

Anti-Fraud and Anti-Bribery Policy

Incorporating the Fraud Response Plan and the Sanctions and Redress commitment

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Anti-Fraud and Anti-Bribery Policy

CONSULTATION SCHEDULE

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1.0	Review of policy against changes to NHS Protect services and responsibility		
2.0	Revised Policy for the six South Staffordshire CCGs		
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4.0			

IMPACT ASSESSMENTS – available upon request

	Stage	Complete	Comments
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Quality Impact Assessment			N/A
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This policy applies to Cannock Chase CCG, East Staffordshire CCG, North Staffordshire CCG, South East Staffordshire & Seisdon Peninsula CCG, Stafford and Surrounds CCG and Stoke-on-Trent CCG.

Where the term CCG is used, this applies to all of the CCGs listed above.

Where the term Staff is used this includes Lay Members, Clinicians and contractors working on behalf of the CCG

1.0 Introduction

- 1.1 Cannock Chase Clinical Commissioning Group, East Staffordshire Clinical Commissioning Group, North Staffordshire Clinical Commissioning Group, South East Staffordshire & Seisdon Peninsular Clinical Commissioning Group, Stafford & Surrounds Clinical Commissioning Group, and Stoke-on-Trent Clinical Commissioning Group (“the CCGs”) are committed to the anti-fraud, bribery and corruption procedures as laid down in this policy.
- 1.2 This document sets out the CCGs’ policy for dealing with detected or suspected fraud, bribery or corruption, and the avoidance of such activity as directed by the [NHS Counter Fraud Authority](#) (“the NHSCFA”).
- 1.3 The policy also includes a response plan, setting out the procedure to be followed when employees or members of the public wish to raise concerns in connection with suspected fraud, bribery or corruption.
- 1.4 The Governing Body of the CCGs wish to encourage anyone having reasonable suspicions of fraud, bribery or corruption to report those suspicions.
- 1.5 The CCGs will ensure that no employee will suffer in any way as a result of reporting reasonably held suspicions of fraud, bribery or corruption. For these purposes “a reasonably held suspicion” shall mean any suspicion other than those which are raised maliciously.
- 1.6 All suspicions of fraud, [bribery and corruption](#) committed against the CCGs will be investigated.
- 1.7 The ultimate aim of the policy is to protect the patients, staff, property, finances and reputation of the CCGs and wider NHS.

2.0 Scope

- 2.1 This policy applies to all employees and members of the CCGs and should also be used by interim staff, agency workers, contractors or suppliers, to report any concerns they may have.
- 2.2 The CCGs will adhere to the [NHSCFA](#) anti-fraud Standards and the NHS Anti-Fraud Manual when investigating cases and seeking to impose sanctions.
- 2.3 The CCGs will make every effort to investigate fully any suspicion of fraud. It is the policy of the CCGs to seek to recover all losses arising from any identified fraud-related activities, and to take such sanctions as are appropriate.
- 2.4 All investigations into fraud, bribery or corruption against the CCGs will be reported to the Chief Finance Officer and to the [NHSCFA](#).

3.0. Definitions

- 3.1 *Fraud* - can be defined as “wrongful or criminal deception intended to result in financial or personal gain, or to cause the loss or risk of loss to another.”

The Fraud Act 2006 includes a number of offences relating to fraudulent and dishonest actions, the main ones being:-

- Fraud by false representation;
- Fraud by failing to disclose information;
- Fraud by abuse of position.

Offences under the Fraud Act carry prison sentences of up to 10 years in addition to heavy fines.

- 3.2 *Bribery* - can be defined as “The offering, giving, receiving, or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his or her public or legal duties”
- 3.3 *Corruption* - can be defined as being “where someone is influenced by bribery, payment or benefit in kind to unreasonably use their position to give some advantage to themselves or to another.”
- 3.4 *The Bribery Act 2010* - includes a number of offences in relation to bribery and corruption. The generic term “corruption” is accommodated into this act. The main offences listed in the Bribery Act 2010 involve:-
 - Offering or paying a bribe;
 - Asking for or receiving a bribe;
 - Bribing a foreign public official;
 - Failing to prevent bribes being paid on behalf of an organisation.

The offences apply to all UK ‘bodies corporate’, which includes all NHS organisations.

- 3.5 The fourth offence is a corporate offence applicable where bribes are paid on behalf of an organisation that has not taken appropriate measures to prevent bribery from occurring. While there are few scenarios within the NHS where this might prove likely, the CCGs and other NHS organisations are nevertheless required to be mindful of the risks that this offence poses.

