

POLICY FOR FRAUD AND BRIBERY

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**The Director responsible for monitoring and reviewing this policy is
Executive Chief Finance Officer**

FRAUD AND BRIBERY POLICY AND RESPONSE PLAN

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ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

FRAUD AND BRIBERY POLICY AND RESPONSE PLAN

1.0 INTRODUCTION

- 1.1 One of the basic principles of public sector organisations is the proper use of public funds. The NHS is a public funded organisation and consequently it is important that every employee and associated person acting for, or on behalf of, Essex Partnership University NHS Foundation Trust (the Trust) is aware of the risk of fraud, theft and bribery, the rules relating to fraud, theft and bribery, the process for reporting their suspicions and the enforcement of these rules. This policy explicitly covers fraud and corruption.
- 1.2 This policy does **not** cover theft, which is the responsibility of the Trust's Local Security Management Specialist (LSMS). The basic definition of theft is the appropriation of property belonging to another with the intention of permanently depriving the other of it, and it is deemed immaterial whether the appropriation is made with a view to gain, or is made for the thief's own benefit. If a member of staff suspects a theft, they should contact [REDACTED], the Trust's LSMS on [REDACTED] or [REDACTED] for advice, complete a Datix incident report and refer to the Trust's Management of Security policy and procedure (RM09 / RMPG09). In the event that the member of staff is unsure whether an incident is fraud or theft and therefore who to contact, staff should initially refer the concern to the Trust's counter fraud provider who will direct the query accordingly.
- 1.3 This document sets out the Trust's policy and response plan for detected or suspected fraud or bribery. All genuine suspicions of fraud and bribery can be reported to the Local Counter Fraud Specialist (LCFS) or via the NHS Counter Fraud Authority on 0800 028 4060 or at www.cfa.nhs.uk/reportfraud. This policy has the endorsement of the Trust's Board and Executives. The Trust Board endorses the NHS Counter Fraud Strategy as set out under HSC 1998/231.
- 1.4 The policy reflects the Board's wish to embed a culture of best practice in anti-fraud and anti-bribery measures, and enforcement of the policy will reduce the risk that the Trust or any staff, contractors, or persons working for the Trust will incur any criminal liability or reputational damage.
- 1.5 The Trust already has procedures in place that reduces the likelihood of fraud and/or bribery occurring. These include the Standing Orders, Standing Financial Instructions, other documented procedures, a system of internal control, and a system of risk assessment. The Board seeks to ensure that a risk awareness culture exists in the Trust (which includes fraud and bribery awareness), and have complied with the Secretary of State's Directions in nominating a Local Counter Fraud Specialist.
- 1.6 The Trust does not tolerate fraud and bribery within the NHS. The intention is to eliminate all NHS fraud and bribery as far as possible. If fraud does occur, the Trust will seek the appropriate disciplinary, regulatory, civil and criminal sanctions against fraudsters and where possible attempt to recover losses.

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- 1.7 The Local Counter Fraud Specialist conducts investigations as directed by the NHS Counter Fraud and Corruption Manual, as required by the Secretary of State's Directions.
- 1.8 This document applies to all individuals working at all levels including Board, Executive and Non-Executive Members, Governors, employees (whether permanent, fixed-term, or temporary), contractors, trainees, seconded, home-workers, casual staff and agency staff, interns and students, agents, sponsors, volunteers or any other person associated with the Trust wherever located (collectively referred to as "Staff") in, and for the exclusive purpose of this Policy.
- 1.9 All employees should familiarise themselves and comply with the organisations policies, procedures and financial regulations, with particular attention to the Whistleblowing Policy, Gifts and Hospitality Policy and Standards of Business Conduct Policy.

2.0 FRAUD

- 2.1 The Fraud Act 2006 came into effect on 15 January 2007, and introduced the general offence of fraud. The Act created three key criminal offences which an individual can be found guilty of if they are in breach, as follows:

- Fraud by false representation (see section 3.2)
- Fraud by failing to disclose information (see section 3.3)
- Fraud by abuse of position (see section 3.4)

In all three classes of fraud, there is the requirement that for an offence to have occurred, the person must have acted dishonestly and they had acted with the intent of making a gain for themselves, or anyone else, or inflicting a loss (or a risk of loss) on another.

