

# COUNTER FRAUD, BRIBERY AND CORRUPTION POLICY

**UNIQUE REF NUMBER:** AC/XX/003/V2  
**DOCUMENT STATUS:** Approved at Audit & Governance Committee – Dec 2017  
**DATE ISSUED:** JANUARY 2018  
**DATE TO BE REVIEWED:** JANUARY 2021

## AMENDMENT HISTORY

VERSION	DATE	AMENDMENT HISTORY
AC/XX/003/V1	June 2013	Version approved by Audit Committee 19 June 2013
AC/XX/003/V1.1	December 2013	Addition of branding, formatting changes in line with Policy for Development of Policies and unique reference number prior to publication
AC/XX/003/V1.2	October 2015	Review by Anti-Fraud Specialist
AC/XX/003/V2.0	November 2017	Reviewed and refreshed by the Anti-Fraud Specialist

## REVIEWERS

NAME	DATE	TITLE/RESPONSIBILITY	VERSION
Lisa Hines	October 2015	Anti-Fraud Specialist	V1.2
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## APPROVALS

This document has been approved by:

NAME	DATE	VERSION
CCG Audit Committee	21 November 2015	V1.2
CCG Audit & Governance Committee	14 December 2017	V2.0

NB: The version of this policy used on the intranet must be a PDF copy of the approved version.

## DOCUMENT STATUS

This is a controlled document. Whilst this document may be printed, the electronic version posted on the intranet is the controlled copy. Any printed copies of the document are not controlled.

## RELATED DOCUMENTS

These documents will provide additional information:

REFERENCE NUMBER	DOCUMENT TITLE	VERSION
AC/XX/002	Staff Code of Conduct on Confidentiality	V1

## APPLICABLE LEGISLATION

Fraud Act 2006
Bribery Act 2010
Public Interest Disclosure Act 1998
Proceeds of Crime Act 2002

## GLOSSARY OF TERMS

TERM	ACRONYM	DEFINITION
Anti Fraud Specialist	AFS	

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## **POLICY OVERVIEW**

### **1.0 Introduction**

- 1.1 Dudley CCG is committed to reducing the level of fraud, bribery and corruption within the NHS to an absolute minimum and keeping it at that level, freeing up public resources for better patient care.
- 1.2 This policy has been produced by the Anti-Fraud Specialist (AFS) and is intended as a guide for all employees on counter fraud work within the NHS.
- 1.3 All genuine suspicions of fraud and corruption can be reported to the AFS or through the NHS Fraud and Corruption Reporting Line on free phone 0800 028 40 60 or by email: [www.nhscfa.org.uk](http://www.nhscfa.org.uk) Appendix 1, Fraud Referral Form (can be completed and passed to the AFS for investigation should any individual have suspicion of fraudulent activity occurring within Dudley CCG).

### **2.0 Purpose**

- 2.1 This policy relates to all forms of fraud, bribery and corruption and is intended to provide direction and help to all staff and other stakeholders (including patients, visitors, temporary employees, locums, agency staff, contractors, suppliers and visiting clinicians) 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, bribery and corruption. The overall aims of this policy are to:

- improve the knowledge and understanding of everyone in Dudley CCG of their position, about the risk of fraud, bribery and corruption within the organisation and its unacceptability
- assist in promoting a climate of openness and a culture and environment where staff feel able to raise concerns sensibly and responsibly
- set out Dudley CCG's responsibilities in terms of the deterrence, prevention, detection and investigation of fraud, bribery and corruption
- ensure the appropriate sanctions are considered following an investigation, which may include any or all of the following:
  - criminal prosecution
  - civil recovery
  - Internal/external disciplinary action.

### **3.0 Who this Policy applies to**

- 3.1 This policy applies to all employees, self-employed and office holders of Dudley CCG regardless of position held, as well as any other parties who have a business relationship with Dudley CCG.

