

POLICY CONTROL DOCUMENT - 1

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| **POLICY TITLE** | **Counter Fraud and Corruption Policy and Response Plan** |
| **POLICY CODE** | **CORP 11** |
| **REPLACES POLICY CODE (IF APPLICABLE)** |  |
| **AUTHOR**  **(Name and title/role)** | **Gareth Robins, Local Counter Fraud Specialist;**  **Mike McEnaney, Director of Finance** |

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| TRUST BOARD SUB-COMMITTEE WHICH APPROVED ORIGINAL VERSION | |
| **(Name of Committee)**  **Trust Board** | **(Date of approval)**  **June 2006** |
| **DATE OF NEXT REVIEW** | Q2 FY18/19 |

**REVIEW HISTORY**

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| COMMITTEE WHICH APPROVED REVISED VERSION | |
| Integrated Governance Committee (confirmed re-approval of existing policy) | DATE Approved out of session and ratified 07 November 2007 |
| Integrated Governance Committee | DATE Approved out of session; ratified at meeting 10 July 2009 |
| Trust Board | DATE Approved of out session April 2012 |
| Audit Committee | DATE 03 December 2015 |
| Trust Board | DATE 27 January 2016 |

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| CURRENT VERSION PLACED ON INTRANET | DATE |

**CHAIR(S) OF APPROVING COMMITTEE**

**SIGNATURE(S).........................................................................**

**TITLE(S) ...................................................................**

**DATE ...........................................................................**

POLICY CONTROL DOCUMENT - 2

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| NUMBER OF PAGES (EXCLUDING APPENDICES) | **6** |
| **SUMMARY OF REVISIONS:**   * Minor revisions and updates * Updated to include an ‘Aims and Objectives’ section * Inclusion of clear reporting lines * Flow | |

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| **Approval Checklist** |  |
| **CQC Regulation/NHSLA Standard identified and how the policy meets the standard stated** | * N/A |
| **Consultation process undertaken**  **Outline with whom** | * Finance * HR * Audit Committee. |
| **Equality Impact Assessment completed** | Attached |
| **Has the potential for an impact on a person’s human rights been considered** | Considered – no significant negative or positive impact. |
| **Training implications assessed and agreed where relevant with Learning Advisory Committee** | None |
| **Any resource implications for operational services discussed with the Chief Operating Officer** | n/a |
| **Monitoring/audit arrangements included** | See section 7 |

**All policies are copy controlled. When a revision is issued previous versions will be withdrawn. Uncontrolled copies are available but will not be updated on issue of a revision. An electronic copy will be posted on the Trust Intranet for information.**

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| Logo | | | | | | | | | | | | | | | | | | |  |  | policy | | **Corp 11** | |
|  |  | review  Q2 FY18/19 | | | |
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| Policy applicable to - | | | | | |  |  |  | **All areas Yes** | | | | | |  |  |  | Specific Areas | | | | | |  |
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| **Counter Fraud and Corruption Policy** | | | | | | | | | | | | | | | | | | | | | | | | |

