

Document level: Trustwide (TW)
Code: CG1
Issue number: 7

Anti-Fraud, Bribery and Corruption Policy

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Type of document	Policy
Target audience	All CWP staff - CWP NEDs and CWP Governors
Document purpose	A guide for all employees, contractors, consultants, vendors and other internal and external stakeholders who have a professional or business relationship with the Trust, on what fraud, bribery and corruption are in the NHS; what everyone's responsibility is to prevent fraud, bribery and corruption; and also how to report concerns and/or suspicions with the intention of reducing fraud to a minimum within the Trust.

Approving meeting	Audit Committee	Date 12-Jan-21
Implementation date	12-Jan-21	

CWP documents to be read in conjunction with	
HR6 HR3.8 HR3.3 CGM	Mandatory Employee Learning (MEL) Policy How to raise and escalate concerns within work (incorporating whistleblowing) policy Trust disciplinary policy and procedure Corporate Governance Manual, including: <ul style="list-style-type: none"> • Code of Conduct for NHS Managers • Managing Conflicts of Interest in the NHS Policy Trust Standing Financial Instructions, Standing Orders and the Scheme of Delegation

Document change history

What is different?	<ol style="list-style-type: none"> 1. External references updated 2. All references to 'NHS Anti-Fraud and Corruption Manual' replaced with 'NHS counter fraud manual' 3. All references to 'Director of Finance' replaced with 'Director of Business and Value' and 'DoF' replaced with 'DoBV' 4. All references to NHSCFA's strategy 'Tackling crime against the NHS: A strategic approach' replaced with 'Leading the fight against NHS fraud: Organisational Strategy 2017-2020' 5. Section 1.1 Objectives updated 6. Section 2.1 NHS Counter Fraud Authority (NHSCFA) updated 7. Section 2.2 Counter Fraud Standards inserted 8. Section 2.3 Fraud updated 9. Section 2.4 Bribery and Corruption updated 10. Section 4.1 Board/ Audit Committee updated 11. Section 4.6 Anti-Fraud Specialist updated 12. Section 4.7 NHS Counter Fraud Authority (NHSCFA) updated 13. Section 5.1 Reporting Fraud, Bribery or Corruption updated 14. Section 5.2 Disciplinary Action inserted 15. Section 5.5 Evidence Gathering updated 16. Section 5.6 Reporting the Results of the Investigation updated
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	<p>17. Section 5.7 Sanctions and Redress updated</p> <p>18. Section 7 Consultation updated</p> <p>19. Appendix A Desktop Guide updated</p> <p>20. All references to NHSCFA's strategy 'Leading the fight against NHS fraud: Organisational Strategy 2017-2020' replaced with 'NHSCFA Strategy 2020-23'</p> <p>21. External references updated</p> <p>22. Section 2.1 NHS Counter Fraud Authority (NHSCFA) renamed NHS Counter Fraud Authority (NHSCFA) / NHS Counter Fraud Strategy and updated</p> <p>23. Section 2.2 Counter Fraud Standards renamed Government Functional Standard GovS 013: Counter Fraud (NHS Requirements) and updated</p>
Appendices / electronic forms	Yes
What is the impact of change?	Document is up to date

Training requirements	No - Training requirements for this policy are in accordance with the CWP Training Needs Analysis (TNA) with Education CWP.
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Document consultation	
Clinical Services	N/A
Corporate services	MIAA team
External agencies	Who within this service have you spoken to

Financial resource implications	None
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External references
<ul style="list-style-type: none"> • Bribery Act 2010, c.23 [online]. Available at: http://www.legislation.gov.uk/ukpga/2010/23/contents • Fraud Act 2006, c.35 [online]. Available at: http://www.legislation.gov.uk/ukpga/2006/35/contents • Home Office (2016) Bribery and corruption assessment template [online]. Available at: https://www.gov.uk/government/publications/bribery-and-corruption-assessment-template • Ministry of Justice The Bribery Act 2010 Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing (section 9 of the Bribery Act 2010) [online]. Available at: https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf • NHS Business Services Authority (2004) Code of Conduct and Accountability for NHS Boards [online]. Available at: https://www.nhsbsa.nhs.uk/our-policies/governance-framework • NHS Counter Fraud Authority (2021) NHSCFA Strategy 2020-23 [online]. Available at: https://cfa.nhs.uk/about-nhscfa/corporate-publications • NHS Counter Fraud Authority Government Functional Standard 013 [online]. Available at: https://cfa.nhs.uk/government-functional-standard • NHS Counter Fraud Authority (2017) NHS counter fraud manual [online]. Not publicly available • NHS England (2017) Managing Conflicts of Interest in the NHS guidance for staff and organisations [online]. Available at: https://www.england.nhs.uk/publication/managing-conflicts-of-interest-in-the-nhs-guidance-for-staff-and-organisations/ • NHS England (2018) NHS Standard Contract [online]. Available at: https://www.england.nhs.uk/nhs-standard-contract/ • NHS Improvement and NHS England (2016) Freedom to speak up: raising concerns policy for the NHS [online]. Available at: https://improvement.nhs.uk/resources/freedom-to-speak-up-whistleblowing-policy-for-the-nhs/ • NHS Protect (2013) Applying appropriate sanctions consistently [online]. Available at: https://cfa.nhs.uk/fraud-prevention/fraud-guidance