Other offences of fraud found within the Fraud Act 2006 are:

- Possession of articles for use in fraud
- Making or supplying of articles for use in fraud
- Obtaining services dishonestly

A person who is guilty of fraud is liable:

- on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);
- on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).

2.2 Fraud by false representation

A person is in breach of this section if he/she:

- dishonestly makes a false representation, and
- intends, by making the representation
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

A representation is false if:

- it is untrue or misleading, and
- the person making it knows that it is, or might be, untrue or misleading.

Representation means any representation as to fact or law, including a representation as to the state of mind of the person making the representation or any other person.

A representation may be express or implied, and for the purposes of this section a representation may be regarded as 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).

2.3 Fraud by failing to disclose information

A person is in breach of this section if he/ she:

- dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and
- intends, by failing to disclose the information:
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

2.4 Fraud by abuse of position

A person is in breach of this section if he/she:

- occupies a position in which he 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:
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

2.5 Examples of NHS Fraud

There is no one type of fraud – there is in fact an enormous variation in the types of fraud that are committed, as there are in the people who commit

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them. Among more recurrent frauds are (of which this list is not an exhaustive list):

- Timesheet fraud (e.g. staff and professionals claiming money for shifts that they have not worked, claiming for sessions that they have not carried out)
- False expense claims (e.g. falsified travel or subsistence claims)
- Fraudulent job applications (e.g. false qualifications or immigration status)
- Working whilst sick (e.g. usually working for another organisation without informing the Trust)
- Excess study leave
- Advertising scams (e.g. false invoices for placing advertisements in publications)
- Patient fraud (e.g. false travel claims, fraudulently claiming exemptions from pharmaceutical charges)
- Misappropriation of assets (e.g. falsely ordering goods for own use or to sell)
- Procurement Fraud (e.g. the ordering and contracting of goods or services)
- Fraud by professionals (e.g. Pharmacists – constitutes specific types of fraud such as false claims for treatment, unauthorised use of NHS facilities/equipment)
- Pharmaceutical fraud by companies (e.g. overcharging for drugs, supplying inferior or reduced quantities of drugs etc.)

SAMPLE

3.0 BRIBERY

3.1 The Bribery Act 2010 came into effect on 1st July 2011 with a consolidated summary of bribery offences as follows,

- Offences of bribing another person (see section 4.2)
- Offences relating to being bribed (see section 4.3)
- Bribery of foreign public officials (see section 4.4)
- Failure of commercial organisations to prevent bribery (see section 4.5)

The Bribery Act replaces the offences at common law and under the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916 (known collectively as the Prevention of Corruption Acts 1889 to 1916).

A person found guilty of fraud is liable,

- on summary conviction, to a fine of up to £5,000 and/or imprisonment for up to 12 months; or
- if convicted on indictment, an unlimited fine and/or imprisonment for up to 10 years.

If the Trust is found to have taken part in or fails to prevent bribery, then the Trust could face an unlimited fine, be excluded from tendering for public contracts and face serious damage to our reputation.

3.2 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 unincorporated).

The person performing the function or activity must be expected to perform it in good faith, impartially or in a position of trust. 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.

3.3 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.

As for 3.2.1, 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 unincorporated).

The person performing the function or activity must be expected to perform it in good faith, impartially or in a position of trust. 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 Trust employee knows or believes that the performance of the function or activity is improper.

3.4 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.

3.5 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 policy 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.

3.6 Examples of Bribery

The Bribery Act 2010 outlines the offences of bribery as the receipt or acceptance of a bribe, or the offer to, promise or giving of a bribe, which assists in obtaining / retaining business or financial advantage, or the inducement or reward of someone for the "improper performance" of a relevant function. There is however no set types of bribery and there is huge variation in the types of scenarios and circumstances where bribery could occur. A non exhaustive list of examples of where bribery could take place is as follows:

Offering a bribe

- You offer a potential client tickets to a major sporting event, but only if they agree to do business with the Trust.