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| **1 Aim of Policy** | |
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| 1.1 | Oxford Health NHS Foundation Trust (hereinafter referred to as “the Trust”) is committed to ensuring that fraud, bribery or corruption is reduced to the lowest level of risk. However, where fraud, bribery or corruption does occur the Trust will deal with it in a firm and controlled manner by rigorous investigation of such cases. An important part of this approach has been the introduction of a Counter Fraud, corruption & Response Plan. |
| 1.2 | The Trust is committed to protecting the public money it looks after and this means preventing fraud so that more money goes into health services. This policy applies to all employees and may also be used by locum, agency staff, contractors or suppliers to report any concerns they may have and where fraud, bribery or corruption does occur the Trust will deal with it in a firm and controlled manner by rigorous investigation of such cases. |
| 1.3 | The Trust endorses the NHS National Counter Fraud Strategy and has complied with Directions contained within the National Standard Commissioning Contract by nominating a Local Counter Fraud Specialist (LCFS). |
| 1.4 | The aims and objectives of this policy are:   * the policy applies to all employees, locum and agency staff and contractors |
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| **2 Definitions** | |
| 2.1 | Fraud;  Fraud can be defined as a dishonest act to cause or attempt to cause a loss, or expose to a risk of loss, or gain for themselves, or another, by, either:  (1) Making a false statement;  (2) Failing to disclose information; or;  (3) Abusing ones position.  The Fraud Act 2006 (*see Appendix 3*) came into force on the 15 January 2007 and, therefore, is applicable for offences occurring on or after that date.  As the Fraud Act 2006 became law on 15 January 2007, previous legislation must still be applied to offences occurring before this date. Before, the Fraud Act, there was no legal definition of fraud, but the generally held view was that fraud before this date is:  Fraud can be defined as a dishonest act to cause or attempt to cause a loss, or expose to a risk of loss, or gain for themselves, or another, by, either:  (1) Making a false statement;  (2) Failing to disclose information; or;  (3) Abusing ones position.  The Fraud Act 2006 (see Appendix 3) came into force on the 15 January 2007 and, therefore, is applicable for offences occurring on or after that date.  As the Fraud Act 2006 became law on 15 January 2007, previous legislation must still be applied to offences occurring before this date. Before, the Fraud Act, there was no legal definition of fraud, but the generally held view was that fraud before this date is:  ‘Causing loss or making a gain at the expense of someone by deception and dishonest means’ (Fraud Review 2005:23).  As there was no specific law for fraud, fraudulent behaviour encompasses a variety of offences contrary to numerous legislation which can be used to prosecute fraud, such as: Theft Acts 1968, 1978, 1996; Forgery and Counterfeiting Act 1981; Criminal Attempts Act 1981; Conspiracy to defraud etc.  Fraud is also a civil law violation known as tort (a civil wrong for which the law provides a remedy). A civil fraud typically involves the act of making a false representation of a fact susceptible of actual knowledge which is relied upon by another person, to that person's detriment.  There is no one type of NHS fraud – there is in fact an enormous variation in the types of fraud that are committed, as there are in the people who commit them. Among the more recurrent kinds of fraud are:  • Timesheet fraud (e.g. staff and professionals claiming money for shifts they have not worked).  • False expense claims (e.g. false travel or subsistence claims).  • Fraudulent job applications, (e.g. false qualifications or immigration status).  • Working whilst sick (e.g. usually working for another organisation without informing the Trust).  • Procurement Fraud (e.g. bid rigging/splitting; false invoices from bogus suppliers for non-existent services; collusion between suppliers; purchase order and contract variation orders).  • Patient Fraud (e.g. false travel claims; fraudulently claiming exemptions for pharmaceutical charges).  • Unauthorised use of NHS facilities or equipment, e.g. use of Trust-issued Mobile Phones for personal calls, use of clinic facilities for private practice.  • Advertising scams (e.g. false invoices for placing adverts in publications). |
| 2.2 | **Bribery & Corruption**  The Bribery Act 2010 (*see Appendix 3*) replaces the fragmented and complex offences at common law and in the Prevention of Corruption Acts 1889-1916.  The Act creates four categories of offence, which address the following:   * + Offering, promising or giving a bribe to another person;   + Requesting, agreeing to receive or accepting a bribe from another person;   + Bribing a foreign official; and   + A corporate offence of failing to prevent bribery.   Under the new corporate offence, a commercial organisation (including a Foundation Trust) is now liable for the activities of associated third parties as well as its own staff, and corporate ignorance offers no protection from prosecution. The only defence is that it ‘had in place adequate procedures designed to prevent a person associated with it from undertaking such conduct’. |
| **3 Roles and Responsibilities** | |
| 3.1 | This section states the roles and responsibilities of the Trust’s employees and other relevant parties in reporting fraud or other irregularities. |
