

Anti-Fraud and Bribery Procedure

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Lead Manager:	Trust Company Secretary (and Local Counter-Fraud Specialist)
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**Any suspicions of fraud against the Trust should be reported to:
Lianna Parker-Carn, the Trust's Local Counter Fraud Specialist
on 07800617462
or by emailing: lianna.parker-carn@nhs.net or lianna.parker-carn@rsmuk.com**

Alternatively you can telephone the NHS Fraud & Corruption Line in
confidence on
0800 028 40 60
or online www.cfa.nhs.uk/report-fraud

Anti-Fraud and Bribery Procedure

1 Introduction

This document sets out the Tavistock and Portman NHS Foundation Trust's procedure and advice to employees in dealing with suspected fraud or bribery.

The Trust is absolutely committed to maintaining an honest, open and well-intentioned atmosphere, so as to best fulfil the objectives of the Trust and of the NHS. It is, therefore, also committed to the elimination of fraud within the Trust, to the rigorous investigation of any such allegations and to taking appropriate action against wrong doers, including possible criminal prosecution, as well as undertaking steps to recover any assets lost as a result of fraud.

2 Purpose

This procedure is intended to provide direction and help to employees who may identify suspected fraud. It relates to all forms of fraud and bribery.

It provides a framework, advice and information; but it is not intended to provide comprehensive instructions for identification or investigation.

3 Scope

1. The overall aims of this procedure are to:
 - a) improve the knowledge and understanding of everyone in the Trust, irrespective of their position, about the risk of fraud and bribery within the organisation and its unacceptability
 - b) assist in promoting openness and a culture and environment where staff feel able to raise concerns sensibly and responsibly

- c) set out the Trust's responsibilities in terms of the deterrence, prevention, detection and investigation of fraud and bribery
 - d) ensure the appropriate sanctions are considered following an investigation
2. This procedure applies to all employees of the Trust, regardless of position held, as well as agency staff, consultants, vendors, contractors, and/or any other parties who have a business relationship with the Trust, including employees and committee members of partner organisations and organisations funded by the Trust. It will be brought to the attention of all employees and form part of the induction process for new staff. The procedure also applies to service users.
3. In implementing this procedure, managers must ensure that all staff are treated fairly and within the provisions and spirit of the Trust's Equal Opportunities Procedure. Special attention should be paid to ensuring the procedure is understood where there may be barriers to understanding caused by the individual's circumstances, where the individual's literacy or use of English is weak, or where the individual has little experience of working life.

4 Definitions

1. **Fraud** – Any person who dishonestly makes a false representation to make a gain for himself or another or dishonestly fails to disclose to another person, information which he is under a legal duty to disclose, or commits fraud by abuse of position, including any offence as defined in the Fraud Act 2006.

Any offence as defined in the Fraud Act 2006: see summary given in Appendix C.

Examples of NHS Fraud include:

- Timesheet fraud (e.g. staff and professionals claiming money for shifts they have not worked)
- False expense claims (e.g. false travel or subsistence claims)

- Fraudulent job applications (e.g. false qualifications or immigration status)
 - Working whilst sick or whilst on study leave (e.g. usually working for another organisation without informing the Trust)
 - Working for another organisation which overlaps with Trust working time
 - Advertising scams (e.g. false invoices for placing adverts in publications)
 - Patient Fraud (e.g. false travel claims, fraudulently claiming exemptions for pharmaceutical charges)
 - Misappropriation of assets (e.g. falsely ordering goods for own use/ to sell)
 - Procurement Fraud (e.g. the ordering and contracting of goods and services)
 - Fraud by professionals (i.e. Consultants undertaking private practice during Trust time or utilising Trust resources, premises or support staff without appropriate approval)
 - Pharmaceutical Fraud by companies (e.g. overcharging for drugs, supplying inferior or reduced quantities of drugs etc.)
2. **Bribery** – giving or receiving a financial or other advantage in connection with the "improper performance" of a position of trust, or a function that is expected to be performed impartially or in good faith. Bribery does not have to involve cash or an actual payment exchanging hands and can take many forms such as a gift, lavish treatment during a business trip or tickets to an event.

Bribery 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. Appendix D is a summary of the Bribery Act 2010, which has superseded earlier legislation.

It is an offence to bribe the holder of a public office; and it is similarly an offence for the office holder to accept a bribe.

3. **Theft**– A criminal act in which property belonging to another is taken without that person’s consent, as defined in the Theft Act 1968.
4. **Facilitation Payments** – Small payments made to secure or expedite the performance of a routine action, typically by a government official or agency (e.g. issuing licenses or permits, processing goods through customs, etc.) to which the payer (or the company) has legal or other entitlement.

Facilitation payments are prohibited under the Bribery Act. They shall not be given by the Trust or by the Trust’s employees in the UK or any other country.

