NHS WIRRAL CLINICAL COMMISSIONING GROUP

LOCAL ANTI-FRAUD, BRIBERY AND CORRUPTION POLICY
| **Title:** | The local anti fraud, bribery and corruption policy for Wirral Clinical Commissioning Group. |
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1.1 General

NHS Wirral Clinical Commissioning Group (CCG) is committed to reducing the level of fraud, bribery and corruption within the CCG to an absolute minimum and keeping it at that level, freeing up public resources for better patient care.

This policy is intended as a guide for all employees on counter fraud work within the CCG and the wider NHS. All genuine suspicions of fraud and corruption can be reported to the Anti-Fraud Specialist (AFS), or through the NHS Fraud and Corruption Reporting Line (FCRL) on freephone 0800 028 40 60.

1.2 Aims and objectives

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

- The overall aims of this policy are to:
  - Improve the knowledge and understanding of everyone in the CCG, irrespective of their position, about the risk of fraud, corruption and bribery within the organisation, its unacceptability and the CCG’s zero tolerance stance on fraud;
  - 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 CCG’s responsibilities in terms of the deterrence, prevention, detection and investigation of fraud, corruption and bribery;
  - 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.

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

2 Definitions

2.1 NHS Protect

NHS Protect has responsibility for all policy and operational matters relating to the prevention, detection and investigation of fraud, bribery and corruption in the NHS. Any investigations will be handled in accordance with NHS Protect guidance utilising the NHS Protect strategy outlined in the guidance document “Tackling crime against the NHS: A strategic approach”.

2.2 Fraud

The Fraud Act 2006
The Fraud Act 2006 created a single offence of fraud with three ways of committing it. Fraud can, therefore, be defined as follows:

‘Fraud is the intentional distortion of either financial statements or other records, by persons internal or external to the organisation, in order to conceal the misappropriation of assets or otherwise to make a gain or cause a loss.’

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

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

- Fraud by false representation (s.2) – lying about something, using any means, e.g. by words or actions;

- Fraud by failing to disclose (s.3) – not saying something when you have a legal duty to do so;

- Fraud by abuse of a position (s.4) – abusing a position where there is an expectation to safeguard the financial interests of another person or organisation.

It should be noted that all offences under the Fraud Act 2006 occur where the act or omission is committed dishonestly and with intent to cause gain or loss. The gain or loss does not have to succeed, so long as the intent is there.
In criminal law, fraud falls within both the Fraud Act 2006 and the Theft Act 1968.

2.3 Bribery and corruption

Bribery and corruption involves offering, promising or giving a payment of benefit-in-kind in order to influence others to use their position in an improper way to gain an advantage.

The individual does not have to gain an advantage for themselves – it could be for somebody else.

3 Roles and responsibilities

This section outlines the roles and responsibilities of individuals within the organisation.

3.1 Chief Officer

The Chief Officer, as the organisation’s accountable officer, has the overall responsibility for funds entrusted to it. This includes instances of fraud, bribery and corruption. The Chief Officer must ensure adequate policies and procedures are in place to protect the organisation and the public funds it receives.

3.2 Chief Financial Officer

The Chief Financial Officer (CFO) is provided with powers to approve financial transactions initiated by directorates across the organisation.

The Chief Financial Officer will:

- Prepare documents and maintains detailed financial procedures and systems and apply the principles of separation of duties and internal checks to supplement those procedures and systems.

- Report annually to the Governing Body and the Membership Council, 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 NHS body’s annual report.

- Depending on the outcome of initial investigations, inform appropriate senior management of suspected cases of fraud, bribery and corruption, especially in cases where the loss may be above an agreed limit or where the incident may lead to adverse publicity.

- If an investigation is deemed to be appropriate, the Chief Financial Officer will delegate to the CCGs AFS, who has responsibility for leading the investigation, whilst retaining overall responsibility him/herself.
Consult and take advice from the HR Business Partner if a member of staff is to be interviewed or disciplined. The Chief Financial Officer or AFS will not conduct a disciplinary investigation, but the employee may be the subject of a separate investigation by HR.

3.3 Internal and external audit

The role of internal and external audit includes reviewing controls and systems and ensuring compliance with financial instructions. They also have a duty to pass on any suspicions of fraud, bribery or corruption to the Anti-Fraud Specialist (AFS). The findings of the investigation may necessitate further work by internal or external audit to review systems.

3.4 Human resources

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

The HR service 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.

3.5 Anti-Fraud Specialist

The nominated AFS is responsible for taking forward all anti-fraud, bribery and corruption in accordance with national standards as set by NHS Protect and the NHS Anti-fraud Manual and reports directly to the Chief Financial Officer. This confidential manual also specifies how the AFS should carry out duties at a local level in relation to:

• Developing an anti-fraud culture within the CCG;
• Seeking to deter, prevent or detect fraud;
• Investigating fraud;
• Seek to apply sanctions where fraud is proven and obtain redress.
Whilst all these actions form the basis of a AFS’s role the main area in relation to this policy is the approach to investigating suspected fraud and corruption.

