

Anti-Fraud, Financial Irregularities and Anti-Bribery Policy

For use in:	All areas of the Trust
For use by:	All Trust staff
Prepared by:	Assistant Director of Finance
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Purpose of this document:

This document identifies the West Suffolk NHS Foundation Trust policy and framework for dealing with Fraud. It comprises four elements:-

- Fraud Policy;
- Bribery Policy;
- What individuals should do if they suspect fraud; and
- An indication of how fraud will be investigated.

It is a part of the corporate governance framework, which governs the actions of the Trust and promotes public service values.

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Anti-Fraud, Financial Irregularities and Anti-Bribery Policy

1. Introduction

West Suffolk NHS Foundation Trust (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.

The Trust is committed to tackling fraud, bribery and corruption within the NHS and in so doing will take appropriate measures as set out under the NHS Counter Fraud Authority's (NHSCFA) set out by the NHSCFA to implement Government Functional Standard, GovS: Counter Fraud.

Fraud and financial irregularities are criminal acts.

- Where a Director or member of staff is suspected of fraud or financial irregularity, they will be subject to investigation by the Trust nominated Local Counter Fraud Specialist (LCFS). This will be in conjunction with the disciplinary procedure of the Trust. Depending upon the results of the investigation this may lead to dismissal via a disciplinary and/or a criminal prosecution and/or a civil prosecution. The extent of this will be decided by the Trust based upon the evidence available.
- When determining whether fraud has taken place the LCFS must be involved and any decision will be guided by the provisions of the Fraud Act 2006.
- Where a Police investigation is instigated, this is separate from any internal process but will be in conjunction with the work of the LCFS.
- Where the Trust incurs a loss arising from the theft by, or the fraudulent or corrupt act of a Director or employee of the Trust may well seek compensation or redress.
- Requests for references for employees dismissed for reasons connected with fraud or financial irregularity must be dealt with by the Executive Director of Workforce and Communications or a nominated deputy.
- The Police may be contacted if required. Any decision to contact the police will be discussed with the Director of Resources in consultation with the Local Counter Fraud Specialist and NHS Counter Fraud Authority (NHSCFA).

This policy covers the Chairman, Chief Executive, Executive and Non-Executive Directors, Governors and all employees of the Trust including bank staff, interim and temporary staff and contractors and individuals employed via a personal services or company contract.

The approach the Trust will take in addressing fraud will be inclusive, professional, comprehensive, fair, balanced, cost effective and specialist.

1. Commitment of the Trust

The Trust as an organisation is committed to the seven principles of public life, expounded in the Nolan Committee report. In essence these are:

- a. **Selflessness:** Decisions must be made solely in terms of public interest, not in order to gain personal financial or other benefits.
- b. **Integrity:** Directors and staff should not place themselves under any obligation to third parties.
- c. **Objectivity:** In carrying out Trust business all appointments, contracts and recommendations must be made on merit.
- d. **Accountability:** Directors and employees of the Trust are accountable for their decisions and actions.
- e. **Openness:** The Trust Board and Directors will be as open as possible on all decisions and actions taken.
- f. **Honesty:** Directors and employees have a duty to declare any private interests which may impact on their Trust duties.
- g. **Leadership:** The Trust Board and Directors will support these principles by leadership and example.

The purpose of this document is to identify the framework in which the Trust commitment will manifest itself.

The policy is supported by a detailed procedure on the investigation of any instances of fraud and financial irregularity which occur within the Trust.

2. Demonstrating Commitment

The commitment of the Trust to probity and public service values manifests itself in the following:

- The promotion of an ethical environment.
- The maintenance of an Audit Committee with clear terms of reference and unrestricted scope.
- The operation of a remuneration committee.
- The use of clearly defined and documented policies.
- Compliance with statutory financial reporting requirements.
- Operation of an effective accounting and budgetary control system.
- An adequate and effective internal audit function.
- Holding regular public meetings.
- Investigating all cases of alleged fraud.