5. **Gifts and Hospitality**

Courtesy gifts and hospitality must not be given or received in return for services provided or to obtain or retain business but shall be handled openly and unconditionally as a gesture of esteem and goodwill only. Gifts and hospitality shall always be of symbolic value, appropriate and proportionate in the circumstances, and consistent with local customs and practices. They shall not be made in cash. Please refer to the Trust’s Gifts and Hospitality Procedure for more guidance.

6. **Sponsoring** – (a) any contribution in money or in kind by the Trust towards an event organised by a third party, in return for the opportunity to raise the Trust’s profile. All sponsoring contributions must be transparent, pursuant to a written agreement, for legitimate business purposes, and proportionate to the consideration offered by the event host. They may not be made towards events organised by individuals or organisations that have goals incompatible with the Trust’s ethical standards or that would damage the Trust’s reputation. All sponsorships will be publicly disclosed.

– (b) any contribution in money or in kind by a third party towards an event organised by the Trust in return for the opportunity to raise the other party’s profile. Where commercial sponsorship is used to fund Trust training events, the sponsorship must be transparent, pursuant to a written agreement, for legitimate business purposes, and proportionate to the occasion. Where meetings are sponsored by external sources, that fact must be disclosed in the papers relating to the meeting and in any published minutes/proceedings.

Where commercial sponsorship is used to fund Trust training events, training materials and general meetings, the sponsorship must be transparent, pursuant to a written agreement, for legitimate business purposes, and proportionate to the occasion. Where meetings are sponsored by external sources, the sponsorship must be disclosed in the papers relating to the meeting and in any published minutes/proceedings.

Where sponsorship links to the development of guidelines and advice, this should be carried out in consultation with the Senior Compliance Officer in conjunction with the appropriate Trust working group independent of the sponsors. While it is recognised that consultation with the industry may be necessary when developing a guideline, the overall decision on what is included should lie with the Trust working group.

7. Political and charitable contributions

The Trust does not make any contributions to politicians, political parties or election campaigns.

As a responsible member of society, the Trust may make charitable donations. However, these payments shall not be provided to any organisation upon suggestion of any person of the public or private sector in order to induce that person to perform improperly the function or activities which he or she is expected to perform in good faith, impartially or in a position of trust or to reward that person for the improper performance of such function or activities.

Any donations and contributions must be ethical and transparent. The recipient's identity and planned use of the donation must be clear, and the reason and purpose for the donation must be justifiable and documented. All charitable donations will be publicly disclosed.

Donations to individuals and for-profit organisations and donations paid to private accounts are incompatible with the Trust's ethical standards and are prohibited.

5 Public Service Values

High standards of corporate and personal conduct, based on the recognition that patients come first, has been a requirement throughout the NHS since its inception. The three fundamental public service values are:

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

Probity: Absolute honesty and integrity should be exercised in dealing with NHS patients, assets, employees, suppliers and customers.

Openness: The Trust's actions should be sufficiently public and transparent to promote confidence between the Trust and its patients, our employees and the public.

In addition, all those who work for or are in contract with the Trust should exercise the following Nolan principles when undertaking their duties:

Selflessness: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their families or their friends.

Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that may influence them in the performance of their official duties.

Objectivity: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness: Holders of public office should be as open as possible about all their decisions and the actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership: Holders of public office should promote and support these principles by leadership and example. All those who work in the organisation should be aware of, and act in accordance with, these values.

These standards are national benchmarks that inform our local policies and procedures. The arrangements made in this policy have been designed to ensure compliance with the national standards.

6 Roles and Responsibilities

1. Trust

The Trust has a duty to ensure that it provides a secure environment in which to work, and one where people are confident to raise 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 Trust has a duty to ensure that those concerns are listened to and addressed.

2. Chief Executive

The Chief Executive has the overall responsibility for funds entrusted to the organisation 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.

The Chief Executive is liable to be called to account for specific failures in the Trust's 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 Trust employees. The Trust 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 Executive and Deputy Chief Executive and Director of Finance will monitor and ensure compliance with this procedure.

3. Employees

For the purposes of this procedure, 'Employees' includes all Trust staff and all members of the Board, Executive and Non-Executive.

It is expected that Non-Executive Directors and staff at all levels will lead by example in acting with the utmost integrity and ensuring adherence to all relevant regulations, policies and procedures.

All employees should be aware that fraud and bribery will normally, dependent upon the circumstances of the case, be regarded as gross misconduct thus warranting summary dismissal without previous warnings. However, no such action will be taken before a proper investigation and a disciplinary hearing have taken place. Such actions may be in addition to the possibility of criminal prosecution.

The Trust's employees must not request or receive a bribe from anybody, nor imply that such an act might be considered. This means that you will not agree to receive or accept a financial or other advantage from a former, current or future client, business partner, contractor or supplier or any other person as an incentive or reward to perform improperly your function or activities.

Employees must act in accordance with the Trust's Disciplinary Procedure, and Gifts and Hospitality Procedure.

Employees have a duty to protect the assets of the Trust including information, goodwill and reputation, as well as property buildings, equipment and monies, from fraud, theft, or bribery.

Employees are expected to act in accordance with the standards laid down by their Professional Authority(s), where applicable.