- NHS Protect (2016) Investigation case file toolkit [online]. Not publicly available
- NHS Protect (2013) Parallel criminal and disciplinary investigations [online]. Not publicly available
- Public Interest Disclosure Act 1998, c.23 [online]. Available at: <http://www.legislation.gov.uk/ukpga/1998/23/contents>

Equality Impact Assessment (EIA) - Initial assessment	Yes/No	Comments
Does this document affect one group less or more favourably than another on the basis of:		
- Race	No	
- Ethnic origins (including gypsies and travellers)	No	
- Nationality	No	
- Gender	No	
- Culture	No	
- Religion or belief	No	
- Sexual orientation including lesbian, gay and bisexual people	No	
- Age	No	
- Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
Is there any evidence that some groups are affected differently?	No	
If you have identified potential discrimination, are there any exceptions valid, legal and/or justifiable? N/A		
Is the impact of the document likely to be negative?	No	
- If so can the impact be avoided?	N/A	
- What alternatives are there to achieving the document without the impact?	N/A	
- Can we reduce the impact by taking different action?	N/A	
Where an adverse or negative impact on equality group(s) has been identified during the initial screening process a full EIA assessment should be conducted.		
If you have identified a potential discriminatory impact of this procedural document, please refer it to the human resource department together with any suggestions as to the action required to avoid / reduce this impact. For advice in respect of answering the above questions, please contact the human resource department.		
Was a full impact assessment required?	No	
What is the level of impact?	Low	

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1. Introduction

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, bribery and corruption committed by a minority is wholly unacceptable as it ultimately leads to a reduction in the resources available for patient care.

Cheshire and Wirral Partnership NHS Foundation Trust ('the Trust') is committed to reducing the level of fraud, bribery and corruption within the NHS to an absolute minimum and keeping it at that level, freeing up public resources for better patient care. The Trust does not tolerate fraud, bribery or corruption and aims to eliminate all such activity as far as possible.

The Trust wishes to encourage anyone having reasonable suspicions of fraud, bribery or corruption to report them. For the purposes of this policy "reasonably held suspicions" shall mean any suspicions other than those which are totally groundless (and/or raised maliciously).

It is the Trust's policy that no employee will suffer in any way as a result of reporting these suspicions. All members of staff can therefore be confident that they will not suffer in any way as a result of reporting reasonably held suspicions. This protection is given under the Public Interest Disclosure Act 1998 that the Trust is obliged to comply with.

The Trust will take all necessary steps to counter fraud, bribery and corruption in accordance with this policy, the NHS counter fraud manual, the policy statement 'Applying Appropriate Sanctions Consistently' published by the NHS Counter Fraud Authority (NHSCFA), formerly NHS Protect, and in line with the NHSCFA's strategy 'NHSCFA Strategy 2020-23' plus any other relevant guidance or advice issued by the NHSCFA. The Trust will seek the appropriate disciplinary, regulatory, civil and criminal sanctions against fraudsters and where possible will attempt to recover losses.

Each Trust is required to appoint its own dedicated Anti-Fraud Specialist (AFS) who is accredited by the NHSCFA and accountable to them professionally for the completion of a range of preventative anti-fraud, bribery and corruption work, as well as for undertaking any necessary investigations. Locally, the AFS is accountable on a day-to-day basis to the Trust's Director of Business and Value and also reports, periodically, to the Trust Audit Committee.

All instances where fraud, bribery and corruption are suspected are thoroughly investigated by staff trained by the NHSCFA. Any investigations will be handled in accordance with the NHS counter fraud manual.

[NB. For staff awareness, theft issues are usually dealt with by the Local Security Management Specialist (LSMS), not the AFS. However, the AFS will be mindful of any potential criminality identified in the course of any investigation and will, with the agreement of the Director of Business and Value, notify the appropriate investigating authority].

1.1 Objectives

The Trust is committed to taking all necessary steps to counter fraud, bribery and corruption.

Under the NHS Standards Contract (implemented on 1st April 2012), all organisations providing NHS services are required to put in place appropriate anti-fraud management arrangements. The NHSCFA unified approach to tackling fraud and economic crime against the NHS ('NHSCFA Strategy 2020-23') is guided by four strategic objectives:

- To lead and influence the NHS to find, prevent, and reduce fraud, recovering losses and putting money back into patient care
- To work with partners to reduce fraud loss in the NHS

- To support and empower its people to be the best in their roles and feel valued
- To effectively use its resources, identify and pursue opportunities for growth and innovation and reduce its operating costs

1.2 Scope

This policy has been produced by the Trust's AFS and is intended to provide a guide for all employees [regardless of position], contractors, consultants, vendors and other internal and external stakeholders who have a professional or business relationship with the Trust, on what fraud, bribery and corruption are in the NHS; what everyone's responsibility is to prevent fraud, bribery and corruption; and also how to report concerns and/or suspicions with the intention of reducing fraud to a minimum within the Trust.

