

Counter Fraud & Bribery Policy	Type: Policy Register No: 07025 Status: Public
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Consulted With	Post/Committee/Group	Date
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Related Trust Policies (to be read in conjunction with)	Risk Management Strategy & Policy Serious Incident Policy Disciplinary Procedure Policy Guidance on Raising Concerns - Speak Up Policy ("Whistle blowing" policy) Confidentiality Policy Appropriate Use of IT Policy Security Policy Information Security Policy IT Forensics Policy Standing Financial Instructions Conflict of Interest Policy

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1. Purpose

1.1 Trust adopts a zero tolerance attitude to fraud and bribery within the NHS and the aim is to eliminate all fraud and bribery within the NHS as far as possible.

1.2 The Purpose of this document therefore is to:

- set out the Trust's policy and advice to employees in dealing with fraud or suspected fraud - the term "employees" is used as a collective term for staff, volunteers and contractors
- set out the arrangements made in the Trust for such concerns to be raised by employees or members of the public
- to protect the property and finances of the NHS and of service users in Trust care
- set out the Trust's policy for dealing with detected or suspected fraud and bribery, set out in the Secretary of State for Health's Directions to NHS Bodies on Counter Fraud Measures that were issued in November 2004.

2. Scope

2.1 The Trust is committed to take all necessary steps to stop fraud and bribery and, to meet our objectives, the Trust has adopted the seven stage approach developed by NHS Protect (formerly the NHS Counter Fraud and Security Management Service).

- **the creation of an anti-fraud culture** – the Trust will use counter fraud publicity material to persuade those who work in the Trust that fraud and bribery is serious and takes away resources from important services. Such activity will demonstrate that fraud and bribery is not acceptable and is being tackled;
- **maximum deterrence of fraud** – deterrence is about increasing the expectation that someone will be caught if they attempt to defraud – this is more than just tough sanctions. The Trust will use necessary measures to minimise the occurrence of fraud and bribery;
- **successful prevention of fraud which cannot be deterred** - the Trust has policies and procedures in place to reduce the likelihood of fraud and bribery occurring. These include a system of internal controls, Standing Financial Instructions and documented procedures, which involve physical and supervisory checks, financial reconciliations, segregation and rotation of duties, and clear statements of roles and responsibilities. Where fraud and bribery has occurred the Trust will ensure that any necessary changes to systems and procedures take place immediately to prevent similar incidents from happening again;
- **prompt, detection of fraud which cannot be prevented** - the Trust has developed and will maintain effective controls to prevent fraud and bribery and to ensure that if it does occur, it will be detected promptly and referred to the Local Counter Fraud Specialist (LCFS) for investigation;
- **professional investigation of detected fraud** - the LCFS is professionally trained and accredited to carry out investigations into suspicions of fraud and

bribery to the highest of standards. In liaison with NHS Protect, all suspicions of fraud and will be professionally investigated to prove or disprove the allegation;

- **effective sanctions, including appropriate legal action against people committing fraud and bribery** - following the conclusion of an investigation, if there is evidence of fraud, consideration of available sanctions will be made in accordance with the guidance issued by NHS Protect – *'Applying Appropriate Sanctions Consistently'*. This may include criminal prosecution, civil proceedings and disciplinary action; and
- **effective methods of seeking redress in respect of money defrauded** - recovery of any losses incurred will also be sought through civil proceedings if appropriate, to ensure losses to Mid Essex Hospital NHS Trust and the NHS are returned for their proper use.

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

2.3 A non-inclusive list of examples of what activities constitute fraud and bribery is in para 8.1 of this policy

2.4 This policy applies to all employees, including contractors, agency staff and forms part of the induction process for new staff.

3. Definitions

3.1 Fraud

3.1.1 The Fraud Act 2006 simplified the way in which fraud is investigated. It is no longer necessary to prove a person has been deceived, only that there was an intention to do so. The focus is now on the dishonest behavior of the suspect and their intent to make a gain for themselves or another or cause a loss to another.

