

POLICY REF. NO. SABP/EXECUTIVE BOARD/0008

COUNTER FRAUD AND CORRUPTION POLICY

NAME OF POLICY:	Counter Fraud and Corruption Policy
REASON FOR THE POLICY:	To set the Trust Policy on the principles to be adopted in the prevention of fraud and corruption
WHO NEEDS TO KNOW ABOUT IT:	All staff.
DATE APPROVED:	December 2010
VERSION NUMBER:	2.0
APPROVING COMMITTEE:	Executive Board
DATE OF IMPLEMENTATION:	December 2010
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AUTHOR/REVIEWER:	Mary Ellaby/Michele Stacey
DIRECTORATE RESPONSIBLE	Finance and Performance
DISTRIBUTION:	Trustwide

COUNTER FRAUD AND CORRUPTION POLICY

1. INTRODUCTION

The three fundamental public service values underpinning NHS and all public sector work, specified by the NHS Code of Conduct for Boards, are:

Accountability: Everything done by those who work in the organisation must be able to withstand public and parliamentary scrutiny;

Probity: Absolute honesty and integrity should be exercised in dealing with the NHS patients, assets, staff, suppliers and customers;

Openness: The Trust's activities should be sufficiently public and transparent to promote confidence between the organisation and its patients, staff and the public.

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

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

2. POLICY STATEMENT

The Trust is committed to an effective Counter-Fraud & Corruption Policy designed to:-

- encourage prevention;
- promote detection: and
- identify a clear management trail for investigation.

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.

Corruption is defined as the offering, giving, soliciting or acceptance of an inducement, gift, favour, payment or benefit-in-kind which may influence the action of any person.

The Trust's expectation is all staff and board members will lead by example in ensuring adherence to legal requirements, Standing Orders, Standing Financial Instructions, procedures and practices.

The Trust is determined that the culture of the organisation is one of honesty and opposition to fraud and corruption. It is therefore also committed to the elimination of any fraud and corruption within the Trust, and to the rigorous investigation of any such cases

The Trust also expects that individuals and external organisations (e.g. Suppliers, Contractors, Service Providers) that it comes into contact with, will act towards the Trust with integrity.

3. REFERENCES

Arrangements to Counter Fraud and Corruption were initiated in September 1998 and have been embodied in the Secretary of State directions as part of the National Health Service Act 1977. This initiated the setting up of the Counter Fraud and Security Management Service. These arrangements are incorporated as a national requirement in the Trust's Standing Financial Instructions.

To ensure that the Trust acts in a consistent and proper manner in response to suspected fraud & corruption, it has nominated an officer whom staff may contact confidentially if illegal acts are suspected.

The Trust's Counter-Fraud and Corruption Policy is supported by the Counter Fraud and Corruption Procedure SABP/AUDIT/0008 and a number of detailed and inter-related procedures designed to frustrate any attempted fraudulent or corrupt act. These include Standing Financial Instructions (SABP/GOVERNANCE/0002) and the Whistle Blowing Procedure (SABP/EXEC/0023).

The Trust wishes to encourage anyone having reasonable suspicions of fraud to report them. Therefore it is also the Trust's policy in accordance with the Public Interest Disclosure Act 1998, that no employee will suffer in any way as a result of reporting reasonably held suspicions.

The Trust will support concerned employees and protect them from reprisals, and will do everything to guarantee their anonymity. Victimising employees or deterring them from raising a concern about fraud or corruption will be treated as a serious disciplinary matter, as will abusing this process by raising unfounded malicious allegations.

4. LEGAL ACTS/REGULATIONS AND GUIDANCE

LEGAL ACTS

- **Fraud**
The Fraud Act 2006 came into force on 15 January 2007. Offences are also dealt with under the Theft Acts (1968 and 1978) and the Criminal Justice Act (1987).
- **Corruption**
The offence of corruption is dealt with under the Public Bodies Corrupt Practices Act (1989), The Prevention of Corruption Acts (1906) and (1916). To be replaced in April 2011 by the Bribery Act 2010 and the Anti-terrorism, Crime and Security Act 2001
- **Data Protection Act (1998)**
- **The Computer Misuse Act (1990)**
- **Regulation of Investigatory Powers Act 2000**
- **Criminal Procedure and Investigations Act 1996**
- **Public Interest Disclosure Act 1998**
- **Human Rights Act 1998**
- **Police and Criminal Evidence Act 1984**
- **Proceeds of Crime Act 2002**

REGULATIONS AND GUIDANCE

- **Standards of Business Conduct for NHS Staff** - NHS Executive HSG (93)5.
- **Codes of Conduct and Accountability in the NHS** – revised 2004.
- **Trust Standing Orders and Standing Financial Instructions** and supporting policies and procedures including **Whistle Blowing Procedure** (SABP/EXEC/0023).
These are available on the Trust extranet.