4.0 Roles & Responsibilities

4.1 All Employees

- 4.1.1 Employees of the CCGs are expected to adhere to the policies and procedures of the Clinical Commissioning Groups and to the Public Service Values (“the Nolan Principles”). All employees also have a duty to protect the assets of the CCGs, including information and goodwill, in addition to property.
- 4.1.2 Employees are expected to act in accordance with the standards laid down by their Professional Institutes, where applicable.
- 4.1.3 The CCGs’ Standing Orders and Standing Financial Instructions place an obligation on all staff, to act in accordance with best practice. In addition, all senior staff, and Governing Body Members must declare and register any interests that might potentially conflict with those of the CCGs or the wider NHS.
- 4.1.4 When an employee suspects that there has been an incident of fraud, bribery or corruption, they must report the matter to the nominated Local Counter Fraud Specialist, or the Chief Finance Officer. (See Section 9.3 below)
- 4.1.5 Under no circumstances should staff attempt to either investigate any instance of actual or suspected fraud, bribery or corruption nor subject any individual(s) to surveillance of any kind.
- 4.1.6 All employees should be aware that failure to gather evidence in an appropriate legal manner may undermine any potential criminal investigation and subsequent prosecution.

4.2 Managers

- 4.2.1 Managers must be vigilant and ensure that procedures to guard against fraud, bribery and corruption are followed. They should be alert to the possibility that unusual events or

transactions could be symptoms of fraud. Where they have any doubt they must seek advice from their nominated Local Counter Fraud Specialist.

4.2.2 They must establish an anti-fraud and corruption culture within their team and ensure that information on procedures is made available to all staff

4.2.3 Managers should make all members of their staff aware of this policy and its contents.

4.3 Chief Finance Officer

4.3.1 The Chief Finance Officer is responsible for the funds of the CCGs.

4.3.2 The Chief Finance Officer will oversee the work of the nominated Local Counter Fraud Specialist for the CCGs, and will liaise and discuss with the nominated Local Counter Fraud Specialist the anti-fraud, bribery and corruption arrangements and any investigations undertaken.

4.3.3 The Chief Finance Officer will liaise with the [NHSCFA](#) with regard to anti-fraud, bribery and corruption arrangements and investigations relating to the CCGs.

4.3.4 The Chief Finance Officer will authorise any prosecution, following discussion with the nominated Local Counter Fraud Specialist and the [NHSCFA](#). When investigations have been referred to the Police or the investigation is in conjunction with the Police, the Crown Prosecution Service will make the decision concerning any prosecution.

4.3.5 The Chief Finance Officer will, depending on the outcome of investigations (whether on an interim/on-going or a concluding basis) and/or the potential significance of suspicions that have been raised, inform the Chair of the CCGs and the Chair of the Audit Committee of cases, when deemed appropriate or necessary.

4.4 Local Counter Fraud Specialist

4.4.1 The nominated Local Counter Fraud Specialist is responsible for delivering all anti-fraud, bribery and corruption arrangements at the CCGs, in accordance with national standards as set by the [NHSCFA](#) and the NHS Anti-Fraud Manual. The LCFS reports directly to the Chief Finance Officer.

4.4.2 The nominated Local Counter Fraud Specialist will work with key colleagues and stakeholders to promote anti-fraud work and effectively respond to system weaknesses.

4.4.3 The LCFS will investigate allegations of fraud, bribery and corruption.

4.5 Internal and External Audit

4.5.1 Internal and external auditors appointed by the CCGs have a duty to pass on any incident or suspicion of fraud, bribery or corruption that they identify as part of an audit, to the nominated Local Counter Fraud Specialist for the CCGs.

4.6 Human Resources (HR)

4.6.1 Human Resources will liaise closely with the nominated Local Counter Fraud Specialist, from the outset where an employee is suspected of being involved in fraud, bribery or corruption. Close liaison between the nominated Local Counter Fraud Specialist and HR is essential to ensure that any parallel sanctions (i.e. criminal and disciplinary) are applied effectively and in a coordinated manner.

5.0 The NHS Counter Fraud Authority

5.1 The NHS Counter Fraud Authority ([NHSCFA](#)) is a special health authority charged with identifying, investigating and preventing fraud and other economic crime within the NHS and the wider health group.