- Nomination of a local counter fraud specialist (LCFS)

This commitment impacts on the day-to-day activities of Directors and staff through the operation and regular review of the following features:

Aims and scope

This policy relates to all forms of fraud 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 details the organisation's commitment to the proper use of public funds and outlines roles and responsibilities for the prevention of fraud. It is not intended to provide a comprehensive approach to preventing and detecting fraud. The overall aims of this policy are to:

- Improve the knowledge and understanding of everyone in the Trust, irrespective of their position, about the risk of fraud and that the Trust has a zero-tolerance approach to fraudulent behaviour.
- 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.
- 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 policy 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.

In implementing this policy, managers must ensure that all staff members are treated fairly and within the provisions and spirit of the Trust's Equal Opportunities Policy. Special attention should be paid to ensuring the policy is understood where there may be barriers to understanding caused by the individual's circumstances, where the individual's literacy or use of English is weak, or where the individual has little experience of working life.

What are Fraud, and Financial Irregularity NHS Counter Fraud Authority (NHSCFA)

The NHSCFA 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.

A copy of the NHSCFA strategy: 2020-2023 is available at:

https://cfa.nhs.uk/resources/downloads/documents/corporatepublications/NHSCFA_Strategy_2020-23.pdf

Counter Fraud Standards

A requirement in the NHS standard contract, service condition 24, is that providers of NHS services (that hold a NHS Provider Licence or is an NHS Trust) must take the necessary action to comply with the NHSCFA's counter fraud Requirements set out by the NHSCFA to implement Government Functional Standard, GovS: Counter Fraud. Others should have due regard to the Requirements. The contract places a requirement on providers to have policies, procedures and processes in place to combat fraud, corruption and bribery to ensure compliance with the Requirements. The NHSCFA carries out regular assessments of health organisations in line with the counter fraud requirements in which the Trust reports compliance with, via submission of a Counter Fraud Functional Standard Return (CCFSR) self-assessment.

Fraud

Any person who dishonestly makes a false representation to make a gain for himself or another or dishonestly fails to disclose to another person, information which he is under a legal duty to disclose, or commits fraud by abuse of position, including any offence as defined in the Fraud Act 2006. The full definitions of these are contained in Appendix A. These definitions are a direct extract from the Fraud Act 2006.

Theft

"A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it"

Financial Irregularity

This may include any of the above descriptions.

Bribery and Corruption

Bribery and corruption involves offering, promising or giving a payment of benefit-in-kind to influence others to use their position in an improper way to gain an advantage. Bribery does not have to involve cash, or an actual payment exchanging hands and can take many forms such as a gift, lavish treatment during a business trip or tickets to an event. Bribery 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

Appendix A is a summary of the Bribery Act 2010.

Under the corporate offence, an organisation can be held liable for any instances of bribery identified committed by members of its staff or associated persons, therefore the Trust has procedures in place that reduce the likelihood of bribery occurring. These include Standing Orders, Standing Financial Instructions, documented procedures, a system of internal control (including Internal and External Audit) and a system of risk assessment. In addition, the Trust seeks to ensure that a comprehensive anti-bribery culture exists throughout the Trust via the appointment of a dedicated Senior Compliance Officer and Local Counter Fraud Specialist

3. The Role of Management

With regard to fraud and financial irregularity, it is one of the fundamental duties of management to put in place systems which will ensure:

- The security of assets.
- Compliance with laws and regulations.
- Effective financial stewardship and will demonstrate the probity of transactions.
- The reduction of fraud to a minimum.

Consequently, all Directors and Managers have a responsibility for ensuring that all the systems over which they exercise control comply with the principles outlined.

The Chief Executive has the overall responsibility for funds entrusted to the organisation as the Accountable Officer. This includes instances of fraud and bribery. The Chief Executive must ensure adequate policies and procedures are in place to protect the organisation and the public funds entrusted to it.

4. Duty of Directors and Staff

For the purposes of this policy, 'Employees' includes the Trust staff, Board, Executive and Non-Executive Members (including Co-Opted Members) and Honorary Members to the Board.

Employees are required to comply with the Trust's policies and procedures and apply best practice to prevent fraud, bribery and corruption (for example in the areas of procurement, personal expenses and ethical business behaviour). Staff should be made aware of their own responsibilities in protecting the Trust from these crimes.

Employees who are involved in or manage internal control systems should receive adequate training and support in order to carry out their responsibilities.

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.

All staff have a duty to protect the assets of the Trust. Assets include information and intellectual property as well as tangible items.