Only the accredited AFS can carry out investigations into suspected fraud using the documentation and processes specified within the NHS Anti-fraud Manual. This covers:

- Opening and maintaining an investigation file;
- Control and movement of files;
- Investigative procedures and methods;
- Interviewing under caution;
- Witness statements;
- Exhibits;
- Liaison with the Police.

The key points to be followed by the AFS are to ensure that:

- Once a prima case of fraud has been identified the AFS will record the investigation on NHS Protect’s national case management system FIRST in accordance with the NHS Anti-fraud Manual requirements;

- Regular updates for the Chief Financial Officer and NHS Protect via FIRST are provided along with the inclusion of appropriate information in the form of confidential progress reports to the Audit Committee;

- At the conclusion of the investigation the AFS will prepare a final report for the Chief Financial Officer. If the case requires a criminal prosecution the Area Anti-Fraud Specialist will action the request and submit the file to the prosecuting authority. The Chief Financial Officer will have to agree to a prosecution.

Whatever the outcome of the case, the AFS will upload the final report onto NHS Protect FIRST system in accordance with the NHS Anti-fraud Manual requirements.

### 3.6 Area Anti-Fraud Specialists

Area Anti-Fraud Specialists (AAFSs) are the frontline face of NHS Protect for all health bodies within their region.

The AAFS is responsible for the management and vetting of all local investigation case papers and evidence and witness statements submitted for the consideration of prosecutions.

AAFSs ensure that local investigations are conducted within operational and legislative guidelines to the highest standards for all allegations of fraud in the NHS. They provide help, support, advice and guidance to Chief Financial Officer, AFS, Audit Committees and other key stakeholders in their region.
The AAFS allocates, supervises and monitors fraud referrals and notifications to the AFS and provides support as to the direction of ensuing investigations as required and oversees the AFS’s performance.

The AAFS ensures that all information and intelligence gained from local investigative work is reported and escalated as appropriate at both local and national level so that fraud trends can be mapped and used to fraud-proof future policies and procedures.

3.7 Managers

All managers are responsible for ensuring that policies, procedures and processes within their local area are adhered to and kept under constant review.

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

Managers have a responsibility to ensure that staff are aware of fraud, bribery and corruption and understand the importance of protecting the organisation from it. Managers will also be responsible for the enforcement of disciplinary action for staff who do not comply with policies and procedures. The AFS will proactively assist the encouragement of an anti-fraud culture work that will raise fraud awareness.

Managers should report any instances of actual or suspected fraud, bribery or corruption brought to their attention to the AFS immediately. It is important that managers do not investigate any suspected financial crimes themselves.

Line managers at all levels have a responsibility to ensure that an adequate system of internal control exists within their areas of responsibility and that controls operate effectively. The responsibility for the prevention and detection of fraud and corruption therefore primarily rests with managers but requires the co-operation of all employees.

As part of that responsibility, line managers need to:

• Inform staff of the CCG’s Code of Business Conduct and Local 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 CCG;
• Be aware of the CCGs Local 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;
• Contribute to their director’s assessment of the risks and controls within their business area, which feeds into the CCGs and the Department of Health Accounting Officer’s overall statements of accountability and internal control.

3.8 All employees

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

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 NHS Wirral CCG 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.

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

Any member of staff can request fraud awareness training from the AFS.

If an employee suspects that fraud, bribery or corruption has taken place, they should ensure it is reported to the AFS and/or to NHS Protect as explained below.
3.9 Information management and technology

Wirral CCG will comply with the terms of The Computer Misuse Act 1990.

This includes unauthorised access to a computer with intent to commit or facilitate offences and the unauthorised modification of computer material.

“It is an offence to attempt or achieve access to a computer or the data it stores, by inducing a computer to perform any function with intent to secure unauthorised access even if all attempts to log on are rejected by the target computer. Thus, using another person's username or identifier (ID) and password without proper authority to access data or a program, or to alter, delete, copy or move a program or data, or simply to output a program or data to a screen or printer, or to impersonate that other person using e-mail, online chat, web or other services, constitute the offence”.

The fraudulent use of information technology will be reported by the Head of Information Security (or equivalent) to the AFS.

4 The response plan

4.1 Reporting fraud or corruption

Suspected fraud, bribery and corruption can also be reported using the:–

- NHS Fraud and Corruption Reporting Line on Freephone 0800 028 40 60
- By filling in an online form at www.reportnhsfraud.nhs.uk, as an alternative to internal reporting procedures and if staff wish to remain anonymous.
- By contacting Karen McArdle Anti-Fraud Specialist, 0151-651-3917 or Karenmcardle1@nhs.uk
- Contact the Chief Financial Officer immediately, unless the Chief Financial Officer or AFS is implicated. If that is the case, they should report it to the Chair or Chief Officer, who will decide on the action to be taken;
- An employee can also contact any senior manager or Lay Member of the CCG to discuss their concerns if they feel unable, for any reason, to report the matter to the AFS or Chief Financial Officer.