The Trust's Standing Orders and Standing Financial Instructions place an obligation on all staff and Non-Executive Directors to act in accordance with best practice. In addition, all Trust staff and Non-Executive Directors must declare and register any interests that might potentially conflict with those of the Trust or the wider NHS.

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.

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:

act with honesty, integrity and in an ethical manner

behave in a way that would not give cause for others to doubt that the Trust's employees deal fairly and impartially with official matters

be alert to the possibility that others might be attempting to deceive.

When an employee suspects that there has been fraud or bribery, they must report the matter to the nominated Local Counter Fraud Specialist (LCFS) and /or the NHS Counter Fraud Authority.

The Public Interest Disclosure Act 1998 came into force in July 1999 and gives statutory protection, within defined parameters, to staff members who make disclosures about a range of subjects, including fraud and bribery, which they believe to be happening within the Trust employing them.

Any unfounded or malicious allegations will be subject to a full investigation and appropriate disciplinary action.

4. Line Managers

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 and bribery 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 Trust's expected code of conduct, gifts, hospitality, and interest declaration requirements and this procedure 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 procedure
- assess the types of risk involved in the operations for which they are responsible
- ensure that adequate control measures are put in place to minimise the risks. This must include clear roles and responsibilities, supervisory checks, staff rotation (particularly in key posts), separation of duties wherever possible so that control of a key function is not invested in one individual, and regular reviews, reconciliations and test checks to ensure that control measures continue to operate effectively
- be aware of the Trust's Anti-Fraud and Bribery 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
- contribute to their director's assessment of the risks and controls within their business area, which feeds into the Trust's and the Department of Health Accounting Officer's overall statements of accountability and internal control.

All instances of actual or suspected fraud or bribery, 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. See Section 6 below.

5. NHS Counter Fraud Authority

The NHS Counter Fraud Authority has responsibility for all policy and operational matters relating to the prevention, detection and investigation of fraud, bribery and corruption in the NHS. All investigations will be handled in accordance with NHS Counter Fraud Authority guidance.

The NHS Counter Fraud Authority publishes standards and guidance for all NHS organisations on all aspects of fraud prevention and detection, using a seven point approach:

- the creation of an anti-fraud culture

- maximum deterrence of fraud
- successful prevention of fraud which cannot be deterred
- prompt detection of fraud which cannot be prevented
- professional investigation of detected fraud
- effective sanctions, including appropriate legal action against people committing fraud and bribery, and
- effective methods of seeking redress in respect of money defrauded.

6. Local Counter Fraud Specialist (LCFS)

The Local Counter Fraud Service is contracted to support the Trust in all aspects of counter-fraud work, including processes and training for deterrence and prevention. The LCFS in consultation with the Director of Finance will review the strategic counter-fraud objectives regularly. Where risks are identified these will be included on the Trust's risk register so the risk can be proactively addressed.

The LCFS is responsible for taking forward all anti-fraud work locally in accordance with national NHS Counter Fraud Authority standards and reports directly to the Deputy Chief Executive and Director of Finance.

The LCFS works with key colleagues and stakeholders to promote anti-fraud work and effectively respond to system weaknesses and investigate allegations of fraud and corruption. This will include the undertaking of risk assessments to identify fraud, bribery and corruption risks at the Trust.

The LCFS's role is to ensure that all cases of actual or suspected fraud and bribery are notified to the Deputy Chief Executive and Director of Finance and reported accordingly.

This document covers primarily the LCFS's role in *investigation*.

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. While the allegations may be erroneous or unsubstantiated, they may also reflect a genuine cause for concern and should always be taken seriously. Sufficient enquiries will be made by the LCFS to establish whether or not there is any foundation to the allegations. If the allegations are found to be malicious, they will also be considered for further investigation as to their source.

Investigation of cases of alleged fraud or bribery within the Trust will normally be the responsibility of the Trust's LCFS. The LCFS and the Deputy Chief Executive and Director of Finance, in conjunction with the NHS CFA, will decide who will conduct the investigation and when/if referral to the police is required. Cases, for instance, where more than £100,000 possible loss is identified or where possible bribery is involved, may be investigated by the NHS Counter Fraud Authority (though the LCFS may assist); otherwise the investigation will normally be undertaken by the Trust's own LCFS directly. Following receipt of all referrals, the NHS Counter Fraud Authority will add any known information or intelligence and based on this case acceptance criteria determine if a case should be investigated by the NHS Counter Fraud Authority.

The LCFS will regularly report to the Director of Finance on the progress of the investigation and when/if referral to the Police is required. Any referral to the police will not prohibit action being taken under the Trust's disciplinary procedures.

7. Deputy Chief Executive and Director of Finance

The Deputy Chief Executive and Director of Finance is provided with powers to approve financial transactions initiated by the Trust. As part of this role the Deputy Chief Executive and Director of Finance is responsible for the maintenance and implementation of detailed financial procedures and systems which incorporate the principles of separation of duties and internal checks.