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 Trust's 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.

All employees should be aware that fraud and bribery (of finances of the NHS or of patients in our care) will normally, dependent upon the circumstances of the case, be regarded as gross

misconduct thus warranting summary dismissal without previous warnings. However, no such action will be taken before an investigation and a disciplinary hearing have taken place. Such actions may be in addition to the possibility of criminal prosecution.

Employees will not request or receive a bribe from anybody, nor imply that such an act might be considered. This means that you will not agree to receive or accept a financial or other advantage from a former, current or future client, business partner, contractor or supplier or any other person as an incentive or reward to perform improperly your function or activities.

The Standing Orders and Standing Financial Instructions place an obligation on all staff and Non-Executive Directors to act in accordance with best practice. In addition, all decision makers and Non-Executive Directors must declare and register any interests that might potentially conflict with those of the Trust or the wider NHS. All other non-decision-making staff have a responsibility to declare any interests that may be actual or perceived as conflicts due to the Trust being contractually or otherwise involved. All interests must be adequately noted on the register of interest.

When an employee suspects that there has been fraud or bribery, they must report the matter to the nominated LCFS and/or NHSCFA.

Each and every Director and member of staff of the Trust has a responsibility to ensure that any suspected incidence of fraud or financial irregularity is identified and reported promptly.

Any Director or member of staff who is aware of but does not report any suspected fraudulent corrupt act may be considered as condoning the act and may be included in any investigation.

It should be noted that all Directors and Staff have a duty to comply with PP(08)054 "Standards of Business Conduct for NHS Staff".

5. Duty of Managers

Managers are responsible for ensuring that policies, procedures and processes within their local area are adhered to and kept under review. They have a responsibility to ensure that staff are aware of fraud, bribery and corruption and understand the importance of protecting the Trust from it. They are also responsible for the enforcement of disciplinary action against staff who do not comply with policies and procedures.

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

Managers must instil and encourage an anti-fraud 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.

Although employees are not encouraged to report fraud to their manager, all instances of actual or suspected fraud which come to the attention of a manager must be reported immediately to the LCFS or Director of Resources. 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 LCFS and/or~~

NHSCFA 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 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 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.
- 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.

6. Duty of the Director of Resources

The Trust is provided with powers to approve financial transactions initiated by directorates across the Trust. As part of this role the Director of Resources is responsible for the maintenance and implementation of detailed financial procedures and systems which incorporate the principles of separation of duties and internal checks.

The Director of Resources will report annually to the Board and, where applicable, the Council of Governors on the adequacy of internal financial controls and risk management as part of the Board's overall responsibility to prepare an Annual Governance Statement for inclusion in the Trust's Annual Report.

The responsibility for the initiating of an investigation of any fraudulent activity against the Trust resides with the Director of Resources – who informs the LCFS in each case.

The Director of Resources, in consultation with NHSCFA and the LCFS, will decide whether there is sufficient cause to conduct an investigation, and whether the Police and External Audit need to be informed. Then as appropriate any of the following:

1. Chief Executive
2. Audit Committee
3. Trust Board
4. Internal Audit
5. Executive Director of Workforce and Communications

6. Pensions Agency
7. Insurance Brokers /Company
8. NHS Improvement

It is also the responsibility of the Director of Resources to assess and quantify any loss arising and to instigate a process of recovery through either civil or criminal proceedings, restitution or recovery via a claim or pension contributions.

7. Role of the Executive Director of Workforce & Communications

The Executive Director of Workforce & Communications and Human Resources team (HR) will liaise closely with Managers and the LCFS, from the outset, where an employee is suspected of being involved in fraud in accordance with agreed liaison protocols. HR are responsible for ensuring the appropriate use of the Trust's Disciplinary Procedure. HR shall advise those involved in the investigation in matters of employment law and in other procedural matters, such as disciplinary and complaints procedures. Close liaison between the LCFS and HR will be essential to ensure that any parallel sanctions (i.e. criminal and disciplinary) are applied effectively and in a coordinated manner.

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.