PROCEDURE REF. NO. SABP/EXECUTIVE BOARD/

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COUNTER FRAUD AND CORRUPTION PROCEDURE

CONTENTS

	Page
1 SUMMARY	3
2 INTRODUCTION	3
General	
Generic areas of action	
Aims and scope	
3 DEFINITIONS	4
Fraud	
Bribery & Corruption	
Employees	
4 CODES OF CONDUCT	5
5 ROLES AND RESPONSIBILITIES	6
Role of NHS Trust	
Employees	
Managers	
LCFS	
Operational Fraud Managers (OFMs)	
Director of Finance	
Internal and External Audit	
Human Resources	
Information Management and Technology	
6 THE RESPONSE PLAN	11
Reporting fraud or corruption	
Disciplinary action	
Police involvement	
Managing the investigation	
Gathering evidence	
7 THE RECOVERY OF LOSSES TO FRAUD AND CORRUPTION	13
Reporting the results of the investigation	
Action to be taken	
Timescales	
Recording	
APPENDICES	16
Desktop guide	
Referral Form	

FURTHER READING

www.nhsbsa.nhs.uk/fraud

1. SUMMARY

Surrey and Borders Partnership NHS Foundation Trust hereafter referred to as “the Trust” is committed to reducing the level of fraud and corruption within the NHS to an absolute minimum and keeping it at that level, freeing up public resources for better patient care. This procedure has been produced by the Local Counter Fraud Specialist (LCFS) and is intended as a guide for all employees on counter fraud work within the NHS. All genuine suspicions of fraud and corruption can be reported to the LCFS or through the NHS Fraud and Corruption Reporting Line (FCRL) on freephone 0800 028 40 60.

2. INTRODUCTION

General

One of the basic principles of public sector organisations is the proper use of public funds. The majority of people who work in the NHS are honest and professional and they find that fraud committed by a minority is wholly unacceptable as it ultimately leads to a reduction in the resources available for patient care.

The NHS Counter Fraud Service (NHS CFS) is part of the NHS Counter Fraud and Security Management Service, a business unit of the NHS Business Services Authority. It has responsibility for all policy and operational matters relating to the prevention, detection and investigation of fraud and corruption and the management of security in the NHS. All instances where fraud is suspected are properly investigated until their conclusion by staff trained by the NHS CFS. Any investigations will be handled in accordance with the *NHS Counter Fraud and Corruption Manual*.

The Trust does not tolerate fraud and corruption within the NHS. The aim is to eliminate all NHS fraud and corruption as far as possible.

Generic areas of action

The Trust is committed to taking all necessary steps to counter fraud and corruption. To meet its objectives, it has adopted the seven-stage approach developed by the NHS CFS:

- 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 corruption, and
- effective methods of seeking **redress** in respect of money defrauded.

Aims and scope

This procedure relates to all forms of fraud and corruption and is intended to provide direction and help to employees who may identify suspected fraud. It provides a framework for responding to suspicions of fraud, advice and information on various aspects of fraud and implications of an investigation. It is not intended to provide a comprehensive approach to preventing and detecting fraud and corruption. The overall aims of this procedure are to:

- improve the knowledge and understanding of everyone in the Trust, irrespective of their position, about the risk of fraud and corruption within the organisation and its unacceptability
- assist in promoting a climate of openness and a culture and environment where staff feel able to raise concerns sensibly and responsibly
- set out the Trust's responsibilities in terms of the deterrence, prevention, detection and investigation of fraud and corruption
- ensure the appropriate sanctions are considered following an investigation, which may include any or all of the following:
 - criminal prosecution
 - civil prosecution
 - internal/external disciplinary action.