Receiving a bribe

- A supplier gives your nephew a job but makes it clear that in return they expect you to use your influence in the Trust to ensure that it continues to do business with them
- Someone responsible for awarding an employment contract is offered gifts and/or hospitality by one of the candidates or someone linked to them to ensure they get the job
- Someone responsible for booking bank or agency staff is offered lavish gifts and/or hospitality, by an agency, to ensure their agency staff are booked by the Trust

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- Someone responsible for choosing suppliers (medical or non-medical) or awarding business contracts is offered gifts and/or hospitality by an existing/new supplier, contractor or business to ensure they are selected as a supplier
- Someone associated with the purchasing of drugs and/or the selection of approved drugs to the Trust Formulary is offered gifts, hospitality and/or paid expenses by a medical representative or Drugs Firm to ensure their drugs are purchased and/or added to the Trust Formulary for prescribing by the Trust
- Someone associated with the prescribing of drugs is offered gifts and/or hospitality by a medical representative or Drugs Firms to ensure they prescribe their drugs
- Someone associated with the provision of training is offered gifts and/or hospitality by an external training company to ensure they are selected to provide training at the Trust

4.0 RAISING CONCERNS (WHISTLEBLOWING)

- 4.1 The Public Interest Disclosure Act (PIDA) 1998 provides a clear signal that it is safe and acceptable for all staff to raise any specific concerns that they may have. By providing strong protection for those who raise concerns, the legislation will help ensure that employers address the message and not the messenger. It is a safety net for the Trust, its employees and users of its services. The fundamental principle behind the legislation is to improve governance and accountability within organisations.
- 4.2 A whistleblowing concern is when any member of staff, contractor or person working for the Trust blows the whistle by informing their employer, a regulator, customers, the police or the media about a serious risk, malpractice, or wrongdoing that affects others e.g. concerns about health and safety risks, potential environmental problems, fraud, bribery, deficiencies in the care of vulnerable people, cover-ups and many other problems.
- 4.3 Often it is only through whistleblowing that this information comes to light and can be addressed before real damage is done. Whistleblowing is a valuable activity which can positively influence all of our lives. The Trust Board fully endorses the provisions of the Public Interest Disclosure Act 1998 and wishes to encourage anyone having reasonable suspicions of fraud and/or bribery to report them in accordance with the Trust's Raising Concerns (Whistleblowing) Policy.
- 4.4 Please see the Raising Concerns (Whistleblowing) Policy for additional information.

5.0 PUBLIC SERVICE VALUES

- 5.1 Staff must be impartial and honest in the conduct of their business and remain above suspicion whilst carrying out their role within the Trust. A Code of Conduct for NHS Boards was first published, by the NHS Executive, in April 1994 and set out the initial public service values. This has been superseded by the seven fundamental public service values specified in the Nolan report.

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A further Code of Conduct was issued in October 2002 titled "Code of Conduct for NHS Managers".

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.

Furthermore, staff and those working for the Trust are expected to:

- Ensure that the interest of patients remains paramount at all times
- Be impartial and honest in the conduct of their official business
- Use the public funds entrusted to them to the best advantage of the service, always ensuring value for money
- Not abuse their official position for personal gain or to benefit their family or friends
- Not to seek advantage or further private business or other interests in the course of their official duties.

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

6.0 ROLES AND RESPONSIBILITIES

6.1 Executive Chief Finance Officer

The Executive Chief Finance Officer has overall responsibility for ensuring compliance with Secretary of State Directions on fraud and bribery.

Under the Secretary of State Directions the Executive Chief Finance Officer has a legal responsibility to make sure fraud and corruption is prevented, detected and investigated. Combating fraud and corruption requires an understanding of how and why it happens, the ways in which it can be minimised and how to professionally investigate it. In line with the Secretary of State Directions the Executive Chief Finance Officer has nominated a Local Counter Fraud Specialist to tackle fraud and bribery within the Trust.

Where a referral concerning fraud or bribery has been made to the Executive Chief Finance Officer, the Director shall inform the Local Counter Fraud Specialist at the first opportunity and delegate to him/her responsibility for leading any investigation whilst retaining overall responsibility him/herself. A protocol for the referral, acknowledgement, investigation and reporting of allegations forms part of the Trust's Service Level Agreement for the current counter fraud provider.

The Executive Chief Finance Officer shall inform and consult the Chief Executive in cases where the loss may be above the delegated limit or where the incident may lead to adverse publicity.