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

2. Definitions

The definitions applicable to this policy are as follows:

2.1 NHS Counter Fraud Authority (NHSCFA) / NHS Counter Fraud Strategy

The NHS Counter Fraud Authority (NHSCFA) is a special health authority which has the responsibility for the detection, investigation and prevention of fraud and economic crime within the NHS. Its aim is to lead the fight against fraud affecting the NHS and wider health service, by using intelligence to understand the nature of fraud risks, investigate serious and complex fraud, reduce its impact and drive forward improvements.

The NHSCFA also maintains a national NHS counter fraud strategy which sets out the strategic approach and direction, key challenges and opportunities, and the key objectives identified for tackling fraud, bribery and corruption in the NHS. The Trust's local approach to tackling fraud, bribery and corruption, through the work of the Anti-Fraud Specialist, organisational resources and the annual risk-assessed anti-fraud, bribery and corruption work plan, fully acknowledges and aligns itself to the key objectives set out in the national strategy.

2.2 Government Functional Standard GovS 013: Counter Fraud (NHS Requirements)

A requirement in the NHS standard contract is that providers and commissioners of NHS services must take the necessary action to comply with the NHSCFA's counter fraud standards. Others should have due regard to the standards. The contract places a requirement on providers and commissioners to have policies, procedures and processes in place to combat fraud, bribery and corruption to ensure compliance with the standards. The NHSCFA carries out regular assessments of health organisations in line with the counter fraud standards.

2.3 Fraud

The Fraud Act 2006 created a general offence of fraud and introduced three ways of committing it. Fraud can broadly be defined as follows:

Fraud is a criminal deception committed by a person who acts in a false and dishonest way intended to result in financial or personal gain to them self or loss to another.

The Fraud Act, which came into effect on the 15 January 2007, introduced an entirely new way of investigating and prosecuting fraud. Previously, the word 'fraud' was an umbrella term used to cover a variety of criminal offences falling under various legislative acts. It is no longer necessary to prove that a person has been deceived, or for fraud to be successful. The focus is now on the dishonest behaviour of the suspect and their intent to make a gain for themselves or another; to cause a loss to another; or, expose another to a risk of loss.

The offence of fraud can be committed in three ways:

- **Fraud by false representation (s.2)** – a person dishonestly makes a false representation, and intends, by making the representation – to make a gain for them self or another, or to cause loss to another or to expose another to a risk of loss, e.g. employee lying on a timesheet about hours worked;
- **Fraud by failing to disclose (s.3)** – a person fails to disclose to another person information which s/he is under a legal duty to disclose, and intends, by failing to disclose the information – to make a gain for them self or another, or to cause loss to another or to expose another to a risk of loss, e.g. employee not disclosing a criminal conviction to an employer; and
- **Fraud by abuse of position (s.4)** – a person occupies a position in which s/he is expected to safeguard, or not to act against, the financial interests of another person, dishonestly abuses that position, and intends, by means of the abuse of that position – to make a gain for them self or another, or to cause loss to another or to expose another to a risk of loss, e.g. company director manipulating company accounts to channel monies to personal bank account.

It should be noted that all offences under the Fraud Act 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.

The maximum penalty for offences under the Fraud Act is twelve months' imprisonment and/ or a fine on summary conviction and ten years' imprisonment and/ or a fine on conviction on indictment.

2.4 Bribery and Corruption

The Bribery Act 2010 came into effect on the 1 July 2011 to provide an effective legal framework to combat bribery in the public and private sectors. The Bribery Act replaced the complex system of offences under common law and in the Prevention of Corruption Acts 1889 to 1916. Bribery is generally defined as follows:

Bribery is an inducement or reward offered, promised or provided to someone to perform a relevant function or activity improperly in order to gain a personal, commercial, regulatory and/ or contractual advantage, on behalf of oneself or another.

The offence of bribery can be committed in two main ways:

- **Bribing another person (s.1):-**

- a person offers, promises or gives a financial or other advantage to another person, and intends the advantage to induce a person to perform improperly a relevant function or activity, or to reward a person for the improper performance of such a function or activity; or
- a person offers, promises or gives a financial or other advantage to another person, and knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity
- **Request, agree to receive or accept a bribe (s.2):-**
 - a person requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by them self or another person); or
 - a person requests, agrees to receive or accepts a financial or other advantage, and the request, agreement or acceptance itself constitutes the improper performance by them self of a relevant function or activity; or
 - a person requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by them self or another person) of a relevant function or activity; or
 - where, in anticipation of or in consequence of them self requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly by them self, or by another person at his/ her request or with his/ her assent or acquiescence

The Bribery Act also introduced a corporate offence:

- **Failure of commercial organisations to prevent bribery (s.7):-**
 - a relevant commercial organisation is guilty of an offence under this section if a person associated with it bribes another person intending, to obtain or retain business for the organisation, or to obtain or retain an advantage in the conduct of the business for the organisation; but
 - it is a defence for the organisation to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct

It should be noted that the corporate offence (s.7) is not a stand-alone offence, but always follows from a bribery offence committed by an individual associated with the relevant commercial organisation in question. The Trust is classed as a commercial organisation for the purposes of the Act. The Trust may avoid conviction if it can show that it had adequate procedures in place to prevent bribery. The maximum penalty for a section 7 offence under the Bribery Act is an unlimited fine.