This procedure applies to all employees of the Trust, regardless of position held, as well as consultants, vendors, contractors, and/or any other parties who have a business relationship with the Trust. It will be brought to the attention of all employees and form part of the induction process for new staff.

3 DEFINITIONS

Fraud

The Fraud Act 2006 represents an entirely new way of investigating fraud. It is no longer necessary to prove that a person has been deceived. The focus is now on the dishonest behaviour of the suspect and their intent to make a gain or cause a loss.

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

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

It should be noted that all 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.

Bribery and Corruption

This can be broadly defined as the offering or acceptance of inducements, gifts, favours, payment or benefit-in-kind which may influence the action of any person. Corruption 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.

The new Bribery Act 2010 comes into force in April 2011 and introduces new legislation to combat bribery and corruption including Section 7 which creates a criminal offence of a failure to prevent bribery on the part of commercial organisations and reflects a general recognition that there is an important role to be played by business itself in ensuring that commerce is undertaken in an open and transparent manner. The new law will introduce a clear and robust approach and is intended to encourage commercial organisations to take steps to address the risks of bribery. Section 7 provides a statutory defence to a charge where a commercial organisation can demonstrate that it has put adequate bribery prevention procedures in place.

Section 9 of the Act will provide guidance to commercial organisations on how best to implement bribery prevention measures to best suit their particular circumstances.

Bribery and Corruption prosecutions tend to be most commonly brought using specific pieces of legislation dealing with corruption, i.e. under the following:

- the Public Bodies Corrupt Practices Act 1889
- the Prevention of Corruption Acts 1889–1916 (to be replaced by the Bribery Act 2010)
- the Anti-terrorism, Crime and Security Act 2001.

Employees

For the purposes of this procedure, 'employees' includes the Trust staff, as well as board, executive and non-executive members (including co-opted members) and honorary members.

4 CODES OF CONDUCT

The codes of conduct for NHS boards and NHS managers set out the key public service values. They state that 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. These values are summarised as:

<i>Accountability</i>	Everything done by those who work in the authority must be able to stand the tests of parliamentary scrutiny, public judgements on propriety and professional codes of conduct.
<i>Probity</i>	Absolute honesty and integrity should be exercised in dealing with NHS patients, assets, staff, suppliers and customers.

Openness The health body's activities should be sufficiently public and transparent to promote confidence between the authority and its staff and the public.

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

5 ROLES AND RESPONSIBILITIES

Through our day-to-day work, we are in the best position to recognise any specific risks within our own areas of responsibility. We also have a duty to ensure that those risks – however large or small – are identified and eliminated. Where you believe the opportunity for fraud exists, whether because of poor procedures or oversight, you should report it to your LCFS or the NHS Fraud and Corruption Reporting Line.

This section states the roles and responsibilities of employees and other relevant parties in reporting fraud or other irregularities.

The Trust will take all necessary steps to counter fraud and corruption in accordance with this procedure, the *NHS Counter Fraud and Corruption Manual*, the policy statement 'Applying Appropriate Sanctions Consistently' published by the NHS CFS and any other relevant guidance or advice issued by the NHS CFS.

The Trust will implement the seven generic areas of counter fraud action outlined below. A key element in achieving this is the appointment of an LCFS.

The creation of an anti-fraud culture - The Trust will use Counter Fraud publicity material to persuade those who work in the organisation that fraud and corruption is serious and takes away resources from important services. Such activity will demonstrate that fraud and corruption 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 introduce such measures to minimise the occurrence of fraud and corruption.

Successful prevention of fraud that cannot be deterred - The Trust has policies and procedures in place to reduce the likelihood of fraud and corruption 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 corruption has occurred, the Trust will ensure that any necessary changes to systems and procedures take place immediately to prevent similar incidents from happening in the future.

Prompt detection of fraud which cannot be prevented - The Trust will develop and maintain effective controls to prevent fraud and corruption and to ensure that if it does occur, it will be detected promptly and referred to the LCFS for investigation.

Professional investigation of detected fraud - The LCFS will be professionally trained and accredited to carry out investigations into suspicions of fraud and corruption to the highest standards. In liaison with the NHS CFS, the LCFS will professionally investigate all suspicions of fraud and corruption to prove or disprove the allegation.