6.2 Local Counter Fraud Specialist

Under the NHS Standard Contract, each health body is required to have a Local Counter Fraud Specialist (LCFS). The LCFS is responsible for investigation allegations and suspicions of fraud and also for undertaking proactive work to minimise the risk of fraud occurring.

The Local Counter Fraud Specialist is responsible for the managing and delivery of all counter fraud work within the Trust in accordance with an agreed annual workplan. Under the Secretary of State Directions and the Trust's Standing Orders and Standing Financial Instructions, the Local Counter Fraud Specialist is responsible for investigating allegations of fraud and corruption at the Trust. Presently, the Trust has contracted with BDO LLP to provide a counter fraud service. Our nominated Local Counter Fraud Specialist is James Shortall.

The Local Counter Fraud Specialist is an experienced and accredited (professionally qualified) counter fraud specialist. In essence the role of the Local Counter Fraud Specialist is to respond to and proactively tackle risks and occurrences of fraud and bribery at the Trust by providing a robust and effective prevention, detection and investigation function. The LCFS is responsible for ensuring that the Trust achieves the four key sections that follow the National Counter Fraud strategy:

- **Strategic Governance** – Completion of counter fraud activity which complies with relevant legislation, has support from the Executive Board and is proportionate and focused on the key fraud and bribery risk areas within the Trust

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- **Inform and Involve** – Increased levels of anti-fraud, bribery and corruption awareness and buy-in across the Trust, including non-executives, staff, contractors and patients on a continuous basis
- **Prevent and Deter** – Reduced instances of fraud through strengthening the systems of control in place within the Trust to manage key areas of fraud, bribery and corruption risk. Reduced instances of fraud through deterring all relevant parties from committing or becoming involved with fraudulent activities against the Trust and the NHS as a whole
- **Hold to Account** – Reduced losses from fraud through the timely detection of instances of fraud, bribery and corruption risk. All referrals efficiently and effectively investigated in accordance with relevant legislation and guidance; thereby allowing sanctions to be applied, redress sought and control weaknesses addressed. Appropriate sanctions applied wherever possible; thereby helping to prevent and deter future frauds from occurring and limiting potential reputational damage to the Trust. Recovery of losses maximised as far as possible; thereby limiting the financial impact, helping to prevent and deter reoccurrence and limiting potential reputational damage to the Trust.

The Local Counter Fraud Specialist reports to the Executive Chief Finance Officer, but any Staff at the Trust can speak to and ask for advice from the Local Counter Fraud Specialist. The Local Counter Fraud Specialist is authorised to receive reports of suspected fraud from anyone, whether an employee of the Trust, independent contractors, patients or other third party. All staff have a responsibility to the Trust to raise their genuine concerns.

The Local Counter Fraud Specialist employs a risk-based methodology to enable the Trust to target resources at high risk areas and throughout the year undertakes proactive reviews in these areas which can detect fraud. Such reviews together with Investigations, ensures the Local Counter Fraud Specialist identify and counters vulnerabilities within the Trust's systems by implementing effective prevention, detection and corrective controls to reduce the likelihood of fraud

6.3 Deputy Director with responsibility for Human Resources (HR)

The Deputy Director with responsibility for HR is responsible for the advice given to those involved in the investigation in matters of employment law and in other procedural matters, such as disciplinary, grievance and whistleblowing 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 co-ordinated manner.

The consideration of 'triple tracking' options, namely criminal, civil and disciplinary sanctions (including Professional Regulatory Body sponsored disciplinary sanctions) shall be taken in conjunction with the HR Department and the LCFS.

6.4 Audit Committee

The purpose of the Audit Committee is to provide an independent check on the financial management of the Trust. The Audit Committee meets, receives and considers reports by the internal and external auditors on all aspects of

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financial processes and procedure. Both the Local Counter Fraud Specialist and the Executive Chief Finance Officer attend the Audit Committee and the Local Counter Fraud Specialist presents progress reports on the counter fraud work undertaken at the Trust. The Audit Committee can question and ask for further explanation in relation to any aspect of counter fraud work.

6.5 Managers

Managers must be vigilant and ensure that policies, procedures and processes within their local area are adhered to and kept under constant review to guard against fraud and/or bribery. They should be alert to the possibility of unusual events or transactions which could be symptoms of fraud and or/bribery. Where they have any doubt they must seek advice from the nominated LCFS.