### **4.0 Key Principles**

- 4.1 One of the basic principles of public sector organisations is the proper use of public funds. The majority of people who work in the NHS are honest and professional and they find that fraud committed by a minority is wholly unacceptable as it ultimately leads to a reduction in the resources available for patient care.

- 4.2 Dudley CCG does not tolerate fraud and corruption within the NHS. The aim is to eliminate all NHS fraud bribery and corruption as far as possible.

## THE POLICY

### 5.0 Definitions

#### 5.1 *Fraud*

5.1.1 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 or for a fraud to be successful. The focus is now on the dishonest behaviour of the suspect and their intent to make a gain or cause a loss to another; or, expose another to a risk of loss.

5.1.2 The most common offences of fraud can be committed in the following three ways:

- Fraud by false representation (Section 2) – lying about something using any means, e.g. by words or actions on a timesheet or application form/C.V.
- Fraud by failing to disclose (Section 3) – not saying something when you have a legal duty to do so eg failing to disclose a conviction, disqualification or commercial interest.
- Fraud by abuse of a position of trust (Section 4) – abusing a position where there is an expectation to safeguard the financial interests of another person or organisation eg a carer abusing their access to patients monies, or an employee using commercially confidential NHS information to make a personal gain

5.1.3 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. Successful prosecutions under the Fraud Act 2006 may result in an unlimited fine and/or a potential custodial sentence of up to 10 years.

#### 5.2 *Bribery and Corruption*

5.2.1 Bribery and corruption prosecutions can be brought using specific pieces of legislation:

- The Prevention of Corruption Acts 1906 and 1916, for offences committed prior to 1st July 2011; and,
- The Bribery Act 2010, for offences committed on or after 1st July 2011 has updated UK law and is defined as: an inducement or reward offered, promised or provided to someone to perform a relevant function or activity improperly in order to gain a personal, commercial, regulatory and/or contractual advantage, on behalf of oneself or another. Therefore making it a criminal offence to:
  - Offer, Promise, or Give a Bribe (section.1)
  - Request, Agree to Receive, or Accept a Bribe (section.2)
- Corruption is dishonest or fraudulent conduct by those in power, typically involving some sort of bribe, preferential treatment or embezzlement.

5.2.2 Examples of Bribery and Corruption in an NHS context could be; a contractor attempting to influence a procurement decision-maker by giving them an extra benefit or gift as part of a tender exercise; or a medical or pharmaceutical company providing holidays or other excessive hospitality to a clinician in order to influence them to persuade their CCG to purchase supplies and/or services.

5.2.3 A bribe does not have to be in cash; it may be the awarding of a contract, the provision of gifts, hospitality, sponsorship, the promise of work or some other benefit. The persons making and receiving the bribe may be acting on behalf of others and under the Bribery Act 2010; all parties involved may be prosecuted. The Bribery Act 2010 includes an offence of Bribing a Foreign Public Official (section.6) meaning that anyone involved in bribery activities overseas may also be liable to prosecution in the UK if the bribe is in respect of any UK activity, contract or organisation.

5.2.4 The Bribery Act 2006 introduces a new Corporate Offence of Failing to Prevent Bribery (section.7). The Department of Health Legal Service has stated that NHS bodies are deemed to be "relevant commercial organisations" to which this applies. As a result, an NHS body may be liable (and punished with a potentially unlimited fine) when someone "associated" with it bribes another in order to get, keep or retain business for the organisation. However, the NHS body will have a defence and avoid prosecution, if it can show that it has adequate procedures in place designed to prevent bribery from occurring.

5.2.5 In addition, the Bribery Act 2010 also includes an offence of a senior officer of the organisation would be liable for prosecution if they consented to or connived in a bribery offence carried out by another (section.14) meaning that a senior manager, an executive or a non-executive director may be prosecuted for a parallel offence to that brought against the primary perpetrator and the organisation could also be subject to an unlimited fine.

5.2.6 The CCG adopts a zero tolerance attitude towards bribery and does not and will not pay or accept bribes or offers of inducement to or from anyone, for any purpose. The CCG is fully committed to preventing bribery and will ensure that adequate procedures, proportionate to the risks are in place and will be regularly reviewed.