Effective sanctions, including appropriate legal action against people committing fraud and corruption - Following the conclusion of an investigation, if there is evidence of fraud, available sanctions will be considered in accordance with the guidance issued by the NHS CFS – ‘Applying Appropriate Sanctions Consistently’. This may include criminal prosecution, civil proceedings and disciplinary action, as well as referral to a professional or regulatory body.

Effective methods for 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 the Trust and the NHS are returned for their proper use.

Role of the Trust

The Trust also 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 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.

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

Employees

The Trust's Standing Orders, Standing Financial Instructions, policies and procedures place an obligation on all employees and non-executive directors to act in accordance with best practice.

Employees are expected to act in accordance with the standards laid down by their professional institutes, where applicable, and have a personal responsibility to ensure that they are familiar with them.

Employees also have a duty to protect the assets of the Trust, including information, goodwill and property.

In addition, all employees have a responsibility to comply with all applicable laws and regulations relating to ethical business behaviour, procurement, personal expenses, conflicts of interest, confidentiality and the acceptance of gifts and hospitality. This means, in addition to maintaining the normal standards of personal honesty and integrity, all employees should always:

- avoid acting in any way that might cause others to allege or suspect them of dishonesty
- behave in a way that would not give cause for others to doubt that the employees deal fairly and impartially with official matters
- be alert to the possibility that others might be attempting to deceive.

All employees have a duty to ensure that public funds are safeguarded, whether or not they are involved with cash or payment systems, receipts or dealing with contractors or suppliers.

If an employee suspects that there has been fraud or corruption, or has seen any suspicious acts or events, they must report the matter to their nominated LCFS (see *LCFS heading below*).

Managers

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

Managers must instil and encourage an anti-fraud and -corruption culture within their team and ensure that information on procedures is made available to all employees. The LCFS will proactively assist the encouragement of an anti-fraud culture by undertaking work that will raise fraud awareness.

All instances of actual or suspected fraud or corruption which come to the attention of a manager must be reported immediately. It is appreciated that some employees will initially raise concerns with their manager. However, in such cases, managers must not attempt to investigate the allegation themselves; they have the clear responsibility to refer the concerns to their nominated LCFS as soon as possible.

Line managers at all levels have a responsibility to ensure that an adequate system of internal control exists within their areas of responsibility and that controls operate effectively. The responsibility for the prevention and detection of fraud and corruption 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 code of business conduct and counter fraud and corruption policy as part of their induction process, paying particular attention to the need for accurate completion of personal records and forms
- ensure that all employees for whom they are accountable are made aware of the requirements of the policy
- assess the types of risk involved in the operations for which they are responsible

- ensure that adequate control measures are put in place to minimise the risks. This must include clear roles and responsibilities, supervisory checks, staff rotation (particularly in key posts), separation of duties wherever possible so that control of a key function is not invested in one individual, and regular reviews, reconciliations and test checks to ensure that control measures continue to operate effectively
- ensure that any use of computers by employees is linked to the performance of their duties within the Trust
- be aware of the Trust 's Counter Fraud Policy 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.

LCFS

The Directions to NHS Bodies on Counter Fraud Measures 2004 outline the actions that should be taken by NHS bodies to ensure that appropriate and adequate provision is made for effective local Counter Fraud work to take place. Under the Directions, the Trust is required to appoint and nominate an LCFS.

While Foundation Trusts are not legally obliged to comply with the Directions, there is a contractual requirement to have adequate arrangements to counter fraud.

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

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.

The LCFS will:

- ensure that the Director of Finance is informed about all referrals/cases
- be responsible for the day-to-day implementation of the seven generic areas of counter fraud and corruption activity and, in particular, the investigation of all suspicions of fraud
- investigate all cases of fraud
- in consultation with the Director of Finance, report any case to the police or NHS CFS as agreed and in accordance with the *NHS Counter Fraud and Corruption Manual*
- report any case and the outcome of the investigation through the NHS CFS's national case management system (CMS)
- ensure that other relevant parties are informed where necessary, e.g. Human Resources (HR) will be informed if an employee is the subject of a referral
- ensure that the Trust's incident and losses reporting systems are followed
- ensure that any system weaknesses identified as part of an investigation are followed up with management and reported to internal audit

- adhere to the Counter Fraud Professional Accreditation Board (CFPAB)'s Principles of Professional Conduct as set out in the *NHS Counter Fraud and Corruption Manual*
- not have responsibility for or be in any way engaged in the management of security for any NHS body
- ensure that the Director of Finance is informed of regional team investigations, including progress updates
- ensure cases are handled appropriately, taking account of best practice and the employment relationship.