- 5.2 As a special health authority focused entirely on counter fraud work, the NHSCFA is independent from other NHS bodies and directly accountable to the Department of Health and Social Care (DHSC).
- 5.3 The NHS CFA sets the standards that NHS organisations have to follow when tackling crime across NHS funded services.
- 5.4 As well as setting organisational standards, the NHSCFS also sets the standards by which investigators must operate when combating crime within the NHS.
- 5.5 Only NHSCFA accredited Local Counter Fraud Specialists can be nominated by an NHS organisation to undertake their anti-fraud, bribery and corruption activities.

6.0 Local Counter Fraud Specialist

- 6.1 The CCGs will nominate an appropriate and accredited person to act as its Local Counter Fraud Specialist (“LCFS”). The roles and responsibilities of an LCFS are determined by the NHSCFSA and set out within the Anti-Fraud Standards and the NHS Anti-Fraud Manual.
- 6.2 The LCFS will actively promote an anti-fraud, bribery and corruption culture throughout the CCGs.
- 6.3 The LCFS will investigate all cases of fraud, bribery and corruption committed against the CCGs, in line with the NHS Anti-Fraud Manual, NHS Anti-Fraud Standards and mindful of the Data Protection Act 1998, General Data Protection Regulations and relevant criminal legislation.
- 6.4 The LCFS will report to the CCGs’ Chief Finance Officer, Audit Committee and NHS Protect.
- 6.5 The LCFS will produce an anti-fraud, bribery and corruption work plan with the CCGs’ Chief Finance Officer, which will be ratified by the Audit Committee.
- 6.6 The LCFS will attend Audit Committee meetings of the CCGs, to report progress on the annual work plan and raise matters of concern.
- 6.7 The LCFS will regularly liaise with the Chief Finance officer of the CCGs, to discuss matters including any investigations. The LCFS has direct access to the Audit Committee Chair.

7.0 Anti-Bribery Procedures

- 7.1 The guidance accompanying the Bribery Act features a number of principles that apply when considering the risk of bribery and corruption. Being able to demonstrate that these principles have been properly addressed provides some legal defence, should it be proven that bribery has taken place on behalf of the organisation. Although the risk of this occurring in an NHS context is generally considered to be low, the principles form a useful framework for any organisation to demonstrate that it has adequate procedures in place to prevent bribery.
- 7.2 The six principles are:
 - 7.2.1 *Proportionality*
The CCGs must have procedures in place to prevent bribery by persons associated with it. These are proportionate to the bribery risks faced by the organisation and to the nature, scale and complexity of the organisation’s activities. They are also clear, practical, accessible, effectively implemented and enforced.
 - 7.2.2 *Top Level Commitment*
The CCGs’ Accountable Officer and Directors should demonstrate that they are committed to preventing bribery by persons associated with the CCGs. They will foster a culture within the organisation in which bribery is never acceptable.

7.2.3 *Risk Assessment*

There are periodic and documented assessments undertaken of the nature and extent of the CCGs' exposure to potential external and internal risk of bribery on its behalf by persons associated with it is periodically assessed. This includes financial risks but also other risks such as reputational damage.

7.2.4 *Due Diligence*

The CCGs take a proportionate and risk based approach, in respect of persons who perform or will perform services for or on their behalf, in order to mitigate identified bribery risks.

7.2.5 *Communication (including training)*

The CCGs seek to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation, through internal and external communication, including training that is proportionate to the risks it faces.

7.2.6 *Monitoring and Review*

The CCGs will monitor and review that its procedures designed to prevent bribery by persons associated with the CCGs and make improvements to minimise the risk where necessary.

8.0 Prevention Arrangements

8.1 Prevention arrangements are a key part of an organisation's defence against fraud, bribery or corruption. Therefore deterring and preventing dishonesty is a key component in combating internal or external fraud, bribery and corruption.

8.2 Prevention arrangements include revising and strengthening procedures, administrative processes and providing input for review of policies.

8.3 The CCGs need to be aware of system weaknesses that are identified during an investigation. The nominated Local Counter Fraud Specialist and Internal Auditors will advise on the development of procedures to prevent fraud, bribery and corruption when organisational weaknesses have been identified.

9.0 Investigating Procedures and Methods

9.1 All investigations will be undertaken in a professional and objective manner in accordance with the criminal legislation and procedure, the NHSCFA policy and the NHS Fraud and Corruption Manual.

9.2 The nominated Local Counter Fraud Specialist for the CCGs will be allowed access to all CCGs employees, directors, contractors, and providers, as well as to systems, processes, records, data and information, as is necessary, in order to progress any investigation. All information requests will be made in accordance with the relevant sections of the Data Protection Act 1998.