The Deputy Chief Executive and Director of Finance 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 Trust's annual report.

The Deputy Chief Executive and Director of Finance, in consultation with the NHS Counter Fraud Authority and/or the LCFS, will decide whether there is sufficient cause to conduct an investigation, and whether the Police and External Audit need to be informed.

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

The Director of Finance 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 Trust and the Chair of the Audit Committee of cases, as may be deemed appropriate or necessary.

The Director of Finance is also responsible for informing the Audit Committee of all categories of loss

8. Senior Compliance Officer

The Trust has appointed the Deputy Chief Executive and Director of Finance who will be responsible for ensuring the Trust is compliant with the requirements of the Bribery Act 2010, implementing anti-bribery guidelines and monitoring compliance. The Senior Compliance Officer will review annually the suitability, adequacy and effectiveness of the Trust's anti-bribery arrangements and implement improvements as and when appropriate.

The Deputy Chief Executive and Director of Finance directly reports to the Chief Executive.

Any incident or suspicion that comes to attention of the Senior Compliance Officer will be passed immediately to the LCFS.

9. Human Resources

Human Resources will liaise closely with Managers and the LCFS, from the outset, where an employee is suspected of being involved in fraud in accordance with agreed liaison protocols. Human Resources are responsible for ensuring the appropriate use of the Trust's Disciplinary Procedure. The Human Resources Department shall advise those involved in the investigation in matters of employment law and in other procedural matters, such as disciplinary and complaints procedures. Close liaison between the LCFS and HR will be essential to ensure that any parallel sanctions (i.e. criminal and disciplinary) are applied effectively and in a coordinated manner.

Human Resources 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.

10. Internal and External Audit

Any incident or suspicion that comes to Internal or External Audit's attention will be passed immediately to the LCFS.

11. Information Management and Technology

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. This includes inappropriate internet/intranet, e-mail, telephone, PDA use and any offence under the Computer Misuse Act 1990. Human Resources will be informed if there is a suspicion that an employee is involved.

7 Procedures

1. The Trust is committed to taking all necessary steps to counter fraud and bribery. To meet its objectives, it has adopted the seven-stage approach developed by the NHS Counter Fraud Authority (see 6 above).
2. The Trust wishes to encourage anyone having reasonable suspicions of fraud to report them. It recognises that, while cases of theft are usually obvious, there may initially only be a suspicion regarding potential fraud and, thus, individuals should report the matter to their Local Counter Fraud Specialist who will then ensure that procedures are followed. The Trust's procedure, which will be rigorously enforced, is that no individual will suffer any detrimental treatment as a result of reporting reasonably held suspicions. Within this context, 'reasonably held' means suspicions other than those which are raised maliciously and are subsequently found to be groundless.
3. The Trust 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 (including Internal and External Audit) and a system of risk assessment. In addition, the Trust seeks to ensure that a comprehensive anti-fraud and bribery culture exists throughout the Trust via the appointment of the dedicated Local Counter Fraud Specialist, in accordance with the

4. Bribing anybody is absolutely prohibited. Trust employees will not pay a bribe to anybody regardless of their position or status. This means that you will not offer, promise, reward in any way or give a financial or other advantage to any person in order to induce that person to perform his/her function or activities improperly. Similarly, you are not permitted to receive a financial or other advantage from any person in order to induce you to perform your function or activities improperly.
5. Off-the-book accounts and false or deceptive booking entries are strictly prohibited. All gifts, payments or any other contribution, whether in cash or in kind, shall be documented, regularly reviewed, and properly accounted for on the books of the Trust. Record retention and archival procedure must be consistent with the Trust's accounting standards, tax and other applicable laws and regulations.
6. The Trust may, in certain circumstances, be held responsible for acts of bribery committed by intermediaries acting on its behalf such as subsidiaries, clients, business partners, contractors, suppliers, agents, advisors, consultants or other third parties. The use of intermediaries for the purpose of committing acts of bribery is prohibited.
7. All intermediaries shall be selected with care, and all agreements with intermediaries shall be concluded under terms that are in line with this procedure. The Trust will contractually require its agents and other intermediaries to comply with the Anti-Fraud and Bribery Procedure and to keep proper books and records available for inspection by the Trust, auditors or investigating authorities. The Trust will monitor performance and, in case of non-compliance, require the correction of deficiencies, apply sanctions, or eventually terminate the agreement even if this may result in a loss of business

8. The Trust procures goods and services ethically and transparently with quality, price and value for money determining the successful supplier/contractor, not by receiving (or offering) improper benefits. The Trust will not engage in any form of bribery, neither in the UK nor abroad.
9. The Trust will contractually require its agents and other intermediaries to comply with the Anti-Fraud and Bribery Procedure and to keep proper books and records available for inspection by the Trust, auditors or investigating authorities. Agreements with agents and other intermediaries shall at all times provide for the necessary contractual mechanisms to enforce compliance with the anti-bribery regime. The Trust will monitor performance and, in case of non-compliance, require the correction of deficiencies, apply sanctions, or eventually terminate the agreement even if this may result in a loss of business.
10. Where the Trust is engaged in commercial activity (irrespective as to what happens to the profit) it could be considered guilty of a corporate bribery offence if an employee, agent, subsidiary or any other person acting on its behalf bribes another person intending to obtain or retain business or an advantage in the conduct of business for the Trust and it cannot demonstrate that it has adequate procedures in place to prevent such. Criminal liability must be prevented at all times.
11. Recovery of any losses will always be sought – see below.