| 3.2 | **Investigations with Clinical Implications:**  When investigating suspicions of fraud, corruption/bribery it is important that consideration is given to whether there may be any clinical or health and safety implications, which could have an adverse impact on the organisation. An example of this would be an individual who is working with patients or vulnerable people and is suspected to be using a false name/identity. In such cases the overriding consideration must be one of patient care. Where there are clinical implications, guidance is set out at Appendix 4, but it must be appreciated that every case is different and it is therefore impossible to provide definitive guidance. |
| 3.3 | **Director of Finance:**  The Director of Finance has a legal responsibility to make sure fraud, bribery or corruption are prevented, detected and investigated. Combating fraud and corruption requires an understanding of how and why it happens, the ways in which it can be minimized and how to professionally investigate it; therefore the Director of Finance nominates a LCFS to tackle fraud and corruption within the Trust. |
| 3.5 | **Local Counter Fraud Specilaist:**  The LCFS is an experienced and accredited (professionally qualified) counter fraud specialist. In essence, the role of the LCFS is to respond to and proactively tackle risks and occurrences of fraud and corruption at the Trust by providing a robust and effective prevention, detection and investigation function. The LCFS is responsible for ensuring the Trust achieves the four specific objectives of the National Counter Fraud Strategy at the Trust:   * Strategic Governance - This section sets out the standards in relation to the organisation’s strategic governance arrangements. The aim is to ensure that anti-crime measures are embedded at all levels across the organisation. * Inform and Involve - This section sets out the requirements in relation to raising awareness of crime risks against the NHS and working with NHS staff, stakeholders and the public to highlight the risks and consequences of crime. * Prevent and Deter - This section sets out the requirements in relation to discouraging individuals who may be tempted to commit crimes against the NHS and ensuring that opportunities for crime to occur are minimised. * Hold to Account - This section sets out the requirements in relation to detecting and investigating crime, prosecuting those who have committed crimes and seeking redress.   The LCFS reports to the Director of Finance, but any member of the Trust staff can speak to and ask for advice from the LCFS. The LCFS is authorised to receive reports of suspected fraud from anyone, whether an employee of the Trust, independent contractors, patients and other third parties, and staff have a responsibility to the Trust to raise their genuine concerns. Under the National Standard Commissioning Contract Directions and the Trust’s Standing Orders and Standing Financial Instructions, the LCFS is responsible for investigating allegations of fraud, bribery and corruption at the Trust.  The LCFS employs a risk-based methodology to enable the Trust to target resources at high risk areas and throughout the year undertakes proactive reviews in these areas which can detect fraud. Such reviews, together with investigations, ensure the LCFS identifies and counters vulnerabilities within the Trust’s systems by implementing effective prevention, detection and corrective controls to reduce the likelihood of fraud. |
| 3.6 | **Audit Committee:**  The purpose of the Audit Committee is to provide an independent check on the financial management of the Trust. The Committee meets, receives and considers reports by the internal and external auditors on all aspects of financial processes and procedures. Both the LCFS and Director of Finance attend the Committee and the LCFS presents Progress Reports on the counter fraud work undertaken at the Trust. The Audit Committee can question and ask for further explanations in relation to any aspect of the counter fraud work. |
| 3.7 | **Employees and Contractors:**  For the purposes of this policy, ‘Employees’ includes the Trust’s staff, Board, Executive and Non-Executive Members (including Co-Opted Members) and Honorary Members to the Board.  All employees and contractors of the Trust are individually responsible for:  • Securing the property of the Trust;  • Avoiding loss;  • Conforming with the rules and regulations contained in the Trust’s Policies & Procedures.  Trust employees are required to follow any Code of Conduct related to their personal professional qualifications.  Any offers of gifts or hospitality, which are in any way related to their Trust duties, must be discussed by the employee with their line manager and acceptance of offers of gifts or hospitality may be required to be registered in line with the Trust’s Code of Conduct and associated guidance on Gifts and Hospitality..  Trust employees must declare any possible conflicts of interest which they may have in contracts entered into by the Trust and these must be noted in a register maintained for that purpose.  All non executives have to register potential conflicts between their duties and personal or professional lives.  Please refer to the Trust’s Code of Conduct for more guidance on the standards of business conduct expected of all employees.  When an employee suspects that there has been fraud or corruption, they must report the matter to the nominated LCFS or Director of Finance, immediately.  **Any employee in breach of these regulations may be liable to disciplinary action including summary dismissal and a criminal investigation by the Local Counter Fraud Specialist.** |
| 3.8 | **Internal and External Audit:**  Any incident or suspicion that comes to Internal or External Audit’s attention will be passed immediately to the Trust’s LCFS.  Auditors perform thorough checks on systems which detect any anomalies. |
| **4 Fraud Response Plan (Reporting Fraud and Investigation Procedure)** | |