3.1.2 The offence of fraud can be committed in three ways:

- Fraud by false representation (s.2) – lying about something using any means e.g. by words or actions;
- Fraud by failing to disclose (s.3) – not saying something when you have a legal duty to do so; and
- Fraud by abuse of position of trust (s.4) – abusing a position where there is an expectation to safeguard the financial interests of another person or organisation.

3.1.3 It should be noted that offences under the Fraud Act 2006 occur where the act or omission is committed dishonestly and with intent to cause gain or loss. **The gain or loss does not have to succeed, so long as the intent is there.**

3.2 Anti- Bribery Policy Statement

3.2.1 Bribery is a criminal offence under the Bribery Act 2010. The Trust does not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor will it make or accept bribes or improper inducements.

3.2.2 To use a third party as a conduit to channel bribes to others is also a criminal

offence. The Trust does not, and will not, engage indirectly in or otherwise encourage bribery.

3.2.3 In particular, there are four key offences under the Act:

- Bribery of another person (section 1)
- Accepting a Bribe (section 2)
- Bribing a Foreign Official (section 6)
- Failing to Prevent Bribery (section 7)

3.2.4 The Trust is committed to the prevention, deterrence and detection of bribery. It has a zero-tolerance towards bribery. It aims to maintain anti-bribery compliance as “business as usual”, rather than as a one-off exercise, and this statement of policy is deemed to be included in all past and future Trust policies.

3.3 Irregularity

3.3.1 An irregularity may be any significant matter or issue, other than fraud or bribery, which may warrant consideration or investigation. An example of an irregularity may be where a member of staff makes a genuine error or mistake in the course of their duties/responsibilities, but where this error or mistake is subsequently hidden, perhaps to the on-going detriment to the NHS body. Additionally, an irregularity may also involve consideration of the possible inappropriate use of NHS funds or assets, which may or may not constitute fraud, theft or bribery.

3.4 Theft

3.4.1 Includes any dishonest appropriation of property belonging to another with the intention of permanently depriving the other of the property.

3.4.2 The Board already has procedures in place that reduce the likelihood of fraud occurring. These include Standing Orders, Standing Financial Instructions, documented procedures, a system of internal control and a system of risk assessment. In addition the Board tries to ensure that a risk (and fraud) awareness culture exists in the Trust. It also complies with the on-going requirements of NHS Governance and Controls Assurance programmes that are monitored by both Internal and External Audit.

3.4.3 It is expected that all employees, non-executive directors, volunteers, contractors 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.

4. Public Service Values

4.1 High standards of corporate and personal conduct, based on the recognition that patients come first, have been a requirement throughout the NHS since its inception. 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 judgments on property and professional codes of conduct.
- **Probity** – Absolute honesty and integrity should be exercised in dealing with NHS service users, 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, Trust employees and the public.

All staff should be aware of, and act in accordance with, these values.