The maximum penalty for other offences under the Bribery Act is twelve months' imprisonment and/ or a fine of up to £5,000 on summary conviction and ten years' imprisonment and/ or an unlimited fine on conviction on indictment.

Corruption is generally considered to be an "umbrella" term covering such various activities as bribery, corrupt preferential treatment, kickbacks, cronyism, theft or embezzlement.

Examples of bribery in an NHS context could be a contractor attempting to influence a procurement decision-maker by giving them an extra benefit or gift as part of a tender exercise; or, a medical or

pharmaceutical company providing holidays or other excessive hospitality to a clinician in order to influence them to persuade their Trust to purchase that company's particular clinical supplies.

A bribe does not have to be in cash; it may be the awarding of a contract, the provision of gifts, hospitality, sponsorship, the promise of work or some other benefit. The persons making and receiving the bribe may be acting on behalf of others – under the Bribery Act, all parties involved may be prosecuted for a bribery offence.

All staff are reminded to ensure that they are transparent in respect of recording any gifts, hospitality or sponsorship and they should refer to the Trust's separate policy, the Managing Conflicts of Interest in the NHS Policy, covering:

- Acceptance of Gifts and Hospitality
- Declaration of Interests
- Sponsorship

The Bribery Act is also extra-territorial in nature. This means that anyone involved in bribery activity overseas may be liable to prosecution in the UK if the bribe is in respect of any UK activity, contract or organisation. To this end, the Bribery Act also includes an offence of **bribing a foreign public official (s.6)**.

Under section 14 of the Bribery Act, a senior officer of the organisation (e.g. a Senior Manager, an Executive or Non-Executive Director) would also be liable for prosecution if they consented to or connived in a bribery offence carried out by another. Under such circumstances, the senior officer may be prosecuted for a parallel offence to that brought against the primary perpetrator.

The Bribery Act is applicable to the Trust and applies to (and can be triggered by) everyone "associated" with it, including those who performs services for it, or on its behalf, or who provides it with goods. This includes those who work for and with the Trust, such as employees, agents, subsidiaries, contractors and suppliers (regardless of whether they are incorporated or not). The term 'associated persons' has an intentionally wide interpretation under the Bribery Act 2010.

The Trust adopts a 'zero tolerance' attitude towards bribery and does not, and will not, pay or accept bribes or offers of inducement to or from anyone, for any purpose. The Trust has conducted risk assessments in line with Ministry of Justice guidance to assess how bribery and corruption may affect the organisation. The Trust is fully committed to the objective of preventing bribery and will ensure that adequate procedures, which are proportionate to its risks, are in place to prevent bribery and which will be regularly reviewed. The Trust will, in conjunction with the NHSCFA, seek to obtain the strongest penalties – including criminal prosecution, disciplinary and/or civil sanctions – against anyone associated with the Trust who is found to be involved in any bribery or corruption activities.

All NHS bodies including private providers, commissioners and trusts should refer to the Home Office's bribery and corruption assessment template in order to assess their response to bribery and corruption.

3. 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:

Accountability – 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.

Probity – 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, and those who work on behalf of the Trust, should be aware of and act in accordance with these values. In addition they are expected to:

- Act impartially in all their work;
- Refuse gifts, benefits, hospitality or sponsorship of any kind that might reasonably be seen to compromise their judgement or integrity; and, to avoid seeking to exert influence to obtain preferential consideration. All such gifts should be returned and hospitality refused;
- Declare and register gifts, benefits or sponsorship of any kind, in accordance with limits agreed locally, whether refused or accepted;
- Declare and record financial, non-financial or personal interest (e.g. company shares, research grant) in any organisation with which they have to deal, and be prepared to withdraw from those dealings if required, thereby ensuring that their professional judgement is not influenced by such considerations;
- Make it a matter of policy that offers of sponsorship that could possibly breach the Code be reported to the Board;
- Not misuse their official position or information acquired in the course of their official duties, to further their private interests or those of others;
- Ensure professional registration (if applicable) and/or status are not used in the promotion of commercial products or services;
- Beware of bias generated through sponsorship, where this might impinge on professional judgement or impartiality; and
- Neither agree to practice under any conditions which compromise professional independence or judgement, nor impose such conditions on other professionals.

The Trust has detailed policies and procedures in place in relation to declarations of interest, gifts, hospitality and sponsorship, as well as accompanying registers to be completed. These can be found on the Trust's intranet.

All staff are reminded that every NHS employee, regardless of position or status, must comply with the Managing Conflicts of Interest in the NHS Policy.

Relevant personnel are also reminded that their professional bodies will also have codes of conduct or standards of behaviour which they will be expected to adhere to.

4. Roles and Responsibilities

Through day-to-day work, staff are in the best position to recognise any specific risks within their own areas of responsibility. Staff also have a duty to ensure that those risks – however large or small – are

identified and eliminated. Where staff believe the opportunity for fraud, bribery or corruption exists, whether because of poor procedures or oversight, they should report it to the AFS or the NHS Fraud and Corruption Reporting Line and/or online fraud reporting form.