Managers must instil and encourage an anti-fraud and bribery culture within their team and ensure that information on procedures is made available to all employees and understand the importance of protecting EPUT from it. The LCFS will proactively assist the encouragement of an anti-fraud and bribery culture by undertaking work that will raise fraud and bribery awareness. This includes arranging staff to attend fraud awareness sessions and promoting relevant fraud policies.

All instances of actual or suspected fraud or bribery which come to the attention of a manager must be reported to the LCFS 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.

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 Trust staff of the code of business conduct, gifts and hospitality, declaration of interest and anti-fraud and anti-bribery policies 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
- assess the types of risk involved in the operations for which they are responsible, this is through conducting risk assessments and mitigating these identified risks.
- 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

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- ensure that controls are being complied with
- enforce disciplinary action for staff who do not comply with policies and procedures
- report any identified system weaknesses which could allow for fraud to occur, to the LCFS

6.6 Staff

All Staff must ensure that they have read, understand and comply with this policy. The prevention, detection and reporting of fraud and bribery are the responsibility of all those working for or under the control of the Trust. All Staff are individually responsible for:

- Securing the property of the Trust
- Avoiding loss
- Conforming with the rules and regulations contained in the Trust's policies and procedures

All Staff are required to follow any Code of Conduct related to their personal professional qualifications and the NHS Constitution.

Any gifts or hospitality made to or received from a 'third party' in the course of Trust duties, and which exceeds the threshold stipulated in the Trust's Gifts and Hospitality policy must be formally declared and registered in accordance with this policy.

Where it is anticipated that the gifts or hospitality to be made to or received from a 'third party' may exceed the threshold stipulated in the Trust's Gifts and Hospitality policy then Staff must obtain prior authorisation and approval from their line manager.

A 'third party' means any individual or organisation who Staff may come into contact with during the course of their work with the Trust and includes actual and potential clients, suppliers, distributors, business contacts, agents, advisors, government and public bodies, including their advisors, representatives and officials, politicians, and political parties.

Staff must declare any possible conflicts of interest which they may have in contracts entered into by the Trust, or which relates to aspects of their work for the Trust (such as business interests or other employment) and these must be noted in a register maintained for that purpose.

All Non-Executives are required to declare and register potential conflicts between their duties and personal or professional lives.

Please refer to the Trust's 'Standards of Business Conduct Policy' for more guidance on the standards of business conduct expected of all Staff, and 'Standards of Conduct' detailed within the Disciplinary (Conduct) Procedure.

All new employees to the Trust should receive fraud and bribery awareness material as part of their induction. This should cover the key points of how to detect fraud, how to report it and LCFS contact details.

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Employees who are involved in or manage internal control systems should receive adequate training and support to carry out their responsibilities. This can be discussed and arranged with management.

If Staff suspect that there has been fraud or bribery, they must report the matter to the nominated Local Counter Fraud Specialist. See section 8.2 below.

All Staff are required to avoid any activity that might lead to, or suggest, a breach of this policy. Any Staff found in breach of this policy may be liable to disciplinary action including summary dismissal.

6.7 Internal and External Audit

The role of internal and external audit includes reviewing controls and systems and ensuring compliance with financial instructions. Any incident or suspicion of fraud and/or bribery that comes to Internal or External Audit's attention will be passed immediately to the Local Counter Fraud Specialist. The outcome of the investigation may necessitate further work by internal or external audit to review systems.

Audit performs thorough checks on systems which detect any anomalies.

6.8 Local Security Management Specialist

Any incident or suspicion of fraud and/or bribery that comes to the Local Security Management Specialist's attention will be passed immediately to the Local Counter Fraud Specialist.

The Local Security Management Specialist works within the Trust to minimise safety and security risks (in relation to Trust property and Staff) and investigate any allegations of theft and abuse of Trust property and assets.

6.9 Information and IT

Information Management and IT will contact the Local Counter Fraud Specialist immediately in line with the Computer Misuse Act 1990, for all cases where there is suspicion that IT is being used for fraudulent purposes. This includes inappropriate internet/intranet, e-mail, telephone and PDA use. HR will also be informed if there is a suspicion that an employee is involved.