Operational Fraud Managers (OFMs)

Each operational fraud manager works as part of the NHS CFS operations directorate, whose key objective is to combat fraud and corruption in the National Health Service. The Trust falls within the remit of the South East Regional Team.

Director of Finance

While Foundation Trusts are not legally obliged to comply with the Directions, there is a contractual requirement to have adequate arrangements to counter fraud. In discussion with the Director of Finance, it has been agreed that, to ensure that the arrangements in place are appropriate, the work at the Trust will continue to be measured against the criteria defined by the Secretary of State Directions.

The Director of Finance, in conjunction with the Chief Executive, monitors and ensures compliance with Secretary of State Directions regarding fraud and corruption. The Director of Finance will, depending on the outcome of investigations (whether on an interim/ongoing or concluding basis) and/or the potential significance of suspicions that have been raised, inform appropriate senior management accordingly.

The LCFS shall be responsible, in discussion with the Director of Finance, for informing third parties such as external audit or the police at the earliest opportunity, as circumstances dictate.

The Director of Finance will inform and consult the Chief Executive in cases where the loss may be above the agreed limit or where the incident may lead to adverse publicity. The Director of Finance will inform the Head of Internal Audit at the first opportunity.

If an investigation is deemed to be appropriate, the Director of Finance will delegate to the Trust's LCFS, who has responsibility for leading the investigation, whilst retaining overall responsibility him/herself.

The Director of Finance or the LCFS will consult and take advice from the head 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.

Internal and external audit

Any incident or suspicion that comes to internal or external audit's attention will be passed immediately to the nominated LCFS. The outcome of the investigation may necessitate further work by internal or external audit to review systems.

Human resources

HR will liaise closely with managers and the LCFS from the outset if an employee is suspected of being involved in fraud and/or corruption, in accordance with agreed liaison protocols. HR staff are responsible for ensuring the appropriate use of the Trust's disciplinary procedure. The HR department will advise those involved in the investigation on matters of employment law and other procedural matters, such as disciplinary and complaints procedures, as requested. Close liaison between the LCFS and HR will be essential to ensure that any parallel sanctions (i.e. criminal, civil and disciplinary sanctions) are applied effectively and in a coordinated manner and that staff are at all times treated in accordance with Trust values.

HR will take steps at the recruitment stage to establish, as far as possible, the previous record of potential employees, as well as the veracity of required qualifications and memberships of professional bodies, in terms of their propriety and integrity. In this regard, temporary and fixed-term contract employees are treated in the same manner as permanent employees.

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. HR will also be informed if there is a suspicion that an employee is involved.

6 THE RESPONSE PLAN

Reporting fraud or corruption

This section outlines the action to be taken if fraud or corruption is discovered or suspected.

If an employee has any of the concerns mentioned in this document, they must inform the nominated LCFS or the Trust's Director of Finance immediately, unless the Director of Finance or LCFS is implicated. If that is the case, they should report it to the Chair or Chief Executive, who will decide on the action to be taken.

Form 1 provides a reminder of the key contacts and a checklist of the actions to follow if fraud and corruption, or other illegal acts, are discovered or suspected. Managers are encouraged to copy this to staff and to place it on staff notice boards in their department.

An employee can contact any executive or non-executive director of the Trust to discuss their concerns if they feel unable, for any reason, to report the matter to the LCFS or Director of Finance.

Employees can also call the NHS Fraud and Corruption Reporting Line on freephone 0800 028 40 60. This provides an easily accessible route for the reporting of genuine suspicions of fraud within or affecting the NHS. It allows NHS staff that are unsure of internal reporting procedures to report their concerns in the strictest confidence. All calls are dealt with by experienced trained staff and any caller who wishes to remain anonymous may do so.