| 4.1 | The Trust is committed to tackling fraud and corruption. When fraud is discovered there is a need for clear, prompt and appropriate action. Therefore, having a Fraud Response plan increases the likelihood that the crisis will be managed effectively. The response will be effective and organised and will rely on the principles contained within this section.  The Trust will be robust in dealing with any fraud, and can be expected to deal timely and thoroughly with any person who attempts to defraud the Trust or who engages in corrupt practices, whether they are non executives, employees, suppliers, patients or unrelated third parties. |
| 4.2 | **REPORTING FRAUD:**  What to do if you suspect a fraud:  If you discover or suspect a colleague, patient or other person of committing fraud you must:   * + Immediately tell the ‘nominated officers’: Director of Finance or LCFS;   + Secure records in your possession;   + Record details of relevant events;   + Await further advice (the nominated officers will decide on the next course of action and advise you accordingly).   Contacting the LCFS: Gareth Robins on office 020 3313 2828; mobile 07825 450259 or[**mailto:gareth.robins@tiaa.co.uk**](mailto:gareth.robins@tiaa.co.uk)  Contacting the Director of Finance: Mike McEnaney on 01865 782020 or [**mailto:mike.mcenaney@oxfordhealth.nhs.uk**](mailto:mike.mcenaney@oxfordhealth.nhs.uk)  If the concern or query involves an Executive Director, the matter should be reported to the Audit Committee Chair in confidence.  Time may be of the utmost importance to prevent further loss to the Trust. Staff/contractors should report their first suspicions and not undertake lengthy consideration of alternative explanations – be assured that any subsequent investigation will be of the highest professional standard.  In addition, everything reported to the ‘nominated officers’ is treated in the strictest confidence and an employee can request to remain anonymous. Well-intentioned employees making a referral will be protected from any unacceptable behaviour from the subject of the referral or anyone else.  **What not to do?**   * + Do not confront the ‘suspect’;   + Do not assume only one person is involved;   + Do not talk about your suspicions, concerns or queries;   + Do not contact any external organisation (only the Director of Finance or the LCFS are permitted to make such contact).   **The reason for the above is twofold:**   * + to ensure evidence is secured against loss, destruction and contamination   + to ensure that nothing is done that could give rise to an action for slander or libel   **MOST IMPORTANTLY: Do not worry about being mistaken and do not do nothing!** |
| 4.3 | **Whistleblowing/ Public Interests Disclosure Act 1998:**  Whistleblowing is when an employee notifies their employer, professional regulator, customers, the police or the media about a dangerous or illegal activity in their workplace. Examples of such activities include: unlawful conduct, financial malpractice, breaches of codes of conduct, ill-treatment of patients/clients, and disregard for health and safety rules, dangers to the public or the environment or any other similar matter.  Often it is only through whistleblowing that this information comes to light and can be addressed before real damage is done. Whistleblowing is a valuable activity which can positively influence all of our lives. The Trust fully endorses the provisions of the Public Interest Disclosure Act 1998 and wishes to encourage anyone having reasonable suspicions of fraud to report them. The Trust’s Management of Concerns (Whistleblowing) Policy, which will be rigorously enforced, is that no employee should suffer because of reporting reasonably held suspicions under the provisions of the Act.  NHS Fraud and Corruption Reporting Line (FCRL)  If unable to talk to anyone within the Trust or the LCFS then staff/contractors **can** contact the[**FCRL**](https://www.reportnhsfraud.nhs.uk/favicon.ico) website,[**www.reportnhsfraud.nhs.uk**](http://www.reportnhsfraud.nhs.uk)or by telephoning **0800 028 40 60.** Your call will be treated in confidence and you can remain anonymous.  **Independent Advice**  **Public Concern at Work** is an independent charity and legal advice centre which provides free confidential advice to people concerned about wrongdoing in the workplace but who are unsure whether or how to raise the matter. Further information can be found at[**Public Concern at Work**](http://www.pcaw.org.uk/) **- Making Whistleblowing Work - 0207 404 6609** |
| 4.4 | **INVESTIGATION OF FRAUD:**  Where a referral concerning fraud, corruption or bribery has been made to the Director of Finance, the Director shall inform the LCFS at the first opportunity. There is a protocol for the referral, acknowledgement, investigation and reporting of allegations.  On receipt of a referral/ allegation of suspected fraud, the LCFS will assess the allegation to determine a course of action. This may involve making preliminary inquires such as obtaining information from the Trust systems.  Where appropriate, the LCFS will seek agreement from the Director of Finance to carry out an investigation.  The LCFS is responsible for investigating all instances of fraud in the Trust on behalf of the Director of Finance.  The LCFS will regularly report to the Director of Finance on all fraud cases they investigate and at particular stages of individual investigations. In addition, the LCFS will provide the Audit committee with quarterly updates as to the progression of investigations.  Depending upon the nature of the investigation, the LCFS will normally work closely with management and other agencies such as the Police, to ensure that all matters are properly investigated and reported upon. Basically, the circumstances of each case will dictate who will be involved and when.  