### 5.3 **NHS Counter Fraud Authority**

5.3.1 The NHS Counter Fraud Authority sets the strategic direction of counter fraud work within the NHS, and issues guidance to individual health bodies on the prevention, detection and investigation of possible fraud, bribery and corruption. The NHS CFA also has a national investigation team, which handles the largest and most complex cases, and a quality assurance team that oversees local anti-fraud work.

5.3.2 NHS Counter Fraud Authority also has an Assurance Team, which measures the effectiveness of NHS Anti-Fraud work. The AFS completes an annual Qualitative Assessment on behalf of the CCG, which is assessed by the Assurance Team, following, which the CCG is assigned with a performance rating. On site Quality Inspections are also periodically conducted to review local arrangements.

### 5.4 **Employees**

5.4.1 For the purpose of this policy 'employees' include Dudley CCG staff, as well as self-employed staff and office holders.

## 6.0 **Codes of Conduct**

6.1 The codes of conduct for NHS boards and NHS managers set out the key public service values. They state that high standards of corporate and personal conduct, based on the recognition that patients come first, have been a requirement throughout the NHS since its inception. These values are summarised as:

- *Accountability*: Everything done by those who work in the organisation must be able to stand the tests of parliamentary scrutiny, public judgements on propriety and professional codes of conduct.

- *Probity*: Absolute honesty and integrity should be exercised in dealing with NHS patients, assets, staff, suppliers and customers.
- *Openness*: The organisation's activities should be sufficiently public and transparent to promote confidence between the authority and its staff and the public.

All employees should be aware of and act in accordance with these values and are expected to:

- act impartially in all their work;
- refuse gifts, benefits, hospitality or sponsorship of any kind that might reasonably be seen to compromise their judgement or integrity; and, to avoid seeking to exert influence to obtain preferential consideration. All such gifts should be returned and hospitality refused. The exception to this are gifts under the value of £6 e.g a tin of biscuits, or chocolates, as long as the gift is a one off, multiple small gifts from the same person may then be deemed a bribe. Staff may declare even these small gifts if they are unsure;
- declare and register gifts, benefits or sponsorship of any kind, in accordance with time limits agreed locally (provided that they are worth £25 or more), whether refused or accepted;
- declare and record financial, non-financial or personal interests (e.g. company shares, research grants etc.) in any organisation with which they have to deal with and be prepared to withdraw from such dealings if required, ensuring that their professional judgement is not influenced by such considerations. Such declarations need to be made annually during employment;
- make it a matter of policy that offers of sponsorship that could possibly breach the Code be reported to the Board;
- not misuse their official position or information acquired in the course of their official duties to further their private interests or those of others;
- ensure professional registration (if applicable) and/or status are not used in the promotion of commercial products or services;
- beware of bias generated through sponsorship, where this might impinge on professional judgement or impartiality;
- neither agree to practice under any conditions which compromise professional independence or judgement, nor impose such conditions onto other professionals.

## **7.0 Roles and Responsibilities**

- 7.1 Through their day-to-day work, those individuals employed in the NHS are in the best position to recognise any specific risks within our own areas of responsibility. We also have a duty to ensure that those risks – however large or small – are identified and eliminated. Where you believe the opportunity for fraud exists, whether because of poor procedures or oversight, you should report it to the AFS or via one of the reporting channels as referred to in Section 1 of this policy