7.0 RESPONSE POLICY

7.1 The Response Plan

The Trust is committed to tackling fraud and bribery. When fraud is discovered there is a need for clear, prompt and appropriate action. Therefore, having a fraud and bribery response plan increases the likelihood that the crisis will be managed effectively. The response will be effective and organised and will rely on the principles contained within this section.

The Trust will be robust in dealing with any fraud or bribery issues, and can be expected to deal timely and thoroughly with any person who attempts to defraud the Trust or who engages in corrupt practices, whether they are non-executives, employees, suppliers, patients or unrelated third parties. Appendix 1 contains further an overview of the fraud response process.

The Local Counter Fraud Specialist will conduct all investigations in accordance with national guidance. This will cover all aspects of conducting a professional investigation, including gathering evidence and interviewing.

It should be added that under no circumstances should a member of staff speak, email or write to representatives of the press, TV, radio or to another third party about a suspected fraud or bribery issue without the express authority of the Chief Executive except within the provisions stated in the Trust's Whistleblowing Policy. Care needs to be taken to ensure that nothing is done that could give rise to an action for slander or libel.

In some cases, e.g. if a major diversion of funds is suspected, speed of response will be crucial to avoid financial loss in following the processes laid out within this policy.

7.2 Referring a Suspicion of Fraud

Anyone, whether Staff or a member of the public, can refer such allegations to the Local Counter Fraud Specialist. A form is attached at appendix 2 which can be used if required. Upon receipt of a referral, the Local Counter Fraud Specialist must comply with national regulations including the Secretary of State's Directions.

If any Staff have good reason to suspect a colleague, patient or other person of fraud and/or bribery, involving the Trust, they should report their genuine concerns to the Local Counter Fraud Specialist or Executive Chief Finance Officer immediately.

The Local Counter Fraud Specialist will then decide on the next course of action and advise the member of Staff accordingly.

Suspicions of fraud should be reported to any of the following:

1. The Executive Chief Finance Officer
2. Local Counter Fraud Specialist
3. National Fraud and Corruption Reporting Line on **0800 028 4060**
4. Report fraud on-line at **www.cfa.nhs.uk/reportfraud**

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5. Public Concern at Work on 020 7404 6609. This is an independent charity who can offer advice on how to proceed.

All referrals will be treated in complete confidence.

If HR or any other Staff in the Trust receives any allegations of fraud and/or bribery, they should refer them to the Local Counter Fraud Specialist before taking any further action.

Time may be of the utmost importance to prevent further loss to the Trust. Staff should be encouraged to report their first suspicions and not undertake lengthy consideration of alternative explanations. They should be reassured that all initial investigation into their suspicions will be of the highest professional standard. Where during an initial investigation, no evidence of fraud is found, the Local Counter Fraud Specialist will ensure there is equal protection of the innocent suspect, and the well-intentioned reporter.

All reported allegations of fraud will be referred to the Executive Chief Finance Officer, including those immediately dismissed as minor or otherwise not investigated. The Local Counter Fraud Specialist will initiate and maintain a record of events (or such record as required by the NHS Counter Fraud and Corruption manual) to record the progress of the investigation.

7.3 Responding to an Allegation

7.3.1 Where a referral concerning fraud or bribery has been made to the Executive Chief Finance Officer, the Executive Chief Finance Officer shall inform the Local Counter Fraud Specialist at the first opportunity. There is a protocol for the referral, acknowledgement, investigation and reporting of all allegations.

7.3.2 On receipt of a referral/allegation of suspected fraud, the Local Counter Fraud Specialist will assess the allegation to determine a course of action. This may involve making preliminary enquiries such as obtaining information from Trust systems.

7.3.3 After such preliminary enquiries, where appropriate, the Local Counter Fraud Specialist will seek agreement from the Executive Chief Finance Officer to carry out an investigation.

7.3.4 If a criminal event is believed to have occurred but fraud or bribery is not suspected, the Executive Chief Finance Officer must immediately inform the police and the Local Security Management Specialist (LSMS) if theft or arson is involved, and where appropriate the Board and External auditors, in accordance with the Trust's Standing Financial Instructions.

7.3.5 The Local Counter Fraud Specialist is responsible for investigating all instances of fraud and/or bribery in the Trust.