Reporting Fraud, Bribery or other Illegal Acts

1. This section outlines the action to be taken where fraud, bribery or other illegal acts involving dishonesty, inappropriate Internet use, or damage to property are discovered or suspected.
2. If any of the concerns mentioned in this document come to the attention of an employee, they must inform the Local Counter Fraud Specialist or the Director of Finance immediately. Employees can also call the NHS Fraud and Corruption Reporting Line. Contact information for the above is listed in **Appendix B**.

3. Sufficient enquiries will be made by the LCFS to establish whether or not there is any foundation to the allegations. If the allegations are found to be malicious, they will also be considered for further investigation
4. Individuals must not communicate with any member of the press, media or another third party about a suspected fraud as this may seriously damage the investigation and any subsequent actions to be taken. Anyone who wishes to raise such issues should discuss the matter with either the Deputy Chief Executive and Director of Finance or the Chief Executive.

Recovery of Losses Incurred by Fraud or Bribery

1. The seeking of financial redress or recovery of losses should always be considered in cases of fraud or bribery that are investigated by the LCFS or the NHS Counter Fraud Authority where a loss is identified. As a general rule, recovery of the loss caused by the perpetrator should always be sought.
2. Redress allows resources that are lost to fraud and bribery to be returned to the NHS for use as intended, for provision of services.
3. In cases of serious fraud and bribery, it is recommended that parallel processes are activated. 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.
4. Actions which may be taken when considering seeking redress include:
 - a) No further action
 - b) criminal investigation
 - c) civil recovery
 - d) disciplinary action
 - e) confiscation order under POCA
 - f) recovery sought from on-going salary payments or pensions.

5. 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). Outcomes can range from a criminal conviction to fines and imprisonment.
6. 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 Deputy Chief Executive and Director of Finance to determine the most appropriate action.
7. Disciplinary procedures will be initiated where an employee is suspected of being involved in a fraudulent or illegal act. The appropriate senior manager, in conjunction with the HR department, will be responsible for initiating any necessary disciplinary action. 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. It should be noted, however, that the duty to follow disciplinary 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.
8. Redress can take the form of confiscation and compensation orders, a civil order for repayment, or a local agreement between the organisation and the offender to repay monies lost. The decisions for redress will be taken in the light of the particular circumstances of each case.
9. 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 Proceeds of Crime Act 2002 (POCA). This means that a person's money or assets are 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. When considering seeking redress recovery may also be sought from on-going salary payments or pensions.
10. Action to recover losses should be commenced as soon as practicable after the loss has been identified.

8 Training

7. The Trust will provide anti-fraud and bribery training to all relevant employees training at induction and INSET to make them aware of our Anti-Fraud and Bribery Procedure and guidelines, including types of fraud and bribery, the risks of engaging in fraud and bribery, and how employees may report suspicion of fraud and bribery.

9 Monitoring Effectiveness

1. The NHS Counter Fraud Authority are responsible for monitoring compliance by the LCFS provider and the Trust is required to submit an annual Self-Review Tool (SRT) of compliance against the NHS Counter Fraud Authority Standards for Providers. The SRT is approved by the Deputy Chief Executive and Director of Finance and Audit Committee Chair prior to submission, and is included within the LCFS Annual Report.
2. The LCFS plan for each year is agreed with the Audit Committee, and the LCFS present regular progress reports on all aspects of their work during the year, and improvements are made accordingly. An annual assessment of staff awareness is carried out.
3. As a result of reactive and proactive work completed throughout the financial year, closure reports are prepared and issued by the LCFS. System and procedural weaknesses are identified in each report and highlight suggested recommendations for improvement. The Trust, together with the LCFS will track the recommendations to ensure that they have been implemented. Such reports may require review or amendment to the Anti-Fraud and Bribery Procedure.
4. In order to provide assurance that policies were adhered to, the Deputy Chief Executive and Director of Finance 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.
5. The LCFS monitors the number, nature and source of referrals received throughout the year to inform the future awareness and preventative activities.

10 Non-Compliance

1. Any abuse or non-compliance with this policy will be subject to a full investigation and appropriate disciplinary action.