10.0 Conclusion

10.1 All employees of the CCGs have a duty to protect the assets of the NHS.

10.2 All employees should at all times comply with the CCGs' internal control systems and procedures, and report any reasonable suspicions of fraud, bribery, corruption or serious criminal misconduct.

11.0 Equality Impact Assessment

- 11.1 An Equality Impact Assessment must be undertaken to ensure that the policies remain fair and equal. The Equality Impact Assessment Form can be obtained from the Equality and Inclusion Team, Midlands and Lancashire CSU.

12.0 Training

- 12.1 The implementation of this policy will not require staff to undergo any specific training. The CCGs' Governance Team will provide assistance on an individual basis, when required.

13.0 References

The Fraud Act 2006
The Bribery Act 2010
The Nolan Principles
General Data Protection Regulations 2018

14.0 Monitoring and Evaluation

- 14.1 The CCGs will monitor and review that its procedures designed to prevent bribery by persons associated with the CCGs and make improvements to minimise the risk where necessary.

15.0 Review

- 15.1 The policy will be reviewed every three years, or earlier if substantial changes occur to the CCGs, legislation or NHS Counter Fraud Authority.

16.0 Appendices

Appendix A: Fraud Response Plan
Appendix B: Sanctions and Redress commitment

Appendix A; Fraud Response Plan

Investigating Fraud, Bribery and Corruption

A key aspect of an effective anti-fraud, bribery and corruption strategy is the ability to undertake a professional and objective investigation into allegations of fraud, bribery or corruption. Early detection both helps an investigation and will minimise the potential for further loss to the organisation.

ACTION TO TAKE IF YOU SUSPECT FRAUD, BRIBERY OR CORRUPTION

Anyone who encounters behaviour, or finds documents that they suspect may constitute fraud, bribery or corruption, should take the following action:-

You should report your suspicions to the nominated Local Counter Fraud Specialist for the CCGs:-

Neil Mohan Lead Counter Fraud Specialist
Telephone 07843 325993
Email neil.mohan@nhs.net

Alternatively, complete the online referral form which is located on the CCGs' website under the Anti-Fraud Section.

You can also report your concerns to the CCGs' Chief Finance Officer:

Alistair Mulvey Chief Finance Officer
Email Alistair.Mulvey@northstaffsccg.nhs.uk

You can also report your suspicions directly to the NHSCFA via the Fraud and Corruption Reporting Line on 0800 028 4060,

Alternatively, you can report your suspicions directly to the NHSCFA on-line via www.reportnhsfraud.nhs.uk.

All referrals received will be treated in confidence. The Public Interest Disclosure Act 1998 came into force in July 1999 and provides statutory protection, within defined parameters, to staff that make disclosures about a range of concerns, including fraud, bribery or corruption, which they believe to be happening within the organisation employing them.

On no account should anyone seek to investigate suspicions of fraud, bribery or corruption, as this may cause difficulties later.

You should retain any potential evidence and make notes of any issues and concerns immediately.

You should take no further action once suspicions have been raised in accordance with the policy.

During the course of an investigation all relevant legislation will be taken into account.

Appendix B; Sanctions and Redress commitment

Commitment

The Governing Body of the Staffordshire CCGs is committed to taking any available and appropriate action to prevent and deter crime against the CCGs and the wider NHS. To this end, the CCGs will support the investigation of any alleged fraud, bribery or corruption committed within or against any of the Staffordshire CCGs.

The actions that the CCGs will pursue should any of these allegations be proven might entail any combination of criminal, civil and disciplinary sanctions. The CCGs will also support its management in seeking financial redress through any legal means to recover any losses to fraud, bribery and corruption. All legal and appropriate channels will be considered to recover lost monies, both to protect the finances of the NHS and to send a deterrent message.

In promoting their zero tolerance approach to fraud, bribery and corruption and to ensure that valuable resources are safeguarded and used to provide the highest quality health services, the CCGs are committed to:

- The early consideration of all appropriate and proportionate sanctions available during investigations into suspected fraud, bribery or corruption
- Taking any appropriate action to seek financial redress and, where possible;
- Taking all necessary steps to recover losses to fraud, bribery or corruption.

Anybody considering fraud or associated offences against the NHS needs to be aware that criminal proceedings are just one of a range of potential issues they will face when identified. The CCGs will also use to the fullest extent allowable and where appropriate, civil law proceedings and remedies to freeze, identify and recover assets. Disciplinary and regulatory action with professional bodies will also be commenced at the earliest opportunity with a view to removing fraudsters from employment within the NHS.