The duties of the Executive Director of Workforce and Communications within the activities of the Trust regarding fraud are:

- To undertake the appropriate level of pre-employment checks on both permanent and temporary staff.
- Advising on Trust disciplinary procedures.
- Promulgating and ensuring that all staff are aware of and understand the Standards of Business Conduct for NHS Staff.
- Notifying staff regarding the Trust procedures and protocol for the declaration of interests and the receipt of gifts and hospitality.
- Congruence between this Policy and the Trust Disciplinary Policy.

In essence, to participate in ensuring the corporate cultural awareness of public service values which is endemic to demonstrating probity in all activities.

8. Role of the Local Counter Fraud Specialist

The investigation of fraud will be undertaken by the Trust nominated Local Counter Fraud Specialist. The LCFS will update the Director of Resources at all stages of the investigation.

The LCFS is responsible for taking forward all anti-fraud work locally in accordance with national standards and reports directly to the Director of Resources. Adherence to the NHSCFA counter fraud Requirements is important in ensuring that the organisation has appropriate counter fraud, bribery and corruption arrangements in place.

The LCFS works with key colleagues and stakeholders to promote anti-fraud work and effectively respond to system weaknesses and investigate allegations of fraud and bribery. This will include the undertaking of risk assessments to identify fraud and bribery risks at the Trust.

The role of the LCFS is to ensure that all cases of actual or suspected fraud and bribery are notified to the Director of Resources and reported accordingly.

Investigation of the majority of cases of alleged fraud within the Trust will be the responsibility of the LCFS. NHSCFA will only investigate cases which should not be dealt with by the LCFS. Following receipt of all referrals, NHSCFA will add any known information or intelligence and based on this case acceptance criteria determine if a case should be investigated by NHSCFA.

Where it is advised by the nominated Local Counter Fraud Specialist and/or the Director of Resources, the case may be referred to the Police for further investigation. This action may only be undertaken following the authorisation by the Director of Resources.

The investigation by the nominated Local Counter Fraud Specialist will be supported by the Trust and as such all Trust staff will have a duty to provide evidence when requested/required to support the investigation process. The investigation will be undertaken in confidence.

The LCFS will also:

- Ensure that the Director of Resources is informed about all referrals/cases.
- Be responsible for the day-to-day implementation of the four generic areas of counter fraud activity and the investigation of all suspicions of fraud and/or Bribery.
- In consultation with the Director of Resources, report any case to the police as required.
- Report any case and the outcome of the investigation through the national case management system, CLUE.
- Ensure that other relevant parties are informed where necessary, e.g. Human Resources 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.
- Not have responsibility for or be in any way engaged in the management of security for any NHS body.
- Ensure that the Director of Resources is informed of regional team investigations, including progress updates.

9. Role of the Audit Committee

The Audit Committee is responsible for seeking assurance that the Trust has adequate arrangements in place for countering fraud and bribery and compliance with NHSCFA Requirements. This will include but is not limited to reports from the LCFS, the annual self-assessment submission to NHSCFA (Counter Fraud Function Standard Return), and from NHSCFA inspection reports. Actions resulting from counter fraud activity including NHSCFA quality assessment reports will be monitored. The committee is also responsible for approving the annual counter fraud work plan and the outcomes of all anti-fraud and bribery work within the Trust.

Further information on the responsibilities of the audit committee can be found in the NHS Audit Committee Handbook 2018 which can be accessed online via <https://www.hfma.org.uk/publications?Type=Guide>

This will also be achieved by:

- Consideration of the provision of the Counter Fraud service, the cost of the audit and any questions of resignation and dismissal of the service.
- Consideration of the major findings of counter fraud work (and management's response).
- Ensuring that the Counter Fraud function is adequately resourced and has appropriate standing within the organisation.
- Receiving an annual review of the work undertaken by the counter fraud function.
- Approval of the policies and procedures for all work related to fraud and bribery.

10. Role of the Trust Board

The Board and Non-Executive Directors should 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 and Non-Executive Directors will scrutinise NHSCFA assessment reports, where applicable, and ensure that the recommendations are fully actioned.

The Board will take assurance from the Audit Committee and Director of Resources that the LCFS provision meets the needs of the Trust. The Board is responsible for ensuring that the Director of Resources and Chief Executive monitor fraud and bribery.