The detailed arrangements for the investigations of any suspected fraud or corruption are contained in the NHS Counter Fraud and Corruption Manual, and within Trust’s policies e.g. Disciplinary, Standing Financial Instructions. The LCFS will record the progress of the investigation and conduct the investigation in accordance with the legal codes of practices (Police and Criminal Evidence Act 1994, Regulation of Investigatory Powers Act 2000, Criminal Procedures and Investigation Act 1996. and other legislative requirements (e.g. Data Protection Act 1998).  On the conclusion of the investigation the LCFS will report their findings and recommendations to the Director of Finance. The Director of Finance is the sole person who can determine whether or not any formal action is justified and what form such action takes; however, guidance can be sought from the Chief Executive and the LCFS.  If the Director of Finance decides that formal action is to be taken against the subject(s) of an investigation, the LCFS will comply with NHS Protect’s ‘Applying Appropriate Sanctions Consistently Policy’. This will involve using an appropriate combination of the sanctions described below:   * + Disciplinary action - Trust and/or professional regulatory body (warning, dismissal etc);   + Civil remedy – recover money, interest and costs;   + Criminal prosecution – which may result in imprisonment, community penalty, a fine, confiscation or compensation.   The use of parallel sanctions or ‘triple-track’ approach helps to maximise the recovery of NHS funds and assets while minimising duplication of work.  The Trust’s Disciplinary Procedures will be used where the outcome of the investigation indicates improper behaviour on part of employees. The LCFS shall liaise with the Director of Human Resources in providing evidence for Disciplinary Hearings.  Where financial loss has been suffered through fraudulent activity, the Trust will pursue the perpetrator for recovery, including taking appropriate legal action where appropriate. The LCFS shall liaise with legal representatives and attend court as required.  The LCFS will seek authorisation from the Director of Finance if a matter is to be reported to the Police. The LCFS shall liaise with the police by providing a MG (Prosecution) File and participate in interviews, searches etc. The LCFS shall attend court to give evidence and liaise with the Crown Prosecution Service as required.  The LCFS acts on behalf of the Trust in the event of any formal action and must ensure there is co-ordination between the various parties involved such as where external legal advisors are used.  When a fraud, bribery or corruption has occurred at the Trust, the LCFS will strengthen the control environment in which the event occurred by identifying and addressing any system weaknesses to reduce the risk of any such an event happening again.  The LCFS is required to advise NHS Protect of every investigation and refer appropriate matters to them.  The Director of Finance shall maintain a record to contain:   * + details of all reported suspicions;   + details of subsequent actions taken and conclusions reached.   This record will be reviewed by the Audit Committee at least once a year and any significant matters will be reported to the Trust Board. The LCFS will have open access to the record. The record will be a confidential document and accessible only by authorised officers. The record is subject to the Data Protection Act 1998 particularly in relation to the retention and destruction of personal data.  The Director of Finance is responsible for the smooth running of this protocol and where clarification is required his or her decision will be final. |
| 4.5 | **Review:**  This policy will be subject to review every three years. |
| 4.6 | **Implementation Process:**  The policy will be published on the Trust website and intranet and all staff will be made aware of it via the Trust weekly bulletin. New staff joining the Trust will be informed of the policy via the counter fraud induction training session and e-learning module. |
| 4.7 | **Monitoring Arrangements:**  Regular audits will be carried out to ensure that staff have adhered to the principles of this policy and reported to the relevant forum. |
| 4.8 | **Equality Statement:**  This policy reflects the Trust’s determination to ensure that all parts of our community have equality of access to services and that everyone receives a high standard of service as a service user, a carer or employee. This policy anticipates and encompasses the Trust’s commitment to prevent discrimination on any illegal or inappropriate basis and recognise and respond to the needs of individuals based on good communication and best practice. We recognise that some groups of the population are more at risk of discrimination or less able to access services than others and that services can often unintentionally put barriers in place that can limit or prevent access. The organisation is continually working to prevent this from happening.  The Trust’s vision and mission is to ensure that everyone lives the life they want, and that no individual member of staff, service users/carers and visitors, is treated unfairly regardless of their race, gender, disability, religion or belief system, age or sexual orientation. |
| **5 Training** | |
| 5.1 | Counter Fraud will be covered in the induction programme for all new staff. Additional bespoke awareness sessions are available to staff/wards/departments/teams at any time during the year on request to the Local Counter Fraud Specialist. |
| 5.2 | Further information, guidance or assistance in relation to this policy and procedures can be sought from the Local Counter Fraud Specialist. |
| **6 External References** | |
| 6.1 | * [Fraud Act 2006](http://www.legislation.gov.uk/ukpga/2006/35/contents) * [Bribery Act 2010](http://www.legislation.gov.uk/ukpga/2010/23/contents) * [NHS Protect](http://www.nhsbsa.nhs.uk/Protect.aspx) * Management of Concerns (Whistleblowing) Policy * Code of Conduct * Disciplinary Policy |