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

4.1 Board / Audit Committee

The Trust has a duty to ensure that it provides a secure environment in which to work, and one where people are confident to raise concerns without worrying that it will reflect badly on them. This extends to ensuring that staff feel protected when carrying out their official duties and are not placed in a vulnerable position. If staff 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 Board and Audit Committee has a duty to provide adequate governance and oversight of the Trust to ensure that its funds, people and assets are adequately protected against criminal activity, including fraud, bribery and corruption.

The Board will provide clear and demonstrable support and strategic direction for counter fraud, bribery and corruption work.

The Board will review the proactive management, control and the evaluation of counter fraud, bribery and corruption work.

The Board will scrutinise NHSCFA assessment reports, where applicable, and ensure that the recommendations are fully actioned.

The Audit Committee will review, approve and monitor counter fraud work plans.

The Audit Committee will receive regular updates on counter fraud activity.

The Audit Committee will monitor the implementation of action plans.

The Audit Committee will provide direct access and liaison with those responsible for counter fraud.

The Audit Committee will review annual reports on counter fraud.

The Audit Committee will discuss NHSCFA quality assessment reports.

4.2 Chief Executive

The Trust's Chief Executive, as the organisation's accountable officer, has overall responsibility for securing funds, assets and resources entrusted to it, including instances of fraud, bribery and corruption.

The Chief Executive must ensure adequate policies and procedures are in place to protect the Trust and the public funds it receives. However, responsibility for the operation and maintenance of controls falls directly to line managers and requires the involvement of all of Trust employees. The Trust therefore has a duty to ensure employees who are involved in or who are managing internal control systems receive adequate training and support in order to carry out their responsibilities.

4.3 Director of Business and Value

The Director of Business and Value [DoBV], in conjunction with the Chief Executive, monitors and ensures compliance with the Trust's contractual requirements regarding fraud, bribery and corruption.

The DoBV has powers to approve financial transactions initiated by directorates across the Trust.

The DoBV prepares, documents and maintains detailed financial procedures and systems; and applies the principles of separation of duties and internal checks to supplement those procedures and systems.

The DoBV will report annually to the Board on the adequacy of internal financial controls and risk management as part of the Board's overall responsibility to prepare a statement of internal control for inclusion in the Trust's annual report.

The DoBV 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.

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

The DoBV will inform and consult the Chief Executive in cases where the loss or where the incident may lead to adverse publicity.

If an investigation is deemed to be appropriate, the DoBV will delegate responsibility for leading the investigation to the Trust's AFS, whilst retaining overall responsibility them self.

The DoBV or the AFS will consult and take advice from the Director of People and Organisational Development if a member of staff is to be interviewed, suspended or disciplined. The DoBV or AFS will not conduct a disciplinary investigation but the employee may be the subject of a separate investigation under the Trust's Disciplinary Procedure.

4.4 Managers

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

Managers must instil and encourage an anti-fraud, bribery and corruption culture within their team and ensure that information on procedures is made available to all employees. The desktop guide [Appendix A] provides a reminder of the key contacts and a checklist of the actions to follow if fraud, bribery 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.

The AFS will proactively assist the encouragement of an anti-fraud, bribery and corruption culture by undertaking work that will raise fraud awareness.

All instances of actual or suspected fraud, bribery and 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 the AFS 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, bribery 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 Anti-Fraud, Bribery 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 anti-fraud, bribery and corruption 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; and
- 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 and Social Care Accounting Officer's overall statements of accountability and internal control.

4.5 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 and property.

In addition, all employees have a responsibility to comply with all applicable laws, regulations and Trust policies 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 Trust's employees deal fairly and impartially with official matters; and
- 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, managing budgets or dealing with contractors or suppliers.

If an employee suspects that there has been fraud, bribery or corruption, or has seen any suspicious acts or events, they must report the matter to the nominated AFS.

The Trust's AFS service is provided under contract by Mersey Internal Audit Agency (MIAA), an NHS agency. The Trust's nominated AFS is **Phillip Leong**.

4.6 Anti-Fraud Specialist (AFS)

The AFS is operationally accountable to the Trust's Director of Business and Value and reports on the progress of all anti-fraud, bribery and corruption activity to the Trust Audit Committee. The AFS is responsible for taking forward all anti-fraud work locally in accordance with national standards and regularly reports to the Director of Business and Value on the progress of the investigation and if/when referral to the police is required.

The adherence to national standards is important in ensuring that the Trust has appropriate anti-fraud, bribery and corruption arrangements in place and the AFS will look to achieve the highest standards possible in their work.

The AFS liaises with several key stakeholders and key contacts across the Trust to promote and maintain an anti-fraud, bribery and corruption culture, apply effective preventative measures and investigate allegations of fraud, bribery and corruption.