11. Role of Third Parties

Third party Individuals (be they contractors or suppliers) must not communicate with any member of the press, media or another third party about a suspected fraud as this may seriously damage the investigation and any subsequent actions to be taken. Anyone who wishes to raise such issues should discuss the matter with either the Director of Resources or the Chief Executive.

12. Actions on Discovery of Suspected Fraud and/ or Bribery

Reporting fraud and/or bribery

This section outlines the action to be taken where fraud, bribery or other illegal acts involving dishonesty, inappropriate Internet use, or damage to property are discovered or suspected. For completeness, it also deals with the action to be taken where theft is discovered or suspected. Employees can also call the NHS Fraud and Corruption Reporting Line on Freephone 0800 028 40 60 or by filling in an online form at <https://cfa.nhs.uk/reportfraud>, as an alternative to internal reporting procedures and if staff wish to remain anonymous. All information provided is treated in complete confidence and all calls are dealt with by experienced caller handlers.

If an employee has any of the concerns mentioned in this document, they must inform the nominated LCFS or the Trust's Director of Resources immediately, unless the Director of Resources 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.

Appendix B provides a reminder of the key contacts and a checklist of the actions to follow if fraud 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 Resources.

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 Fraud and Bribery Referral Form (Appendix D) or by contacting the LCFS by telephone or email using the contact details supplied on Appendix B.

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 whistleblowing policy "Whistleblowing – Staff Concerns about Patient Care". This procedure is intended to complement the counter fraud 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.

If the allegation concerns the Director of Resources an approach may be made directly to the Chief Executive. Where an allegation concerns the Chief Executive the approach should be made to the Chairman of the Trust. The LCFS and the reporting line can also be contacted prior to any approaches.

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 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.

Police involvement

The Director of Resources, 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

Any information received will be treated as confidential. However, following investigation and where the invoking of the Trust's Disciplinary Procedure is considered as necessary, any information received will form part of the investigation report. Individuals may be required to submit a signed statement and may be required to appear as a witness in any subsequent formal hearing, criminal or disciplinary. The disciplinary matters will be dealt with by the Executive Director of Workforce and Communications.

The LCFS must be aware that staff under an investigation that could lead to disciplinary action have the right to be represented at all stages. 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.

Gathering evidence

The LCFS will take control of any physical evidence. 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.

At all stages of formal disciplinary procedure an employee will have the right to be accompanied by a representative of a union, staff organisation, professional organisation (hereinafter referred to as "Union") or by a colleague acting in a non-professional capacity.

The application of this policy will at all times be in tandem with all other appropriate Trust policies, e.g. Standing Financial Instructions (SFIs).

13. Recovery of Losses Incurred to Fraud and/or Bribery

The seeking of financial redress or recovery of losses should always be considered in cases of fraud that are investigated by either the LCFS or Police 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 to be returned to the NHS for use as intended, for provision of high-quality patient care and services. The Trust has a Financial Redress Policy and this must be considered as part of any fraud investigation process.

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 is found to have occurred, the LCFS should prepare a report for the Director of Resources and the next 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.

Action to be taken

Applying Appropriate Sanction guidance provides in-depth details of how sanctions can be applied where fraud 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 civil law.

In cases of serious fraud, 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 LCFS 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 Trust under guidance from the LCFS and with the approval of the Director of Resources, 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 Resources 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 Resources 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.

14. NHS Fraud and Bribery Helpline

As noted above, Employees can also call the NHS Fraud and Corruption Reporting Line on Freephone 0800 028 40 60 or by filling in an online form at <https://cfa.nhs.uk/reportfraud>, as an alternative to internal reporting procedures and if staff wish to remain anonymous. All information provided is treated in complete confidence and all calls are dealt with by experienced caller handlers.

15. Bribery Act 2010

The Bribery Act 2010, which repeals existing corruption legislation, has introduced the offences of offering and or receiving a bribe. It also places specific responsibility on organisations to have in place sufficient and adequate procedures to prevent bribery and corruption taking place.

Under the Act, Bribery is defined as "Inducement for an action which is illegal unethical or a breach of trust. Inducements can take the form of gifts loans, fees rewards or other privileges".

Bribery is broadly defined as the offering or the acceptance of inducements, gifts or favours payments or benefit in kind which may influence the improper 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.