7.3.6 The Local Counter Fraud Specialist will regularly report to the Executive Chief Finance Officer on all fraud and/or bribery cases they investigate, at particular stages of individual investigations. In addition the Local Counter Fraud Specialist will provide the Audit Committee with regular updates as to the progress of investigations.

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- 7.3.7 Depending upon the nature of the investigation, the Local Counter Fraud Specialist will work closely with management and other agencies such as the Police to ensure that all matters are properly investigated and reported upon. The circumstances of each case will dictate who will be involved and when.
- 7.3.8 The detailed arrangements for the investigation of any suspected fraud or bribery are contained in the NHS Counter Fraud and Corruption Manual and within the Trust's policies e.g. Disciplinary Policy and the Standing Financial Instructions. The Local Counter Fraud Specialist will record the progress of the investigation in accordance with the legal codes of practice (Police and Criminal Evidence Act 1984, Regulation of Investigatory Powers Act 2000, Criminal Procedures and Investigation Act 1996) and other legislative requirements (e.g. Data Protection Act 2018).
- 7.3.9 On the conclusion of the investigation the Local Counter Fraud Specialist will report their findings and recommendations to the Executive Chief Finance Officer. The Executive Chief Finance Officer is the sole person who can determine whether or not any formal action is justified and what form such action takes. However, guidance can be sought from the Chief Executive and the Local Counter Fraud Specialist.
- 7.3.10 If the Executive Chief Finance Officer decides that formal action is to be taken against the subject(s) of an investigation, the Local Counter Fraud Specialist will comply with 'Applying Appropriate Sanctions Consistently' Policy. This will involve using an appropriate combination of the sanctions described below:
- Disciplinary action: internal and/or Professional Regulatory Body (warning, dismissal);
 - Civil remedy: recovery of money, interest and costs;
 - Criminal prosecution: may result in imprisonment, community penalty, fine, confiscation or compensation.
 - Confiscation under Proceeds of Crime Act (POCA)
 - Recovery sought from ongoing salary payments or pensions
- 7.3.11 The use of parallel sanctions or the 'triple track' approach helps to maximise the recovery of NHS funds and assets whilst minimising duplication of work.
- 7.3.12 The Trust's Disciplinary Policy will be used where the outcome of the investigation indicates improper behaviour on the part of Staff. The Local Counter Fraud Specialist shall liaise with the Director of HR regarding providing evidence for disciplinary hearings.
- 7.3.13 Where the Trust has suffered a financial loss from a fraud, the Trust will take action to pursue recovery in all applicable cases, subject to authorisation from the Executive Chief Finance Officer.

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- 7.3.14 The Local Counter Fraud Specialist will seek authorisation from the Executive Chief Finance Officer if a matter is to be reported to the Police. The LCFS will liaise with Police by providing a prosecution file and participating in interviews and searches. The LCFS shall attend court to give evidence and liaise with the Crown Prosecution Service as required.
- 7.3.15 The Local Counter Fraud Specialist acts on behalf of the Trust in the event of any formal action and must ensure there is coordination between the various parties involved such as where external legal advisers are used.
- 7.3.16 When a fraud or bribery has occurred at the Trust, the Local Counter Fraud Specialist will strengthen the control environment in which the event occurred by identifying system weaknesses and making recommendations to the Trust to address these weaknesses to reduce the risk of such an event occurring again.
- 7.3.17 The Local Counter Fraud Specialist is required to record every investigation on FIRST.
- 7.3.18 The Executive Chief Finance Officer is responsible for the smooth running of this protocol and where clarification is required his, or her, decision will be final.
- 7.3.19 For all alleged cases reported to the Local Counter Fraud Specialist, the Local Counter Fraud Specialist will liaise with the appropriate lead HR manager and subject's line manager, where necessary and appropriate. Communication during an investigation will be limited to relevant witnesses to protect the confidentiality of the investigation.

7.4 Subsequent Action

- 7.4.1 Following the conclusion of each case a written report will be drafted and presented to the Executive Chief Finance Officer by the LCFS. Consideration will be given to the circumstances in which the fraud occurred, and the need for changes to controls or audit activity to prevent such a fraud occurring again.
- 7.4.2 The Trust may also publicise the outcome of any successful prosecution to support its aim of deterring fraud and creating an anti-fraud culture

END