The role and responsibilities of the AFS are clearly defined within the NHS counter fraud manual. The AFS will:

- conduct risk assessments in relation to their work to prevent fraud, bribery and corruption;
- ensure that the Director of Business and Value is informed about all referrals/cases and approves any necessary investigation activity;
- conduct investigations in respect to all alleged fraud, bribery and corruption in accordance with the NHS counter fraud manual, Investigations Toolkit, NHS Standards for Providers and relevant criminal law;
- gather and take control of any physical evidence, and record this in accordance with the procedures outlined in the NHS counter fraud manual. If evidence consists of several items, such as many documents, the AFS 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.
- carry out interviews under caution in accordance with the Police and Criminal Evidence Act 1984 (PACE). The AFS will take written statements where necessary;
- report the outcome of the investigation through to the Director of Business and Value, setting out the circumstances, the investigation process, the estimated loss, the recommended action to suitably discharge the investigation and the recommended action to prevent a recurrence;
- report the outcome of the investigation through the Audit Committee;
- in consultation with the Director of Business and Value, report any cases to the NHSCFA as agreed and in accordance with the NHS counter fraud manual;
- report any case and the outcome of the investigation through the NHSCFA national case management system;

- ensure that other relevant parties are informed where necessary, e.g. People Services 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 addressed by management as quickly as possible and reported to the NHSCFA;
- adhere to the Counter Fraud Professional Accreditation Board (CFPAB)'s Principles of Professional Conduct as set out in the NHS counter fraud manual;
- not have responsibility for or be in any way engaged in the management of security for any NHS body; and
- ensure that the Director of Business and Value is informed of NHSCFA investigations, including progress updates

In addition, the AFS will be responsible for the day-to-day implementation of the generic areas of anti-fraud, bribery and corruption strategy, as agreed in the fraud risk assessed annual anti-fraud, bribery and corruption work plan.

4.7 NHS Counter Fraud Authority (NHSCFA)

The NHSCFA is a centre of excellence employing specialists in intelligence, fraud prevention, computer forensics, fraud investigation, financial investigation, data analysis and communications. The NHSCFA provide a range of specialised services to tackle NHS fraud:

- As an intelligence-led organisation, the NHSCFA use a wide range of information to build a more accurate picture of the fraud risks facing the NHS, to inform preventative action and to support investigations.
- The NHSCFA investigate the most serious, complex and high-profile cases of fraud, and work closely with the police and the Crown Prosecution Service to bring offenders to justice. Its specialist financial investigators have powers to recover NHS money lost to fraud, and they have a forensic computing team who collect and analyse digital evidence.
- The NHSCFA develop a range of targeted fraud prevention solutions to address identified fraud risks. This may include reviewing and redesigning whole systems or developing tailored guidance or other solutions.
- The NHSCFA set standards for counter fraud work across the NHS. They assess commissioners and providers of NHS services for compliance with the standards through their quality assurance programme.
- The NHSCFA are committed to developing a skilled workforce, in line with the government's counter fraud professional standards. They carry out internal quality assurance, ensuring continued compliance with legislation and professional standards.
- By raising awareness of fraud against the NHS and publicising the work of the NHSCFA, they encourage NHS staff, other stakeholders and the public to join the fight against NHS fraud.
- The NHSCFA strive to be a digital by default organisation, using technology to make their work quicker, smarter and more data-driven
- The NHSCFA use complex algorithms and data mining tools as a means to identify both normal behaviour and outliers in NHS data, within which fraudulent behaviour can be found.

The resulting analyses are used to support ongoing investigations as well as inform the intelligence picture and guide fraud prevention steps.

4.8 Internal and External Audit

The role of internal and external audit includes reviewing controls and systems and ensuring compliance with financial instructions.

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

4.9 People Services

People Services will liaise closely with managers and the AFS from the outset if an employee is suspected of being involved in fraud, bribery and/ or corruption, in accordance with agreed liaison protocols. People Services staff are responsible for ensuring the appropriate use of the Trust's disciplinary procedure. People Services will advise those involved in the investigation on matters of employment law and other procedural matters, such as disciplinary and grievance procedures, as requested.

Close liaison between the AFS and People Services will be essential in respect of any decision as to whether to exclude an employee from the Trust whilst necessary enquiries are on-going, though any final decision to exclude is that of the Trust. Close liaison will also be necessary to ensure that any parallel sanctions (i.e. criminal, civil and disciplinary sanctions) are applied effectively and in a coordinated manner.

People Services 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.

4.10 Information Management and Technology

The Head of Information Security (or equivalent) will contact the AFS immediately in all cases where there is suspicion that Trust ICT is being used for fraudulent purposes in accordance with the Computer Misuse Act 1990. Similarly, the Head of Information Security will liaise closely with the AFS to ensure that a subject's access (both physical and electronic) to Trust ICT resources is suspended or removed where an investigation identifies that it is appropriate to do so.

4.11 Fraud Champion

The role and duties of the Fraud Champion include:

- promoting awareness of fraud, bribery and corruption within the Trust;
- understanding the threat posed by fraud, bribery and corruption; and
- understanding best practice on counter fraud.

The Fraud Champion does not have any remit to investigate allegations of fraud, bribery or corruption.

4.12 Freedom to Speak Up Guardians

Freedom to Speak Up Guardians have a responsibility to report allegations they receive relating to fraud, bribery or corruption against the Trust to the AFS (whilst protecting the identity of the referrer, if necessary).