To demonstrate the organisation has sufficient and adequate procedures in place and to demonstrate openness and transparency all staff are required to comply with the requirements of Standing Financial Instructions and Standing Orders policy.

The Trust will undertake risk assessments in line in line with Ministry of Justice guidance to assess how bribery may affect the organisation. This will be undertaken every three years, however this is not definitive, and circumstances may call for a risk assessment to be undertaken outside of this pattern, for example due to changes in legislation or a reported incident of bribery within the Trust.

Proportionate procedures in place to mitigate the identified risk include the following:

- All staff must disclose their business interests, prior to commencement of employment with the Trust.
- All staff must disclose any new business interests immediately.

- All staff must declare hospitality (other than modest hospitality) received by or offered to them as employees.
- All hospitality (other than extremely minor hospitality) provided by staff to third parties must be declared.
- Staff must not solicit personal gifts and must declare all gifts received.

For a more detailed explanation see the Anti-Bribery Policy. Should members of staff wish to report any concerns or allegations they should contact their Local Counter Fraud Specialist.

16. Facilitation Payments

Facilitation payments are small payments made to secure or expedite the performance of a routine action by a government official or agency (e.g. issuing licenses or permits, installation of a telephone line, processing goods through customs, etc.) to which the payer (or the company) has legal or other entitlement.

Facilitation payments are prohibited under the Bribery Act like any other form of bribe. They shall not be given by West Suffolk NHS Foundation Trust or West Suffolk NHS Foundation Trust employees in the UK or any other country.

17. Gifts & Hospitality

Courtesy gifts and hospitality must not be given or received in return for services provided or to obtain or retain business but shall be handled openly and unconditionally as a gesture of esteem and goodwill only. Gifts and hospitality shall always be of symbolic value, appropriate and proportionate in the circumstances, and consistent with local customs and practices. They shall not be made in cash.

Please refer to the Trust's Gifts and Hospitality policy and register for more guidance.

18. Political & Charitable Donations

West Suffolk NHS Foundation Trust does not make any contributions to politicians, political parties or election campaigns.

As a responsible member of society, West Suffolk NHS Foundation Trust may make charitable donations. However, these payments shall not be provided to any organisation upon suggestion of any person of the public or private sector in order to induce that person to perform improperly the function or activities which he or she is expected to perform in good faith, impartially or in a position of trust or to reward that person for the improper performance of such function or activities.

Any donations and contributions must be ethical and transparent. The recipient's identity and planned use of the donation must be clear, and the reason and purpose for the donation must be justifiable and documented. All charitable donations will be publicly disclosed.

Donations to individuals and for-profit organisations and donations paid to private accounts are incompatible with West Suffolk NHS Foundation Trust's ethical standards and are prohibited.

19. Sponsoring

Sponsoring means any contribution in money or in kind by West Suffolk NHS Foundation Trust towards an event organised by a third party in return for the opportunity to raise West Suffolk NHS Foundation Trusts profile. All sponsoring contributions must be transparent, pursuant to a written agreement, for legitimate business purposes, and proportionate to the consideration offered by the event host. They may not be made towards events organised by individuals or organisations that have goals incompatible with West Suffolk NHS Foundation Trust's ethical standards or that would damage West Suffolk NHS Foundation Trust's reputation. All sponsorships will be publicly disclosed.

Where commercial sponsorship is used to fund Trust training events, training materials and general meetings, the sponsorship must be transparent, pursuant to a written agreement, for legitimate business purposes, and proportionate to the occasion. Where meetings are sponsored by external sources, that fact must be disclosed in the papers relating to the meeting and in any published minutes/proceedings.

Where sponsorship links to the development of guidelines and advice, this should be carried out in consultation with the Senior Compliance Officer in conjunction with the appropriate Trust working group independent of the sponsors. While it is recognised that consultation with the industry may be necessary when developing a guideline, the overall decision on what is included should lie with the Trust working group.

Written agreements can be via e-mail where proportionate to the sponsorship arrangement referred to.

22. Monitoring and auditing of policy effectiveness

Monitoring is essential to ensuring that controls are appropriate and robust enough to prevent or reduce fraud. Arrangements might include reviewing system controls on an on-going basis and identifying weaknesses in processes. Where deficiencies are identified as a result of monitoring, the Trust will ensure that appropriate recommendations and action plans are developed and progress of the implementation of recommendations is tracked.