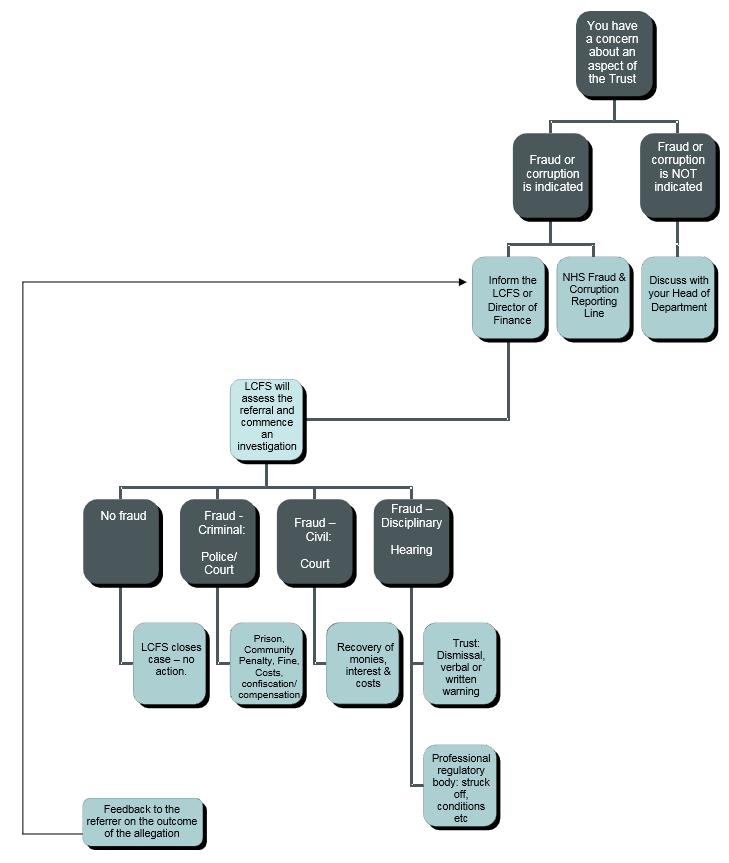
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| **7 Monitoring and evaluation** |