5. The Response Plan

5.1 Reporting Fraud, Bribery or Corruption

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

All genuine suspicions of fraud, bribery and corruption must be reported directly to the AFS on:

Telephone – **0151 285 4531** (Direct) or **0151 285 4500** (Main) or **07721 237352** (Mobile)

Email – phillip.leong@miaa.nhs.uk or phillip.leong@nhs.net

If the referrer believes that the Director of Business and Value or AFS is implicated, they should notify whichever party is not believed to be involved who will then inform the Chief Executive and Audit Committee Chairperson.

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 AFS or the Director of Business and Value.

If an employee feels unable, for any reason, to report the matter internally, employees can also call the NHS Fraud and Corruption Reporting Line on Freephone **08000 28 40 60** or report their concerns via the NHS Online Fraud Reporting Form www.cfa.nhs.uk/reportfraud.

This provides an easily accessible route for the reporting of genuine suspicions of fraud, bribery and corruption within or affecting the NHS. It allows NHS staff who 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 AFS and/ or the NHSCFA will make sufficient enquiries to establish whether or not there is any foundation to the suspicion that has been raised and, where appropriate, seek to apply criminal and civil sanctions. If the allegations are found to be malicious, they will also be considered for further investigation to establish their source.

Staff are encouraged to report reasonably held suspicions directly to the AFS. Staff can do this by completing the Referral Form [Appendix B] or by contacting the AFS by telephone or email using the contact details supplied above and on the desktop guide [Appendix A]. The desktop guide provides a reminder of the key contacts and a checklist of the actions to follow if fraud, bribery or corruption, is discovered or suspected. Managers are encouraged to copy this to staff and to place it on staff notice boards.

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 Raising and Escalating Concerns at Work Policy. This procedure is intended to complement the Trust's Anti-Fraud, Bribery and Corruption Policy as well as other relevant Trust policies 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. Corporate policies can be found on the Trust's intranet site.

To support the reporting of fraud, bribery and corruption using the NHSCFA fraud reporting process (as outlined above), all employees should also be aware of NHS Improvement and NHS England's: Freedom to Speak Up: Raising Concerns Policy for the NHS (April 2016).

5.2 Disciplinary Action

Disciplinary procedures will be initiated where an employee is suspected of being involved in a fraudulent or illegal act. This is linked to the Trust's Disciplinary Policy.

Any referral to the police will not prohibit action being taken under the disciplinary procedures of the Trust.

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

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

5.3 Police Involvement

In accordance with the NHS counter fraud manual issued by the NHSCFA, the AFS, in conjunction with the Director of Business and Value will, where appropriate, refer any case to the police. Any referral to the police will not prohibit action being taken under the local disciplinary procedures of the Trust.

5.4 Managing the Investigation

In accordance with the NHS counter fraud manual issued by the NHSCFA, the AFS, in consultation with the Director of Business and Value, will investigate all allegations of fraud, bribery and corruption.

The AFS may make recommendations to the Trust for them to consider appropriate action in respect of exclusion or suspension whilst an investigation is on-going in order to ensure evidence is protected from the risk of tampering. The Trust will make a decision in respect of exclusion or suspension based on People Services' advice.

The Trust will adhere to its own disciplinary policy if there is evidence that an employee has committed an act of fraud, bribery or corruption.

5.5 Evidence Gathering

The AFS will take custody of any physical evidence and record this in accordance with the procedures outlined in the NHS counter fraud manual. If evidence consists of several items, such as many documents, the AFS 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 AFS, if appropriate, or the investigating police officer, in accordance with the Police and Criminal Evidence Act 1984 (PACE). The AFS 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 Anti-Fraud, Bribery and Corruption Policy will at all times be in tandem with all other appropriate Trust policies, e.g. prime financial policies.

5.6 Reporting the Results of the Investigation

The AFS will prepare a report for the Director of Business and Value and may include recommendations in respect of further action to be taken by the Trust to suitably discharge the investigation and prevent a recurrence; such recommendations will require a management response to be provided by the Trust.

The report will also set out the following detail:

- the circumstances;
- the investigation process; and
- the estimated loss;

An update on any fraud investigation will also be provided to the Trust's Audit Committee as required.

The investigation process requires the AFS to review the systems in operation to determine whether there are any inherent weaknesses. Any such weaknesses identified will be reported to the NHSCFA and should be corrected immediately by the Trust.

5.7 Sanctions and Redress

The Trust's approach to pursuing sanctions and redress in cases of fraud, bribery and corruption is that the full range of possible sanctions and redress – including criminal, civil, disciplinary and regulatory – should be considered at the earliest opportunity and any or all of these may be pursued where and when appropriate. The consistent use of an appropriate combination of investigative processes in each case demonstrates the Trust's commitment to take fraud, bribery and corruption seriously and ultimately contributes to the deterrence and prevention of such actions.

The Trust endorses the NHSCFA's approach and adopts the principles contained within their policy entitled, 'Parallel Criminal and Disciplinary Investigations'; as well as complying with the provisions of the NHS counter fraud manual with regard to applying sanctions and seeking redress where fraud, bribery or corruption is proven. The Trust maintains an internal liaison and joint-working protocol between the AFS and the HR department which also covers their respective investigative duties.