As a result of reactive and proactive work completed throughout the financial year, closure reports are prepared and issued by the LCFS. System and procedural weaknesses are identified in each report and suggested recommendations for improvement are highlighted and the Trust, together with the LCFS will track the recommendations to ensure that they have been implemented.

The Trust is required to complete the NHSCFA CFFSR and Annual Report and submit these annually to NHSCFA and the lead commissioner. The Trust must mark themselves against each standard in the Requirements for Providers/ Commissioners as either Compliant (green), Partially Compliant (Amber) or Non-Compliant (Red). A work-plan is required to address all non-compliant standards which will be monitored by the Audit Committee. An assessment process may be conducted by NHSCFA Quality and Compliance which will evaluate the Trust's effectiveness in dealing with the fraud, bribery and corruption risks it faces through one of four types of assessment: Full, Focused, Thematic or Triggered.

23. Dissemination of the policy

The policy will be referenced within fraud awareness material, presentations and induction. The policy will be available to all staff via the intranet.

24. Review of the policy

This policy will be reviewed by the LCFS every two years or sooner depending on legislative changes.

25. Additional information

Any abuse or non-compliance with this policy or procedures will be subject to a full investigation and appropriate disciplinary action.

APPENDIX A

Definition of Fraud

The following definition is an extract from the Fraud Act 2006:-

1 Fraud

1.1 A person is guilty of fraud if he is in breach of any of the sections listed in subsection (2) (which provide for different ways of committing the offence).

1.2 The sections are-

- (a) Section 2 (fraud by false representation),
- (b) Section 3 (fraud by failing to disclose information), and
- (c) Section 4 (fraud by abuse of position).

2 Fraud by false representation

2.1 A person is in breach of this section if he —

- (a) Dishonestly makes a false representation, and
- (b) Intends, by making the representation —
 - (i) To make a gain for themselves or another, or
 - (ii) To cause loss to another or to expose another to a risk of loss.

2.2 A representation is false if—

- (a) It is untrue or misleading, and
- (b) The person making it knows that it is, or might be, untrue or misleading.

2.3 “Representation” means any representation as to fact or law, including a representation as to the state of mind of—

- (a) The person making the representation, or
- (b) Any other person.

2.4 A representation may be express or implied.

2.5 For the purposes of this section a representation may be regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

3 Fraud by failing to disclose information

3.1 A person is in breach of this section if he —

- (a) Dishonestly fails to disclose to another person information which they are under a legal duty to disclose, and
- (b) Intend, by failing to disclose the information —

- (i) to make a gain for himself or another, or
- (ii) to cause loss to another or to expose another to a risk of loss.

4 Fraud by abuse of position

4.1 A person is in breach of this section if he—

- (a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,
- (b) dishonestly abuses that position, and
- (c) intends, by means of the abuse of that position—
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

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

Examples of Fraud include (but are not limited to):-

- The misuse or the falsification of time sheets, overtime claims, travel claims etc.
- Staff are not allowed to work for another employer whilst on duty, on call or standby or on suspension from duty with this Trust, or whilst off sick, without written permission from their manager.
- Staff who know that they have received salary or expenses that they are not entitled and have not disclosed the fact to the Trust.

The following business practices constitute criminal offences under the Bribery Act 2010 and are therefore prohibited:

Offences of bribing another person

Case 1 is where a Trust employee offers, promises or gives a financial or other advantage to another person *and* intends the advantage (i) to induce that or another person to perform improperly a relevant function or activity, *or* (ii) to reward that or another person for the improper performance of such a function or activity.

Case 2 is where a Trust employee offers, promises or gives a financial or other advantage to another person *and* knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity by that person.

The bribery must relate to (i) a function of a public nature, (ii) an activity connected with a business, (iii) an activity performed in the course of a person's employment, *or* (iv) an activity performed by or on behalf of a body of persons (whether corporate or unincorporate). The person performing the function or activity must be expected to perform it in good faith, impartially or in a position of trust. It does not matter whether the function or activity is performed inside or outside the UK, whether the other person(s) involved is/are in the public or private sector and whether the advantage is

offered, promised or given directly by the Trust employee or through a third party, e.g. an agent or other intermediary.