5. Trust Policy

- 5.1 All employees have a personal responsibility to protect the assets of the Trust, including all buildings, equipment and monies, from fraud, theft, bribery or any other irregularity.
- 5.2 The Board is absolutely committed to maintaining an honest, open and well-intentioned atmosphere within the Trust. It is, therefore, also committed to the elimination of any fraud within the Trust, to the rigorous investigation of any such allegations and to take appropriate action against wrong doers, including possible criminal prosecution, as well as undertaking steps to recover any assets lost as a result of fraud.
- 5.3 The Board wishes to encourage anyone having reasonable suspicions of fraud to report them. The Trust's policy, which will be rigorously enforced, is that no individual will suffer detrimental treatment as a result of reporting reasonably held suspicions. The Public Interest Disclosure Act 1998 came into force in July 1999 and gives statutory protection, within defined parameters, to staff that make disclosures about a range of subjects, including fraud and bribery, which they believe to be happening within the Trust employing them.
- Within this context, for these purposes "reasonably held suspicions" shall mean any suspicions other than those which are raised maliciously and found to be groundless.
- 5.4 The Trust has produced a Speak Up Policy (formerly 'Whistle Blowing' policy), which is intended to complement the Trust's Counter Fraud and Bribery Policy and Code of Business Conduct. This approach ensures there is full provision for raising concerns with others, if staff do not feel able to raise them with their line manager/management chain.
- 5.5 Any unfounded or malicious allegations will be subject to a full investigation and appropriate disciplinary action undertaken.
- 5.6 Individuals (be they employees, agency staff, locums, contractors or supplier) 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 Chief Finance Officer or the Chief Executive.
- 5.7 The Trust expects anyone having reasonable suspicions of fraud to report them. It recognises that, whilst cases of theft are usually obvious, there may initially only be a suspicion regarding potential fraud and thus, employees must report the matter to the LCFS who will ensure that the Trust's procedures are followed.
- 5.8 All employees should be aware that fraud (of finances of the NHS or of patients in the Trust's care) 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.

5.9 Recovery of any losses will always be sought.

6. Responsibility of the Chief Finance Officer

6.1 The Chief Finance Officer, in conjunction with the Chief Executive, shall monitor and ensure compliance with Clause 43 and Schedule 13 relating to counter fraud in the Standard NHS Contract for Acute Services.

6.2 The Chief Finance Officer will, depending on the outcome of investigations (whether on an interim/on-going or concluding basis) and/or the potential significance of suspicions that have been raised, inform appropriate senior management accordingly.

6.3 The Chief Finance Officer shall inform the Head of Internal Audit at the first opportunity where an issue of fraud and bribery arises. Where deemed to be appropriate, the Chief Finance Officer will delegate to the Trust's LCFS, who has the responsibility for leading the investigation, whilst retaining overall responsibility themselves.

6.4 The LCFS shall be responsible, in discussion with the Chief Finance Officer, for informing third parties such as External Audit or the Police at the earliest opportunity, as circumstances dictate.

6.5 The 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.

6.6 The Chief Finance Officer or the LCFS shall consult and take advice from the Director / Head of Human Resources where a member of staff is to be interviewed or disciplined. Neither the Chief Finance Officer nor the LCFS will conduct a disciplinary investigation; however, the employee may be the subject of a separate investigation by HR

7. Roles and Responsibilities of Employees

7.1 For the purposes of this policy, 'Employees' includes the Trust's staff, Board Members, Executive and Non-Executive Members and Honorary Members to the Board.

7.2 Employees are expected to act in accordance with the Trust's Standards of Business Conduct which will include guidance on the receipt of gifts or hospitality. Employees also have a duty to protect the assets of the Trust, including information and goodwill as well as property.

7.3 Employees are required to declare and register any interests that might potentially conflict with those of the Trust.

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

7.5 The Trust's Standing Financial Instructions and Standing Orders place an obligation on all Trust staff and Non-Executive Directors to act in accordance with best practice. Non-Executive Directors are subject to the same high standards of accountability, and

are required to declare and register any interests that might potentially conflict with those of the Trust.

- 7.6 All budget-holders should hold or have access to a Financial Policies and Procedures Manual to guide them in financial matters, and all Finance staff have a special responsibility to support budget holders and their staff in acting responsibly in the use of their budgets.
- 7.7 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.
- 7.8 When an employee suspects that there has been fraud or bribery, they must report the matter to the nominated LCFS.
- 7.9 Employees must be aware of the offences of bribery as defined by the Bribery Act 2010 which include;
- Bribery of another person (section 1)
 - Accepting a Bribe (section 2)
 - Bribing a Foreign Official (section 6)
 - Failing to Prevent Bribery (section 7)
- 7.10 Staff are responsible for declaring any “conflict of Interest” as defined by 07063 Conflict of Interest Policy
- 7.11 Staff are responsible for routinely checking their pay slips for any overpayment of salary. These will be reconciled in line with the Overpayment & Underpayment Policy