NHS Wirral CCG 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 CCG has produced a whistleblowing policy. This procedure is intended to complement NHS Wirral CCG’s Counter Fraud and Corruption Policy and Code of Business Conduct and ensures there is full provision for staff to raise any concerns with others if they do not feel able to raise them with their line manager/management chain.

Appendix 1 provides a reminder of the key contacts and a checklist of the actions to
follow if fraud, bribery and/or corruption, is discovered or suspected. If it is used, managers should be encouraged to copy this to staff and to place it on staff notice boards.

ALL reports of fraud and corruption will be taken seriously and thoroughly investigated.

4.2 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 CCG’s Disciplinary Policy.

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.

4.3 Police involvement
In accordance with the NHS Anti-fraud Manual, the Chief Financial Officer, in conjunction with the AFS, 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 CCGs.

4.4 Managing the investigation
The AFS, in consultation with the CCG’s Chief Financial Officer will investigate an allegation in accordance with procedures documented in the NHS Anti-fraud Manual issued by NHS Protect.

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 CCG that the staff member is suspended from duty. The CCG will make a decision based on HR advice on the disciplinary options, which include suspension.

The CCG will follow its Disciplinary Policy if there is evidence that an employee has committed an act of fraud or corruption.

4.5 Gathering evidence
The AFS will take control of any physical evidence, and record this in accordance with the procedures outlined in the NHS Anti-fraud Manual. If evidence consists of several items, such as many documents, AFS’s 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 Local Anti-Fraud, Bribery and Corruption Policy will at all times be in tandem with all other appropriate CCG policies, e.g. Finance Policies.

**4.6 Recover of losses incurred due to fraud, corruption and bribery**

The seeking of financial redress or recovery of losses should always be considered in cases of fraud or corruption that are investigated by either the AFS or NHS Protect, 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 light of the particular circumstances of each case.

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

**4.7 Reporting the results of the investigation**

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

If fraud or corruption is found to have occurred at the conclusion of the investigation, the AFS will prepare a report for the Chief Financial Officer and the CCG Audit Committee meeting. The report will include 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.

An update on any fraud investigation will be provided to the CCG’s Governing Body.

**4.8 Action to be taken**

Section 6 of the NHS Anti-fraud Manual provide in-depth details of how sanctions can be applied where fraud and corruption is proven and how redress can be sought. To summarise, local action can be taken to recover money by using the administrative procedures of the CCG or the civil law.

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

In some cases (taking into consideration all the facts of a case), it may be that the CCG, under guidance from the AFS and with the approval of the Chief Financial Officer, 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 CCG 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 Chief Financial Officer to determine the most appropriate action.

The appropriate senior manager, in conjunction HR service, 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 CCG. In all cases, current legislation must be complied with.

4.9 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 CCG, it may be necessary for various directorates to liaise about the most appropriate option.

5.0 Review

5.1 Monitoring and auditing of policy effectiveness

Monitoring is essential to ensuring that controls are appropriate and robust enough to prevent or reduce fraud. Arrangements will include reviewing system controls, policies and procedures on an on-going basis and identifying weaknesses in processes.
Where deficiencies are identified as a result of the monitoring, the CCG will ensure appropriate recommendations and action plans are developed and any recommendations made will be discussed and implemented.

5.2 Dissemination of the policy

The policy will be disseminated to all staff and CCG members and will also be held on the CCGs website.

5.3 Review of the policy

This policy is to be reviewed by the AFS on a three yearly basis, unless a new Act/Law etc. comes into force that will affect the work carried out by the AFS.

6 Associated Documents

- Concerns at Work (Whistleblowing)
- Code of Conduct
- Financial Policies
- Financial Standing Orders
- Disciplinary Policy

7 Policy appendices

Appendix 1 – Quick guide to reporting a concerns
Appendix 1 – Quick guide to reporting a concern

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

**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 AFS.
- **Report your suspicion**
  Confidentiality will be respected – delays may lead to further financial loss.

**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 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 AFS 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.

How can I report a fraud (or suspected fraud) taking place in the NHS?

1. Call the **NHS Fraud and Corruption Reporting Line** on 0800 028 40 60 (freephone). Lines are open 8am–6pm Monday to Friday.

2. Fill in the **online fraud reporting form** at [www.reportnhsfraud.nhs.uk](http://www.reportnhsfraud.nhs.uk).

3. Ask your **Anti-Fraud Specialist** for advice.