Offences relating to being bribed

Case 3 is where a Trust employee requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by him-/herself or another person).

Case 4 is where a Trust employee requests, agrees to receive or accepts a financial or other advantage, *and* the request, agreement or acceptance itself constitutes the improper performance by him-/herself of a relevant function or activity.

Case 5 is where a Trust employee requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by him-/herself or another person) of a relevant function or activity.

Case 6 is where, in anticipation of or in consequence of a Trust employee requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly (i) by that the Trust employee, *or* (ii) by another person at his/her request or with his/her assent or acquiescence.

Again, the bribery must relate to (i) a function of a public nature, (ii) an activity connected with a business, (iii) an activity performed during a person's employment, *or* (iv) an activity performed by or on behalf of a body of persons (whether corporate or unincorporated). The person performing the function or activity must be expected to perform it in good faith, impartially or in a position of trust.

It does not matter whether the function or activity is performed inside or outside the UK, whether the other person(s) involved is/are in the public or private sector, whether the Trust employee requests, agrees to receive or accepts the advantage directly or through a third party, e.g. an agent or other intermediary, and whether the advantage is for the benefit of a Trust employee or another person.

In Cases 4 to 6, it does *not* matter whether the Trust employee knows or believes that the performance of the function or activity is improper.

Bribery of foreign public officials

Case 7 is where a Trust employee bribes a foreign public official and intends (i) to influence that official in his/her capacity as a foreign public official *and* (ii) to obtain or retain a business or an advantage in the conduct of business. A foreign public official is someone who holds a legislative, administrative or judicial position of any kind or exercises a public function of a country outside the UK, or is an official or agent of a public international organisation.

Appendix B

Useful contact numbers

Contact	Telephone Number
Executive Director of Resources	01284 713014
Local Counter Fraud Specialist – Mark Kidd	07528 970251
Assistant Director of Finance/Fraud Champion	01284 713285
Chief Executive	01284 713301
Chair of Audit Committee	c/o 01284 713301
Fraud and Bribery Reporting Line:	0800 028 40 60
Freedom to Speak	01284 712828

A desktop guide for West Suffolk NHS Foundation Trust

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.

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.

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 nothing!**

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 Bribery Reporting Line**, or
- contacting the **Director of Resources**.

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

If so, any information can be passed to the
NHS Fraud and Bribery Reporting Line:

0800 028 40 60

All calls will be treated in confidence and investigated

Your nominated Local Counter Fraud Specialist is Mark Kidd, who can be contacted by telephoning 07528 970251, or emailing mark.kidd@nhs.net. If you would like further information about the NHS Counter Fraud Service, please visit www.nhsbsa.nhs.uk/fraud

Appendix D

Anti-Fraud, Financial Irregularities and Anti-Bribery Policy GUIDANCE ON BUSINESS CONDUCT – CHECKLIST FOR STAFF

Do:

- Make sure you understand the guidelines on standards of business conduct and consult your line manager if you are not sure.
- Make sure you are not in a position where your private interest and NHS duties may conflict.
- Declare to your employer any relevant interests. If in doubt, ask yourself:
 - a. am I, or might I be, in a position where I, (or my family/friends) could gain from the connection between my private interests and my employment?
 - b. do I have access to information which could influence purchasing decisions?
 - c. could my outside interest be in any way detrimental to the NHS or to patients' interests?
 - d. do I have any other reasons to think I may be risking a conflict of interest:

If still unsure – Declare it!

- Adhere to the ethical code of the Institute of Purchasing and Supply if you are involved in any way with the acquisition of goods and services.
- Seek your employer's permission before taking on outside work, if there is any question of it adversely affecting your NHS duties. (Special guidance applies to doctors.)
- Obtain your employer's permission before accepting any commercial sponsorship.

Do not:

- Accept any personal gifts, inducements or any hospitality.
- Abuse your past or present official position to obtain preferential rates for private deals.
- Unfairly advantage one competitor over another or show favouritism in awarding contracts.
- Misuse or make available official "commercial in confidence" information.

This checklist is extracted from HSG(93)5 Standards of Business Conduct for Staff. If you have any queries or wish sight of the full document contact either the Committee Clerk or Internal Audit.