8. Responsibilities of Managers

- 8.1 Managers must be vigilant and ensure that procedures to guard against fraud are followed. They should be alert to the possibility that unusual events or transactions could be symptoms of fraud. The following are some examples of circumstances that *may* indicate fraud and should therefore put people on the alert. This list is not exhaustive:
- Altered documents (correcting fluid, different pen or handwriting);
 - Claim form details not readily checkable
 - Changes in normal patterns, of e.g. cash takings or travel claim details;
 - Text erratic or difficult to read or with details missing
 - Delays in completion or submission of claim forms and the like;
 - Lack of vouchers or receipts in support of expense claims etc.
 - Staff seemingly living beyond their means;
 - Staff under constant financial or other stress;
 - Staff choosing not to take annual leave (and so preventing others becoming involved in their work), especially if solely responsible for a “risk” area;
 - Complaints from public or staff

- Always working late;
- Refusal of promotion;
- New staff not staying long; and
- Insistence on dealing with a particular individual.

- 8.2 Where they have any doubt they must seek advice from their immediate manager (unless they suspect that their manager may be involved), the Chief Finance Officer or the LCFS. They must try to establish an anti-fraud culture within their team and ensure that information on procedures is made available to all their staff.
- 8.3 All cases of theft whether of Trust or patient/visitor property must be reported in accordance with the Risk Management Policy and Serious Untoward Incident Policy. Similarly any case of actual or suspected fraud or bribery must be reported to the LCFS and/or the Chief Finance Officer. A Datix form must be completed for all such events.
- 8.4 Where their staff have access to the Internet, managers need to ensure that any use is appropriate to their job, and any personal use is in accordance with Trust policy. Managers must ensure that there is no inappropriate use. For more information refer to the Trust's Email and Internet Policy.
- 8.5 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.

9. Responsibilities of Local Counter Fraud Specialist (LCFS)

- 9.1 The Secretary of State Directions to NHS Bodies on Counter Fraud Measures (2004) require each NHS Body to appoint an LCFS. This officer's role is to ensure that all cases of actual or suspected fraud are notified to the Trust's Chief Finance Officer and NHS Protect.
- 9.2 Any incident or suspicion should be reported to the Trust's LCFS. The LCFS will liaise with the regional Area Anti-Fraud Specialist and NHS Protect and in conjunction with the Chief Finance Officer will decide who will conduct the investigation and when/if referral to the Police is required.
- 9.3 The LCFS will amongst other duties;
- Ensure the Chief Finance officer is kept apprised of all referrals/cases;
 - Be responsible for the day to day implementation of the seven generic areas of counter fraud and bribery activity and in particular the investigation of all suspicions of fraud;
 - Investigate all cases of fraud, as per 6.2 above;
 - In consultation with the Chief Finance Officer and NHS Protect will report any case to the Police as necessary;
 - Report the outcome of the investigation to NHS Protect and the Chief Finance Officer, as well as statutory reports to the Audit Commission and NHS Executive Regional Office;
 - Update the Audit Committee on a regular basis;
 - Ensure that other internal departments are informed where necessary;
 - Human Resources will be informed where an employee is a suspect;
 - Ensure that the Trust's Incident & Losses reporting system is followed;
 - Ensure that any system weaknesses identified as part of the investigation are followed through with management.

10. Responsibilities of Internal Audit

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

11. Responsibilities of Human Resources

- 11.1 Human Resources managers will liaise with Managers, the Chief Finance Officer and the LCFS, from the outset. Where an employee is suspected of being involved in fraud or bribery Human Resources are responsible for ensuring the appropriate use of the Trust's Disciplinary Procedure.
- 11.2 The Director / Head of Human Resources shall advise those involved in the investigation in matters of employment law and in other procedural matters, such as disciplinary and complaints procedures, as requested.
- 11.3 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.
- 11.4 Human Resources managers must take steps at recruitment to establish, as far as possible, the previous record of potential employees as well as the validity of required qualifications and memberships of professional bodies, in terms of their propriety and integrity. In this regard, temporary and contract employees are treated in the same manner as permanent employees.