The types of sanction which the Trust may apply when a fraud, bribery or corruption offence has occurred include:

- Civil – The Trust will seek financial redress, whenever possible, to recover losses (of money or assets), including interest and costs, to fraud, bribery and corruption. Redress can be sought in various ways. These include confiscation or compensation orders or use of the Proceeds of Crime legislation in the criminal courts, as well as civil legal sanctions such as an order for repayment or an attachment to earnings where appropriate, in addition to any locally agreed voluntary negotiations or repayments. The Trust actively publicises the fact that redress will be sought where applicable to recover monies lost to fraud, bribery and corruption, thus creating a further deterrent effect. Redress allows resources that are lost to fraud, bribery and corruption to be returned to the NHS for use as intended, for provision of high-quality patient care and services. Action to recover losses should be commenced as soon as practicable after the loss

has been identified and may include various departments to liaise about the most appropriate option. In order to provide assurance that policies have been adhered to, the Director of Business and Value 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.

- Criminal – The AFS will work in partnership with the NHSCFA, the police and/ or the Crown Prosecution Service, where appropriate, to bring a case to court against an alleged offender. Outcomes can range from a criminal conviction to fines and imprisonment.
- Disciplinary – Disciplinary procedures will also be initiated where an employee is suspected of being involved in a fraudulent or illegal act. The Trust’s Disciplinary Policy can be located on the intranet policies page.
- Professional body disciplinary – Where appropriate and if warranted, the Trust reserves the right to also report staff to their professional body as a result of a successful investigation and/or prosecution.”

Each case needs to be discussed with the Director of Business and Value to determine the most appropriate action. In some cases (taking into consideration all the facts of a case), it may be that the Trust, under guidance from the AFS and with the approval of the Director of Business and Value, decides that no further action is taken.

6. Consultation

Key individuals/groups involved in the development of the document to ensure it is fit for purpose once approved.

Name	Designation
Tim Welch	Director of Business and Value
David Harris	Director of People and OD
Members	Audit Committee

7. Dissemination and Implementation

7.1 Dissemination

This policy will be brought to the attention of all employees and will form part of the induction process for new staff.

This policy will be disseminated Trust-wide for all employees to understand and be made aware of via awareness presentations, the Trust’s Bulletins and on the Trust’s anti-fraud intranet page.

7.2 Implementation

The Trust’s AFS will be responsible for implementing this policy and all Trust managers have a responsibility to ensure all staff are made aware of the policy and understand it. The AFS will provide any training where required.

8. Process for Monitoring Compliance and Effectiveness

Monitoring is essential in ensuring that controls are appropriate and robust enough to prevent or reduce fraud. Through the reviewing of system controls, conducting investigations and identifying weaknesses, the AFS will monitor the policy's effectiveness. Outcomes will be summarised and documented through the Trust's Audit Committee.

9. Standards / Key Performance Indicators

NHS Standards for Providers
Service Condition 24 - NHS Standards Contract

Appendix 1 - Desktop Guide to Reporting NHS Fraud, Bribery and Corruption

FRAUD Fraud is a criminal deception committed by a person who acts in a false and dishonest way intended to result in financial or personal gain to them self or loss to another.

BRIBERY Bribery is an inducement or reward offered, promised or provided to someone to perform a relevant function or activity improperly in order to gain a personal, commercial, regulatory and/ or contractual advantage, on behalf of oneself or 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 or secure evidence**

Retain any evidence that may be destroyed, but do not alter or write on it in any way.

- **Report your suspicion promptly**

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

- **Be discreet**

Don't discuss your concerns with anyone who doesn't need to know.

DO NOT

- **Confront the suspect or convey concerns to anyone other than those authorised**

Never attempt to question a suspect yourself; this could alert a fraudster and place you at harm.

- **Try to investigate the concern yourself**

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 AFS will 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 procedure.

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

- directly contacting the **Anti-Fraud Specialist**, or
- telephoning the freephone **NHS Fraud and Corruption Reporting Line**, or
- online via the **fraud reporting form**, or
- contacting the **Director of Business and Value**

Report NHS Fraud, Bribery & Corruption – contact details:

Your Trust AFS: 0151 285 4531 or 0151 285 4500 (MIAA)
NHS Fraud and Corruption Reporting Line: 0800 028 40 60
NHS Online Reporting Form: www.cfa.nhs.uk/reportfraud

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

Your nominated Anti-Fraud Specialist is **Phillip Leong** who can also be contacted by telephoning **07721 237352**, or by emailing phillip.leong@miaa.nhs.uk or phillip.leong@nhs.net
If you would like further information about the NHS Counter Fraud Authority or the work of the AFS, please visit <https://cfa.nhs.uk>

Protecting your NHS from Fraud, Bribery and Corruption

Appendix 2 - NHS Fraud, Bribery 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 Yes/ No (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 **Phillip Leong**, the nominated AFS for Cheshire and Wirral Partnership NHS Foundation Trust **c/o Mersey Internal Audit Agency, Regatta Place, Brunswick Business Park, Summers Road, Liverpool, L3 4BL.**