Anonymous letters, telephone calls, etc are occasionally received from individuals who wish to raise matters of concern, but not through official channels. While the suspicions may be erroneous or unsubstantiated, they may also reflect a genuine cause for concern and will always be taken seriously. The LCFS will make sufficient enquiries to establish whether or not there is any foundation to the suspicion that has been raised. If the allegations are found to be malicious, they will also be considered for further investigation to establish their source.

Staff should always be encouraged to report reasonably held suspicions directly to the LCFS. You can do this by filling in the NHS Fraud and Corruption Referral Form (**form 2**) or by contacting the LCFS by telephone or email using the contact details supplied on **form 1**.

The Trust wants all employees to feel confident that they can expose any wrongdoing without any risk to themselves. In accordance with the provisions of the Public Interest Disclosure Act 1998, the Trust has produced a Whistle Blowing Procedure (SABP/EXEC/0023). This procedure is intended to complement the Trust's Counter Fraud and Corruption Policy and code of business conduct and ensures there is full provision for staff to raise any concerns with others if they do not feel able to raise them with their line manager/management chain.

Disciplinary action

The disciplinary procedures of the Trust must be followed if an employee is suspected of being involved in a fraudulent or otherwise illegal act.

It should be noted, however, that the duty to follow disciplinary procedures would not override the need for legal action to be taken (e.g. consideration of criminal action). In the event of doubt, legal statute will prevail.

Police involvement

In accordance with the *NHS Counter Fraud and Corruption Manual*, the Director of Finance, in conjunction with the LCFS, will decide whether or not a case should be referred to the police. Any referral to the police will not prohibit action being taken under the local disciplinary procedures of the Trust.

Managing the investigation

The LCFS, in consultation with the Trust's Director of Finance, will investigate an allegation in accordance with procedures documented in the *NHS Counter Fraud and Corruption Manual* issued by the NHS CFS.

The LCFS must be aware that staff under an investigation that could lead to disciplinary action has the right to be represented at all stages. In certain circumstances, evidence may best be protected by the LCFS recommending to the Trust that the staff member is suspended from duty. The Trust will make a decision based on HR advice on the disciplinary options, which include suspension.

The Trust will follow its disciplinary procedure if there is evidence that an employee has committed an act of fraud or corruption.

Gathering evidence

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

Interviews under caution or to gather evidence will only be carried out by the LCFS, if appropriate, or the investigating police officer in accordance with the Police and Criminal Evidence Act 1984 (PACE). The LCFS will take written statements where necessary.

All employees have a right to be represented at internal disciplinary interviews by a trade union representative or accompanied by a friend, colleague or any other person of their choice, not acting in a legal capacity in connection with the case.

The application of the Counter Fraud and Corruption Policy will at all times be in tandem with all other appropriate Trust policies.

7 RECOVERY OF LOSSES TO FRAUD AND CORRUPTION

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

Redress allows resources that are lost to fraud and corruption to be returned to the NHS for use as intended, for provision of high-quality patient care and services.

Reporting the results of the investigation

The investigation process requires the LCFS to review the systems in operation to determine whether there are any inherent weaknesses. Any such weaknesses identified should be corrected immediately.

If fraud or corruption is found to have occurred, the LCFS should prepare a report for the Director of Finance and the next Trust Audit Committee meeting, setting out the following details:

- the circumstances
- the investigation process
- the estimated loss
- the steps taken to prevent a recurrence
- the steps taken to recover the loss.

This report should also be available to the Trust's board.

Action to be taken

Sections 10 and 11 of the *NHS Counter Fraud and Corruption Manual* provide in-depth details of how sanctions can be applied where fraud and corruption is proven and how redress can be sought. To summarise, local action can be taken to recover money by using the administrative procedures of the Trust or the civil law.

In cases of serious fraud and corruption, it is recommended that parallel sanctions are applied. For example: disciplinary action relating to the status of the employee in the NHS; use of civil law to recover lost funds; and use of criminal law to apply an appropriate criminal penalty upon the individual(s), and/or a possible referral of information and evidence to external bodies – for example, professional bodies – if appropriate.

The NHS CFS can also apply to the courts to make a restraining order or confiscation order under the Proceeds of Crime Act 2002 (POCA). This means that a person's money is taken away from them if it is believed that the person benefited from the crime. It could also include restraining assets during the course of the investigation.