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| Criteria | Measurable | Lead person/group | Frequency | Reported to | Monitored by | Frequency |
| System in place to monitor investigations and outcomes of claims and any identified learning | Investigations activity, themes, trends, learning | Local Counter Fraud Specialist | Quarterly | Audit Committee | Director of Finance | Monthly |
| System in place to monitor outcomes of investigations and any identified lessons; dissemination of identified lessons and associated actions to internal and external stakeholders; monitoring arrangements for identified actions. | Investigations activity, themes, trends and necessary recommendations made following these | Local Counter Fraud Specialist | Quarterly | Audit Committee | Director of Finance | Monthly |
| System in place to monitor training activity for fraud | Annual fraud awareness survey  Records maintained by LCFS | Local Counter Fraud Specialist | Monthly | Director of Finance | Director of Finance | Annually |

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| **Appendices/Procedure notes** | |
|  | **Appendices**   1. Flow Chart for reporting 2. Fraud Act 2006 3. Bribery Act 2010 4. Fraud investigations with clinical implications |
|  | **References**  Fraud Act 2006; Bribery Act 2010; NHS Protect; Standards for Providers |

(Appendix 1)

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| **Fraud Response Plan – A Simple Overview** |



(Appendix 2)

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| **Fraud Act 2006** |

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

* section 2 (fraud by false representation)
* section 3 (fraud by failing to disclose information)
* section 4 (fraud by abuse of position).

A person who is guilty of fraud is liable:

* on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);
* on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).

**2: Fraud by false representation**

* A person is in breach of this section if he/she:
  + 1. dishonestly makes a false representation, and
    2. intends, by making the representation:

(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.

* A representation is false if:
  + 1. it is untrue or misleading, and
    2. the person making it knows that it is, or might be, untrue or misleading.
    - “Representation” means any representation as to fact or law, including a representation as to the state of mind of:

1. the person making the representation, or
2. any other person.

* A representation may be express or implied.
* 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**

* A person is in breach of this section if he/ she:
  1. dishonestly fails to disclose to another person information which he is

under a legal duty to disclose, and

* 1. intends, 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**

* A person is in breach of this section if he/she:
  1. occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,
  2. dishonestly abuses that position, and
  3. 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.

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

(Appendix 3)

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| **Bribery Act 2010** |

The laws dealing with corrupt activity in the UK were to be found in the common law offence of bribery and in three Acts of Parliament, namely the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Acts of 1906 and 1916.    
  
The Bribery Act 2010 replaces the fragmented and complex offences at common law and the Prevention of Corruption Acts 1889-1916.   
  
**Examples of Bribery**In the Act the offence of bribery is outlined as the receipt or acceptance of a bribe, or the offer to, promise or giving of a bribe, which assists in obtaining/ retaining business or financial advantage, or the inducement or reward of someone for the “improper performance” of a relevant function.  
  
The Act creates four categories of offence, which address the following:  
   
• Offering, promising or giving a bribe to another person;   
  
• Requesting, agreeing to receive or accepting a bribe from another person;   
  
• Bribing a foreign official; and   
  
• A corporate offence of failing to prevent bribery.   
  
Under the new corporate offence, a commercial organisation (including a Foundation Trust) is now liable for the activities of associated third parties as well as its own staff, and corporate ignorance offers no protection from prosecution.   
  
The Trust could potentially be liable if an associated person intending to retain or obtain business pays a bribe, and the Trust failed to have in place “adequate procedures” to prevent bribery.  Senior Management, directors and officers, including non-board level managers could also be held personally liable for a commercial organisation’s bribery offences.  
  
The only defence available to the Trust would be therefore to prove that they ‘had in place adequate procedures designed to prevent a person associated with it from undertaking such conduct’.   
  
The Act provides for unlimited fines and individuals are liable to a prison sentence of up to ten years. A director convicted of a bribery offence is also likely to be disqualified from holding a director position for up to 15 years.  The Act is not retrospective.  
  
The offences under the Act are known as strict liability offences meaning there is no need to prove intention, dishonesty or recklessness.  This means it is not necessary for the prosecution to prove that the Trust intended to make the bribe in bad faith, or that it was negligent as to whether any bribery activity took place.  
  
