
- *Note all relevant details, such as what was said in telephone or other conversations, the date, time and the names of any parties involved.*
- Convey your suspicions to someone with the appropriate authority and experience.
 - *Use the Investigations Referral form (**Appendix C**) to note your suspicions. Using this form will help you to provide the relevant information so that your suspicions can be researched.* This is usually the Trust's LCFS or alternatively the Director of Finance. The Director of Finance can be contacted on mobile number 01206 745300. The LCFS for the Trust can be contacted on mobile number 070881 283 949 (Charlie Roberts) or 07825 827024 (Lisa George). or by filling in an online form at www.reportnhsfraud.nhs.uk / If you feel unable to talk to anyone within the Trust then alternatively you can contact the NHS fraud, bribery and corruption Reporting Line on 0800 028 40 60.
- Deal with the matter promptly, if you feel your concerns are warranted. Any delay may cause your organisation to suffer further financial loss.
- If you wish to report your suspicions but don't want to give your name, that is fine, but you will not get any feedback on the outcome and without your name we cannot contact you for further information that you may have.
- If you do give your name, you are assured that **your name will not be given to anyone without your permission.**

Don't:

- Do nothing;
- Be afraid of raising your concerns;
You will not suffer any recrimination from the Trust as a result of voicing a reasonably held suspicion. The Trust will treat any matter you raise sensitively and confidentially.
- Approach or accuse any individuals directly;
- Try to investigate the matter yourself.

There are special rules surrounding the gathering of evidence for use in criminal cases.

Any attempt to gather evidence by people who are unfamiliar with these rules may destroy the case. The LCFS is trained in handling investigations in accordance with the NHS Fraud, Bribery and Corruption Manual.

- Convey your suspicions to anyone other than those with the proper authority;
- Withhold information because you do not want to give your name. Any information can be invaluable, even without knowing where it came from.

Taking Information from Someone who Wants to Report a Fraud

There may be occasions when someone asks you how they can report a fraud, or tells you something that you think should be reported.

There are a number of ways someone can report a suspected fraud:

- Ask the person to contact the Director of Finance by telephone on 01206 745300/ 07887 890531 or the; LCFS by telephone on 070881 283 949 (Charlie Roberts) or 07825 827024 (Lisa George); or
 - If they feel unable to talk to someone locally ask them to contact the NHS Fraud and
 - Corruption Reporting Line on 0800 028 40 60.
 - or by filling in an online form at www.reportnhsfraud.nhs.uk
- If you are asked to report something on someone's behalf contact the LCFS
- If you are unsure about any of the above and would like some advice, ring the Director of Finance on mobile number 07887 890531 or the LCFS on mobile number 070881283949 (Charlie Roberts) or 07825827024 (Lisa George).

Managing the Investigation

The Trust will follow its Disciplinary policy and procedure if there is evidence that an employee has committed fraud or acts of corruption.

Gathering Evidence

The LCFS will take control of any physical evidence, and record this in accordance with NHSCFA and the procedures outlined in the NHS Counter Fraud, bribery and corruption Manual. If evidence consists of several items, for example, many documents, LCFSs should record each one with a separate reference number corresponding to the written record. Note that in criminal actions evidence on or obtained from electronic media needs a document confirming its accuracy.

Interviews under caution or to gather evidence shall only be carried out by the LCFS, if appropriate, or the investigating police officer in accordance abiding by the Police and Criminal Evidence Act 1984 (PACE). The LCFS will take written statements, where necessary. All material gathered during the course of a criminal investigation will be done some abiding by the Criminal Procedure and Investigation Act 1996 (CPIA).

All persons subject to a criminal investigation at the Trust and who are interviewed under caution will be given rights as described in PACE.

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 or connection. The Stress Management Procedure 201 identifies further support for staff where required.

The application of the Counter Fraud Policy and Procedure will at all times work in tandem with all other appropriate Trust policies e.g. Standing Financial Instructions (SFIs) and Irregularities.

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 by amending the systems in use.

If fraud or corruption is found to have happened, the LCFS should prepare a report for the DoF and the next Trust Audit and Risk Committee, setting out the following details:

- Circumstances;
- Investigation process;
- Estimated loss;
- Steps taken to prevent a recurrence;
- Steps taken to recover the loss; and
- Action to be taken.

This report should also be available to the Trust Board.

Sanctions and Redress

Sections 10 and 11 of the NHS Counter Fraud, bribery and corruption Manual and the Trust Disciplinary Policy provide 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 Trust or the civil law.