11 Associated documents¹

Whistleblowing Procedure
Disciplinary Procedure
Gifts & Hospitality Procedure
Standing Financial Instructions

¹ For the current version of Trust procedures, please refer to the intranet.
Anti-Fraud and Bribery Procedure, v4, TBC

Appendix A : Equality Impact Assessment

Completed by	Terri Burns
Position	Trust Company Secretary
Date	23 January 2018

The following questions determine whether analysis is needed	Yes	No
Is it likely to affect people with particular protected characteristics differently?		No
Is it a major policy, significantly affecting how Trust services are delivered?	Yes	
Will the policy have a significant effect on how partner organisations operate in terms of equality?		No
Does the policy relate to functions that have been identified through engagement as being important to people with particular protected characteristics?		No
Does the policy relate to an area with known inequalities?		No
Does the policy relate to any equality objectives that have been set by the Trust?		No
Other?		No

If the answer to *all* of these questions was no, then the assessment is complete.

If the answer to *any* of the questions was yes, then undertake the following analysis:

	Yes	No	Comment
Do policy outcomes and service take-up differ between people with		No	

different protected characteristics?			
What are the key findings of any engagement you have undertaken?		No	
If there is a greater effect on one group, is that consistent with the policy aims?		No	
If the policy has negative effects on people sharing particular characteristics, what steps can be taken to mitigate these effects?		No	
Will the policy deliver practical benefits for certain groups?		No	
Does the policy miss opportunities to advance equality of opportunity and foster good relations?		No	
Do other policies need to change to enable this policy to be effective?		No	
Additional comments			

If one or more answers are yes, then the policy may unlawful under the Equality Act 2010 –seek advice from Human Resources.

Appendix B : Action to be taken if you discover or suspect any fraudulent activity

<p>This includes:</p> <p style="text-align: center; color: blue;">Fraud</p> <ul style="list-style-type: none"> • Any deliberate intention to make a gain for themselves or anyone else, or inflicting a loss (or a risk of loss) on another i.e. the NHS.This could be through the falsification of any records or documents or obtaining any service(s) and/or failing to disclose information. <p style="text-align: center; color: blue;">Bribery</p> <ul style="list-style-type: none"> • Anything that induces or intends to induce improper performance. This covers offering, promising or giving a bribe, requesting, agreeing to receive or accepting a bribe, and failing to prevent bribery. • Where someone is influenced by bribery, payment of benefit-in-kind to unreasonably use their position to give some advantage to another. <p style="text-align: center; color: blue;">Theft</p> <ul style="list-style-type: none"> • A person is guilty of theft if he/she dishonestly appropriates property belonging to another person with the intention of 	<p>What to do:</p> <p>If any of these concerns come to light you must immediately report your suspicions and what you have discovered to one of the following:</p> <ul style="list-style-type: none"> • The Local Counter Fraud Specialist, Lianna Parker-Carn: 07800617462 or lianna.parker-carn@nhs.net / lianna.parker-carn@rsmuk.com • Deputy Chief Executive and Director of Finance, Terry Noys: 020 8938 2468 • The NHS Fraud Reporting Line: 0800 0284060 <p style="text-align: center;">Or online www.cfa.nhs.uk/reportfraud</p> <p style="text-align: center;">Advice may be obtained from Public Concern at Work on 020 7404 6609 or email helpline@pcaw.co.uk</p> <p>Reporting to the NHS Counter Fraud Authority provides an alternative to internal reporting procedures and if staff wish to remain anonymous. This provides an easily accessible route for the reporting of genuine suspicions of fraud within or affecting the NHS. All calls are</p>	<p style="text-align: center; color: blue;">DO</p> <ul style="list-style-type: none"> ✓ Tell someone! <ul style="list-style-type: none"> • Confidentiality will be respected. • Any delay might cause the organisation to suffer further financial loss. ✓ Make a note of your concerns! <ul style="list-style-type: none"> • Note all relevant details, what was said, the date time and names of all parties involved. • Keep a record or copy any documentation that arouses your suspicion. <hr/> <p style="text-align: center; color: blue;">DO NOT</p> <ul style="list-style-type: none"> ✗ Confront the individual(s) with your suspicions. ✗ Try to investigate the matter yourself. ✗ Contact the Police directly. ✗ Convey your suspicions to anyone other than those with the proper authority as listed. ✗ Do nothing!
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permanently depriving the other of it.

dealt with by experienced caller handlers. Confidentiality will be maintained and all matters will be dealt with in accordance with the NHS Counter Fraud standards.

You will not suffer any recriminations as a result of raising concerns - You have protection under The Public Interest Disclosure Act 1998.

THE FRAUD ACT 2006

SUMMARY

Section 1 of The Fraud Act sets out provisions for a general offence of fraud. There are several new offences created the main three being sections 2, 3 and 4. The Act also creates new offences of obtaining services dishonestly and of possessing, making and supplying articles for use in fraud, as well as containing a new offence of fraudulent trading applicable to non-corporate traders.

Section 2: Fraud by False Representation

It is an offence to commit fraud by false representation. The representation must be made dishonestly. This test applies also to sections 3 and 4 below. The current definition of dishonesty was established in *R v Ghosh* [1982] Q.B.1053. That judgment sets a two-stage test. The first question is whether a defendant's behaviour would be regarded as dishonest by the ordinary standards of reasonable and honest people. If answered positively, the second question is whether the defendant was aware that his conduct was dishonest and would be regarded as dishonest by reasonable and honest people.