Actions which may be taken when considering seeking redress include:

- no further action
- criminal investigation
- civil recovery
- disciplinary action
- confiscation order under POCA
- recovery sought from ongoing salary payments.

In some cases (taking into consideration all the facts of a case), it may be that the Trust, under guidance from the LCFS and with the approval of the Director of Finance, decides that no further recovery action is taken.

Criminal investigations are primarily used for dealing with any criminal activity. The main purpose is to determine if activity was undertaken with criminal intent. Following such an investigation, it may be necessary to bring this activity to the attention of the criminal courts (magistrates' court and Crown court). Depending on the extent of the loss and the proceedings in the case, it may be suitable for the recovery of losses to be considered under POCA.

The civil recovery route is also available to the Trust if this is cost-effective and desirable for deterrence purposes. This could involve a number of options such as applying through the Small Claims Court and/or recovery through debt collection agencies. Each case needs to be discussed with the Director of Finance to determine the most appropriate action.

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.

Timescales

Action to recover losses should be commenced as soon as practicable after the loss has been identified. Given the various options open to the Trust, it may be necessary for various departments to liaise about the most appropriate option.

Recording

In order to provide assurance that policies were adhered to, the 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.

NHS Fraud and Corruption: :Dos and Don'ts - A Desktop Guide

FRAUD is the dishonest intent to obtain a financial gain from, or cause a financial loss to, a person or party through false representation, failing to disclose information or abuse of position.

CORRUPTION is the deliberate use of bribery or payment of benefit-in-kind to influence an individual to use their position in an unreasonable way to help gain advantage for another.

DO

- **note your concerns**

Record details such as your concerns, names, dates, times, details of conversations and possible witnesses. Time, date and sign your notes.

- **retain evidence**

Retain any evidence that may be destroyed, or make a note and advise your LCFS.

- **report your suspicion**

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

Complete a fraud report and submit in a sealed envelope marked 'Restricted – Management' and 'Confidential' for the personal attention of the LCFS.

If you suspect that fraud against the NHS has taken place, you must report it immediately, by:

- directly contacting the **Local Counter Fraud Specialist**, or
- telephoning the **freephone NHS Fraud and Corruption Reporting Line**, or
- contacting the **Director of Finance**.

DO NOT

- **confront the suspect or convey concerns to anyone other than those authorised, as listed below**

Never attempt to question a suspect yourself; this could alert a fraudster or accuse an innocent person.

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

Never attempt to gather evidence yourself unless it is about to be destroyed; gathering evidence must take into account legal procedures in order for it to be useful. Your LCFS can conduct an investigation in accordance with legislation.

- **be afraid of raising your concerns**

The Public Interest Disclosure Act 1998 protects employees who have reasonable concerns. You will not suffer discrimination or victimisation by following the correct procedures.

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

If so, any information can be passed to the

NHS Fraud and Corruption Reporting Line: 0800 028 40 60

All calls will be treated in confidence and investigated by professionally trained staff

Your nominated Local Counter Fraud Specialists are Michele Stacey and Mary Ellaby who can be contacted by telephoning 01883 383584 mobile numbers 07899 912694 and 07810 653651 or by e-mailing michele.stacey@sabp.nhs.uk or mary.ellaby@sabp.nhs.uk

If you would like further information about the NHS Counter Fraud Service, please visit www.nhsbsa.nhs.uk/fraud

Protecting your NHS

NHS fraud and corruption referral form

All referrals will be treated in confidence and investigated by professionally trained staff

Note: *Referrals should only be made when you can substantiate your suspicions with one or more reliable pieces of information. Anonymous applications are accepted but may delay any investigation.*

1. Date

2. Anonymous application <Delete as appropriate>

Yes (If 'Yes' go to section 6) or No (If 'No' complete sections 3–5)

3. Your name

4. Your organisation/profession

5. Your contact details

6. Suspicion

7. Please provide details including the name, address and date of birth (if known) of the person to whom the allegation relates.

8. Possible useful contacts

9. Please attach any available additional information.

Submit the completed form (in a sealed envelope marked 'Restricted – Management' and 'Confidential') for the personal attention of the LCFS.