It should be noted, however, that the duty to follow the Disciplinary policy and procedures will not override the need for legal action to be taken (e.g. consideration of criminal action). In the event of doubt, legal statute shall prevail. The Trust's Disciplinary Policy can be found on the intranet.

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 individuals), and/or a possible referral of information and evidence to external bodies, for example, professional bodies if appropriate.

The LCFS, through NHSCFA may also apply to the courts to make a restraining order or confiscation order under the Proceeds of Crime Act (POCA) 2002. 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 to be taken;
- Criminal investigation;

- Civil recovery;
- Disciplinary action;
- Referral to relevant professional regulatory body;
- Confiscation Order under POCA; and
- Recovery may also be sought from on-going salary payments.

In some cases (taking into consideration all the facts about a case) it may be that the Trust, under guidance from the LCFS and ultimately approved by the DoF, 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' Court and Crown Court). Depending on the extent of the loss and also the proceedings in the case, then it may be suitable for the recovery of losses to be considered under POCA.

The civil recovery route is also available to the Trust 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 needs to be discussed with the DoF to determine the most appropriate action.

The appropriate senior manager, in conjunction with the HR Department, will be responsible for initiating any disciplinary action that is found to be necessary. Arrangements may be made to recover losses via payroll if the subject is still employed by the Trust. In all cases current legislation must be complied with.

The Trust may also decide to refer an employee (in a relevant position) to their professional regulatory body (e.g. General Medical Council, Nursing and Midwifery Council etc.) for a consideration to be determined of the employee's fitness to practice. This action can be taken regardless of whether or not a formal criminal investigation is undertaken.

Police Involvement

In accordance with the NHS Counter Authority Standards for Providers the DoF, 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 policy and procedures of the Trust.

Redress

The seeking of financial redress or recovery of losses should always be considered in cases of fraud or corruption that are investigated by either the LCFS or NHSCFA where a loss is identified. As a general rule, recovery of the loss caused by the perpetrator should always be sought. The decisions must 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.

Section 4 - Training

It is a mandatory requirement that everyone who works at the Trust receives counter fraud training. Training is offered to all Trust staff via the induction process and e-learning module to raise awareness of fraud, how to recognise it and what to do if there is a possible concern or real suspicions. All newly appointed employees should complete the e-learning package within 3 months of commencement

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

Section 5 - Monitoring Compliance and Audit

Monitoring is essential to ensure controls are appropriate and robust enough to prevent or reduce fraud. System controls should be reviewed on an on-going basis and identify any weaknesses in the process. Compliance is monitored through LCFS and reported as a standing item at the Audit and Risk Committee.

Where deficiencies are identified, as a result of monitoring, the appropriate recommendations should be implemented.

Section 6 - Dissemination, Implementation and Access to the Document

This policy and procedure is available on the Trust intranet. All staff are notified via email of the procedure and any amendments.

Section 7 - Evidence Base

The Bribery Act 2010

Fraud Act 2006

Theft Act 1968

Proceeds of Crime Act 2002

Criminal Procedure and Investigations Act 1996

Public Interest and Disclosure Act 1998

Whistleblowing Policy

Disciplinary and Performance Management Policy and Procedure

Standards of Business Conduct Policy in Respect of Conflicts of Interests, Receipt or

Provision of Gifts, Hospitality and/or Sponsorship

Appendix A - NHS fraud, bribery and corruption: dos and don'ts.

A guide for East Suffolk and North Essex NHS Foundation Trust

FRAUD is the 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 payment or 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 the nature of 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 Local Counter Fraud Specialist (LCFS).

- **Report your suspicions**

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

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 lead to an innocent person being unjustly accused.

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

Never attempt to gather evidence yourself unless it is about to be destroyed; gathering evidence must be done in line with legal requirements 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 (LCFS), or
- telephoning the freephone NHS Fraud, bribery and corruption Reporting Line (see details on the right), or
- contacting the Director of Finance.

Do you have concerns about a fraud taking place in the NHS?

NHS Fraud, Bribery and Corruption Reporting Line: **0800 028 40 60**
calls will be treated in confidence and investigated by professionally trained staff.

Online: www.reportnhsfraud.nhs.uk

Your Local Counter Fraud Specialists are Charlie Roberts and Lisa George who can be contacted by telephoning 07881 283949 (Charlie Roberts) or 07825 827024 (Lisa George), or emailing charlie.roberts@mazars.co.uk / charlie.roberts2@nhs.net or lisa.george@tiaa.co.uk / Lisa.George4@nhs.net

If you would like further information about NHSCFA, please visit <https://cfa.nhs.uk/>