12. Information Communication Technology (ICT) Staff Responsibilities

- 12.1 The ICT department will contact the LCFS in all cases where there is suspicion that Trust IT resources are being used for fraudulent purposes. This includes inappropriate Internet or e-mail use, and Human Resources will be informed if there is a suspicion that an employee is involved. Also refer to the Information Security Policy and IT Forensics Policy.

13. Monitoring

- 13.1 The LCFS will hold regular meetings with the Chief Finance Officer to review reported cases of suspected fraud.
- 13.2 The Audit Committee will receive a progress report from the LCFS at each of its meetings which will include a position statement on all reported cases of suspected fraud. Where the LCFS has recommended a change in process or procedure as a result of findings in an investigation the Audit Committee will review and monitor implementation.

14. Communication & Implementation

- 14.1 This policy will be disseminated via the Trust weekly emailed newsletter and will be available to staff on the trust intranet. It is the responsibility of all staff to make sure they have read it.

14.2 The Local Counter Fraud Specialist will provide training to departments on a rotational basis and new starters will be made aware of the policy via the induction process.

15. **References**

15.1 Public Interest Disclosure Act 1998
Fraud Act 2006; and
Theft Act 1968

APPENDIX I

ACTION TO BE TAKEN IF YOU DISCOVER OR SUSPECT ANY FRAUDULENT ACTIVITY This takes account of the Direction by the Secretary of State for Health (November 2004) regarding Counter Fraud measures.

<p>This includes:</p> <p>FRAUD A person must have acted dishonestly and they must have acted with the intent of making a gain for themselves or anyone else, or inflicting a loss (or a risk of loss) on another for any of the following three classes of fraud to have occurred:</p> <ul style="list-style-type: none"> • fraud by false representation; • fraud by failing to disclose information and; • fraud by abuse of position. <p>THEFT A person dishonestly appropriating property belonging to another with the intention of permanently depriving the other of it.</p> <p>BRIBERY Where someone is influenced by bribery, payment or benefit in kind to unreasonably use their position to give some advantage to another.</p> <p>IRREGULARITY</p> <ul style="list-style-type: none"> • e.g.: viewing offensive Internet sites; • viewing of material that may breach the Trust's Equal Opportunity & Harassment Policies; • fraudulently misappropriating Trust time whilst viewing offensive material ;Inappropriate use of the Trusts phones, Mobile phones, Internet and E-mail. 	<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> <p>Local Counter Fraud Specialist:</p> <ul style="list-style-type: none"> • Mark Kidd mark.kidd@rsmuk.com <p>Chief Finance Officer</p> <ul style="list-style-type: none"> • Stephanie Watson (01245 514733) <p>The NHS Fraud and Corruption Reporting Line</p> <ul style="list-style-type: none"> • 0800 028 40 60 (office hours only) <p>If the LCFS or the Chief Finance Officer is implicated then report your suspicions to the Chair or Chief Executive.</p>	<p style="text-align: center;">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. <p style="text-align: center;">DO NOT</p>
	<p>Confidentiality will be maintained and all matters will be dealt with in accordance with the NHS Counter Fraud standards.</p> <p>You will not suffer any recriminations as a result of raising concerns – you have protection under the Public Interest Disclosure Act 1998</p>	<ul style="list-style-type: none"> • <u>Confront the individual(s) with your suspicions;</u> • <u>Try to investigate the matter yourself;</u> • <u>Contact the police directly;</u> • <u>Convey your suspicions to anyone other than those with proper authority as listed;</u> • <u>Do nothing!</u>