Under the Bribery Act a person is considered to be associated with a commercial organisation if they perform services for it and on its behalf.  It does not matter in what capacity they do this.  This definition therefore includes employees, agents and contractors.

Any member of staff, including Board members and senior staff, who are involved in the decision making regarding the allocation of contracts, Trust funds, and business are potentially vulnerable to the risk of being offered bribes to influence their decision making.   
  
This risk also extends to any partner organisations, limited companies or charitable organisations connected to the Trust, and subcontractors building on the Trust’s behalf, bribing other sub-contractors. 

(Appendix 4)

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| **Investigations with Clinical Implications** |

In such an instance, the LCFS is responsible for ensuring that the Director of Finance is informed of the potential risk at the earliest opportunity. The Director of Finance or designated deputy will decide which of his/her senior colleagues should be informed and consulted with before reaching a decision. Any appropriate professional body may also be notified. It is essential that this happens to ensure that the Director of Finance’s decision can take account of the full consideration of the clinical and non-clinical risks facing the organisation. To ensure that the investigation is not compromised however, it is vital that the number of people aware of the investigation is kept to an absolute minimum. If in any doubt, advice should be ought from the Area Anti-Fraud Specialist (AAFS), or the NHS Protect Legal Services Unit.

It may be appropriate or necessary for immediate action to be taken. All previously agreed parties should be involved in the process, and should be kept informed of any action taken and the outcomes. Any decision to contact or suspend the individual(s) under suspicion must involve the Director of Finance and the LCFS.

It should be noted that if it is decided to contact or suspend the individual(s), there is a risk that they may not attend any internal disciplinary hearings/meetings, or be traceable/contactable during the investigation by the LCFS or other body. There is also a significant risk that evidence may be destroyed, and that the individual(s) may also, at a later date, re-appear within the NHS and be undetected.

Police co-operation may be sought by asking them to arrest the individual(s). We are not able to influence their prioritising process, and therefore this may have an impact on the speed with which the matter is progressed and brought to conclusion.

**Under no circumstances will issues of fraud take priority over patient care.Full Equality Impact Assessment Form**

This form is an Equality Impact Assessment Form. It is used to review services and policies to ensure fair and consistent services for staff, service users and carers. It is a legal duty to prevent discrimination.

The form consists of two parts. Part 1 is screening to see if the Procedural Document or service requires a full assessment. It is through this screening process that you can find out whether the Procedural Document or service requires a Part 2.

Part 1

Equality Impact Assessment

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| **Service Area**  **All** | **Date:**  **January 2016** |
| **Trust handbook for the production and management of policies, procedures, guidelines and protocols** | |

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| **Purpose of policy: To provide a framework for developing and approving Trust procedural documents** |

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| **What is the likely positive or negative impact on people in the following groups?** |
| Older or younger people none |
| People with disabilities - ensuring procedural documents are in an accessible format |
| People from different ethnic/cultural backgrounds (including those who do not speak English as a first language) - Ensuring procedural documents are clear and easy to use |
| Men, women or transgender people - none |
| People with different religious beliefs or no religious beliefs - none |
| Gay, lesbian, bisexual or heterosexual people - none |
| People from a different socio-economic background - none |

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| **Evidence** |
| What is the evidence for your answers above? n/a |
| What does available research say? n/a |
| What further research would be needed to fill the gaps in understanding the potential difficulties or known effects of the Procedural Document? None |
| Have you thought about consulting/researching this gap? What would you need? n/a |
| Does the Procedural Document need a Full Equality Impact Assessment? No |

Part 2

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| **Evidence – please give evidence on how the Procedural Document or service is likely to have a significant impact (either or positive or negative) on the below.** |
| Race & ethnicity n/a |
| Gender n/a |
| Age n/a |
| Disability - Clear and accessible procedural documents |
| Sexual orientation n/a |
| Religion or belief n/a |
| Other n/a |

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| **Consult Formally** |
| Who needs to be consulted Not required |
| Has there been a consultation which would give the information needed? Not required |
| Which types of evidence have been gained (qualitative/quantitative) Not required |