The CCGs recognise that criminal and disciplinary investigations have different purposes, different standards of proof in determining guilt, are governed by different rules, and have different outcomes. It is not therefore appropriate for one process to cover both types of investigation; rather, they will be conducted separately and by different people. The LCFS does not conduct disciplinary investigations.

Disciplinary Sanctions

The CCGs will decide on the appropriate disciplinary action, in accordance with the applicable legislation and policies, in instances when fraud, bribery or corruption has taken place involving an employee.

There will be instances when it is appropriate to pursue more than one course of action at the same time e.g. a criminal investigation and a disciplinary investigation. In such instances close liaison must exist between those investigating criminal and disciplinary matters.

Criminal action should take precedence over disciplinary action. However, care must be exercised as criminal investigations and prosecutions can take much longer to complete and the CCGs should

avoid being in a position where they are paying for a member of staff to be suspended whilst awaiting a criminal trial.

Close liaison must exist between those investigating criminal and disciplinary matters. In situations where an investigation impacts on another the matter will be referred to the CCGs' Chief Finance Officer to consider the advice from each investigator and to agree which investigation takes priority.

Obtaining financial redress

The CCGs are committed to take all necessary steps to recover any monies which have been lost as a result of fraud, bribery or corruption. Such steps will include consideration being given to obtaining voluntary repayment, negotiated settlements, obtaining compensation upon conviction (if applicable), or commencing civil proceedings under Part 5 of the Proceeds of Crime Act 2002.

The Chief Finance Officer will consider the recovery options available and authorise the appropriate recovery action, dependent on the circumstances.

If, during an investigation, there is evidence to show that monies or other assets have been fraudulently misappropriated, it may be appropriate that applications need to be made to the civil courts for injunctive relief (e.g. freezing orders, restraint orders, or search orders) to preserve the proceeds of the fraud.

Decisions regarding the most appropriate and proportionate method of recovering monies lost to fraud, bribery or corruption will be made following consultation between the Executive Director of Finance, the LCFS, the NHSCFA, the police, and the CCGs' legal advisers (where appropriate).

It is the responsibility of the Chief Finance Officer to ensure a record of all recoveries including any awards of compensation and costs, is maintained.

For employees, recovery can be obtained via the payroll until the debt is repaid. The employee will be formally contacted confirming the amount of debt and a reasonable proposal will be made for recovery. An agreement will be sought with the employee to ensure that recovery is made in the shortest possible time.

Where an employee is in the process of leaving or being dismissed, they will be formally advised that the necessary recovery will be actioned via their final salary payment. Where the available funds are insufficient, the employee will be advised of the outstanding amount and inviting a proposal to pay. Should the employee not respond, or their proposal is deemed to be unacceptable, a formal demand for repayment will be made. This letter will be sent by "Recorded Delivery". Should this demand be ignored, the employee will be sent a third and final letter, again by "Recorded Delivery", advising them that the CCG will consider legal action through the Civil Court process in order to secure the recovery.

In circumstances of an employee leaving or being dismissed (either on criminal conviction or as a consequence of any disciplinary process), and where they are a member of the NHS Pension Scheme and the monies owing to the CCG are greater than any recoverable amount from a final payroll payment, an application may be made to recover the outstanding amount from their pension scheme account under Part T5 of the National Health Service Pension Scheme Regulations 1995 or Chapter 2J.6 of the National Health Service Pension Scheme Regulations 2008. The employee will be notified of any such application.

For external bodies or NHS contractors, recovery procedures will be commenced initially via formal contact. They will be advised of the debt and inviting them to submit a proposal to repay. Should they not respond, or their proposal is deemed to be unacceptable, they will be contacted with a formal demand for the money. This letter will be sent by "Recorded Delivery". Should this demand be ignored, the external body or contractor will be sent a third and final letter again by "Recorded

Delivery” advising them that the CCGs will consider legal action through the Civil Court process in order to secure the required recovery.

In any instances concerning the need for civil recovery proceedings to be commenced, the Chief Finance Officer will seek legal advice. Costs associated with the recovery will be included in the claim submitted to the Court. For employees, ex-employees, external bodies or NHS contractors, if following a conviction, the court awards compensation and / or costs, the action will be awarded from and collected by the court.

The LCFS will notify the Finance team of the award and the expected payment terms. Where the payment from the court does not materialise after a period not exceeding three months, the LCFS should be notified by the Finance Department. The LCFS will be responsible for following the matter up with the relevant court.

If during the course of an investigation it is identified that the CCGs have suffered a significant financial loss, the LCFS will promptly notify the Executive Director of Finance.