The person must make the representation with the intention of making a gain or causing loss or risk of loss to another. The gain or loss does not actually have to take place.

A representation is defined as false if it is untrue or misleading and the person making it knows that it is, or might be, untrue or misleading. A representation means any representation as to fact or law, including a representation as to a person's state of mind.

A representation may be express or implied. It can be stated in words or communicated by conduct. There is no limitation on the way in which the

representation must be expressed. It could be written or spoken or posted on a website.

A representation may also be implied by conduct. An example of a representation by conduct is where a person dishonestly misuses a credit card to pay for items. By tendering the card, he is falsely representing that he has the authority to use it for that transaction. It is immaterial whether the merchant accepting the card for payment is deceived by the representation.

This offence would also be committed by someone who engages in "phishing": i.e. where a person disseminates an email to large groups of people falsely representing that the email has been sent by a legitimate financial institution. The email prompts the reader to provide information such as credit card and bank account numbers so that the "phisher" can gain access to others' personal financial information.

A representation may be regarded as being made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention). The main purpose of this provision is to ensure that fraud can be committed where a person makes a representation to a machine and a response can be produced without any need for human involvement. (An example is where a person enters a number into a "CHIP and PIN" machine.)

Section 3: Fraud by Failing to Disclose Information

Section 3 makes it an offence to commit fraud by failing to disclose information to another person where there is a legal duty to disclose the information. A legal duty to disclose information may include duties under oral contracts as well as written contracts.

For example, the failure of a solicitor to share vital information with a client within the context of their work relationship, in order to perpetrate a fraud upon that client, would be covered by this section. Similarly, an offence could be committed under this section if for example an NHS employee failed to disclose to the Trust that certain patients referred by

him for private treatment are private patients, thereby avoiding a charge for the services provided by that NHS employee during NHS time.

Section 4: Fraud by Abuse of Position

Section 4 makes it an offence to commit a fraud by dishonestly abusing one's position. It applies in situations where the defendant has been put in a privileged position, and by virtue of this position is expected to safeguard another's financial interests or not act against those interests.

The necessary relationship will be present between Trustee and beneficiary, director and company, professional person and client, agent and principal, employee and employer, or between partners. It may arise otherwise, for example within a family, or in the context of voluntary work, or in any context where the parties are not at arm's length.

The term "abuse" is not limited by a definition, because it is intended to cover a wide range of conduct. The offence can be committed by omission as well as by positive action. For example, an employee who fails to take up the chance of a crucial contract in order that an associate or rival company can take it up instead at the expense of the employer commits an offence under this section.

An employee of a software company who uses his position to clone software products with the intention of selling the products on would commit an offence under this section.

Another example covered by this section is where a person who is employed to care for an elderly or disabled person has access to that person's bank account and abuses his position by removing funds for his own personal use.

Note: It is now no longer necessary to prove a person has been deceived in the above offences. The focus is now on the dishonest behaviour of the suspect and their intent to make a gain or cause a loss.

Section 5: (not relevant for the purposes of this document)

Section 6: Possession etc. of Articles for Use in Frauds

Section 6 makes it an offence for a person to possess or have under his control any article for use in the course of or in connection with any fraud. This wording draws on that of the existing law in section 25 of the Theft Act 1968 (These provisions make it an offence for a person to "go equipped" to commit a burglary, theft or cheat, although they apply only when the offender is not at his place of abode.

Proof is required that the defendant had the article for the purpose or with the intention that it be used in the course of or in connection with the offence, and that a general intention to commit fraud will suffice.

Section 7: Making or Supplying Articles for Use in Frauds

Section 7 makes it an offence to make, adapt, supply or offer to supply any article 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 facilitate fraud. For example, a person makes devices which when attached to electricity meters cause the meter to malfunction.

Section 8: "Article"

Section 8 extends the meaning of "article" for the purposes of sections 6 and 7 and certain other connected provisions so as to include any program or data held in electronic form. Examples of cases where electronic programs or data could be used in fraud are: a computer program can generate credit card numbers; computer templates can be used for producing blank utility bills; computer files can contain lists of other peoples' credit card details or draft letters in connection with 'advance fee' frauds.

Section 9: Participating in fraudulent business carried on by sole trader etc.

Section 9 makes it an offence for a person knowingly to be a party to the carrying on of fraudulent business where the business is not carried on by a company or (broadly speaking) a corporate body.

- A person commits the offence of fraudulent trading
- dishonesty is an essential ingredient of the offence;
- the mischief aimed at is fraudulent trading generally, and not just in so far as it affects creditors;
- the offence is aimed at carrying on a business but that can be constituted by a single transaction; and
- It can only be committed by persons who exercise some kind of controlling or managerial function within the company.

Section 10: (not relevant for the purposes of this document)

Section 11: Obtaining Services Dishonestly

Section 11 makes it an offence for any person, by any dishonest act, to obtain services for which payment is required, with intent to avoid payment. The person must know that the services are made available on the basis that they are chargeable, or that they might be. It is not possible to commit the offence by omission alone and it can be committed only where the dishonest act was done with the intent not to pay for the services as expected.

It requires the actual obtaining of the service. For example, data or software may be made available on the Internet to a certain category of person who has paid for access rights to that service. A person dishonestly using false credit card details or other false personal information to obtain the service would be committing an offence under this section. The section would also cover a situation where a person climbs over a wall and watches a football match without paying the entrance fee – such a person is not deceiving the provider of the service directly, but is obtaining a service which is provided on the basis that people will pay for it.

Section 11 also covers the situation where a person attaches a decoder to her television to enable viewing access to cable / satellite television channels for which they has no intention of paying for.

Section 12: Liability of Company Officers for Offences by Company

This section repeats the effect of section 18 of the Theft Act 1968. It provides that company officers who are party to the commission of an offence under the Bill by their body corporate will be liable to be charged for the offence as well as the company. It applies to directors, managers, secretaries and other similar officers of a company. If the body corporate charged with an offence is managed by its members the members involved in management can be prosecuted too.

The Fraud Act 2006 repeals the following Theft Act offences:

Theft Act 1968

- Section 15 (obtaining property by deception).
- Section 15A (obtaining a money transfer by deception).
- Section 15B (Section 15A: supplementary).
- Section 16 (obtaining a pecuniary advantage by deception).
- Section 20(2) (procuring the execution of a valuable security by deception).

Theft Act 1978

- Section 1 (Obtaining services by deception).
- Section 2 (evasion of liability).

The Act came into force on 15th January 2007 and carries a maximum sentence of 10 years imprisonment with the exception of the 'going equipped offence' which is 5 years.

BRIBERY ACT 2010

The following business practices constitute criminal offences under the Bribery Act 2010 and are therefore prohibited:

Offences of bribing another person

Case 1 is where a Trust employee offers, promises or gives a financial or other advantage to another person and intends the advantage (i) to induce that or another person to perform improperly a relevant function or activity, or (ii) to reward that or another person for the improper performance of such a function or activity.

Case 2 is where a Trust employee offers, promises or gives a financial or other advantage to another person and knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity by that person.

The bribery must relate to (i) a function of a public nature, (ii) an activity connected with a business, (iii) an activity performed in the course of a person's employment, or (iv) an activity performed by or on behalf of a body of persons (whether corporate or unincorporate). The person performing the function or activity must be expected to perform it in good faith, impartially or in a position of Authority. It does not matter whether the function or activity is performed inside or outside the UK, whether the other person(s) involved is/are in the public or private sector and whether the advantage is offered, promised or given directly by a Trust employee or through a third party, e.g. an agent or other intermediary.

Offences relating to being bribed

Case 3 is where a Trust employee requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant

function or activity should be performed improperly (whether by him-/herself or another person).

Case 4 is where a Trust employee requests, agrees to receive or accepts a financial or other advantage, and the request, agreement or acceptance itself constitutes the improper performance by him-/herself of a relevant function or activity.

Case 5 is where a Trust employee requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by him-/herself or another person) of a relevant function or activity.

Case 6 is where, in anticipation of or in consequence of a Trust employee requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly (i) by that, or (ii) by another person at his/her request or with his/her assent or acquiescence.

Again, the bribery must relate to (i) a function of a public nature, (ii) an activity connected with a business, (iii) an activity performed in the course of a person's employment, or (iv) an activity performed by or on behalf of a body of persons (whether corporate or unincorporate). The person performing the function or activity must be expected to perform it in good faith, impartially or in a position of Authority.

It does not matter whether the function or activity is performed inside or outside the UK, whether the other person(s) involved is/are in the public or private sector, whether a Trust employee requests, agrees to receive or accepts the advantage directly or through a third party, e.g. an agent or other intermediary, and whether the advantage is for the benefit of a Trust employee or another person.

In Cases 4 to 6, it does not matter whether a NHS Trust employee knows or believes that the performance of the function or activity is improper.

Bribery of foreign public officials

Case 7 is where a Trust employee bribes a foreign public official and intends (i) to influence that official in his/her capacity as a foreign public official and (ii) to obtain or retain a business or an advantage in the conduct of business. A foreign public official is someone who holds a legislative, administrative or judicial position of any kind or exercises a public function of a country outside the UK, or is an official or agent of a public international organisation.

The following paragraph will apply if any part of the organisation is considered as a 'commercial' one.

Failure of commercial organisations to prevent bribery

A corporate or partnership is guilty of a corporate bribery offence if an employee, agent, subsidiary or any other person acting on its behalf bribes another person intending to obtain or retain business or an advantage in the conduct of business for the corporate or partnership. For a definition of bribery, please refer to Cases 1, 2 and 7 above.

It should be the procedure of a corporate or partnership not to tolerate any bribery on its behalf, even if this might result in a loss of business for it. Criminal liability must be prevented at all times.