- 7.2 This section states the roles and responsibilities of employees and other relevant parties in reporting fraud or other irregularities.
- 7.3 Dudley CCG will take all necessary steps to counter fraud, bribery and corruption in accordance with this policy, the NHS Anti Fraud and Corruption Manual, the policy statement 'Applying Appropriate Sanctions Consistently' published by NHS Protect and any other relevant guidance or advice issued by NHS Counter Fraud Authority.
- 7.4 Dudley CCG will implement the four generic areas of counter fraud action outlined below. A key element in achieving this is the appointment of an AFS.
- a) ***Strategic Governance: the CCG will ensure that Strategic Governance arrangements are in place to ensure that Anti-Crime measures are embedded at all levels across the organisation.***
  - b) ***Inform and Involve: the CCG will raise awareness of crime risks against the NHS, work with NHS staff and the public to publicise the risks and effects of crime against the NHS.***
  - c) ***Prevent and Deter: the CCG will discourage individuals who may be tempted to commit crime against the NHS and ensure that opportunities for crime to occur are minimised.***
  - d) ***Hold to Account: the CCG will proactively detect fraud in identified risk areas; ensure that all suspicions of fraud are investigated in a timely, professional manner and that all appropriate sanctions and redress actions are applied.***

## **8.0 Role of Dudley CCG**

- 8.1 Dudley CCG has a duty to ensure that it provides a secure environment in which to work, and one where people are confident to raise concerns without worrying that it will reflect badly on them. This extends to ensuring that employees feel protected when carrying out their official duties and are not placed in a vulnerable position. If employees have concerns about any procedures or processes that they are asked to be involved in, Dudley CCG has a duty to ensure that those concerns are listened to and addressed.
- 8.2 Dudley CCG's Chief Accountable Officer is liable to be called to account for specific failures in Dudley CCG's system of internal controls. However, responsibility for the operation and maintenance of controls falls directly to line managers and requires the involvement of all of Dudley CCG's employees and contractors. Dudley CCG therefore has a duty to ensure employees and contractors who are involved in or who are managing internal control systems receive adequate training and support in order to carry out their responsibilities. Therefore, the Chief Accountable Officer and Chief Operating and Finance Officer will monitor and ensure compliance with this policy.

## **9.0 Employees, Self Employed and Office Holders (Employees)**

- 9.1 Dudley CCG Prime Financial Policies and supporting policies and procedures place an obligation on all employees to act in accordance with best practice.
- 9.2 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.



9.3 Employees also have a duty to protect the assets of Dudley CCG including information, goodwill and property.

9.4 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 Dudley CCG's employees deal fairly and impartially with official matters.
- be alert to the possibility that others might be attempting to deceive
- ensure that any computer use at work is only applied to the performance of their duties within the CCG

9.5 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 suppliers.

9.6 If an employee suspects that there has been fraud, bribery or corruption, or has seen any suspicious acts or events, they must report the matter to the nominated AFS whose contact details are detailed below.

## **10.0 Managers**

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

10.2 Managers must instil and encourage an anti-fraud and anti-corruption culture within their team and ensure that information on procedures is made available to all employees. The AFS will proactively assist the encouragement of an anti-fraud culture by undertaking work that will raise fraud awareness.

10.3 All instances of actual or suspected fraud, bribery or corruption which come to the attention of a manager must be reported immediately. It is appreciated that some employees will initially raise concerns with their manager. However, in such cases, managers must not attempt to investigate the allegation themselves; they have the clear responsibility to refer the concerns to the AFS as soon as possible.

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

10.5 As part of that responsibility, line managers need to:

- inform employees of Dudley CCG's code of business conduct and counter 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. This is supported by new starter anti fraud information provided by the AFS.
- 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 Dudley CCG
- be aware of Dudley CCG counter 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 complied with
- contribute to the organisations assessment of the risks and controls within their business area, which feeds into Dudley CCG and the Department of Health Accounting Officer's overall statements of accountability and internal control.

## **11.0 Anti-Fraud Specialist**

- 11.1 In accordance with Service Condition 24 of the NHS Standard Contract, the CCG is required to have in place and maintain appropriate anti-fraud, bribery and corruption arrangements prior to the commencement date of the contract (developed from the Secretary of State for Health's Directions for countering Fraud in the NHS 2004).
- 11.2 The AFS is operationally accountable to the Chief Finance and Strategy Officer and reports regularly on the progress of all anti-fraud, bribery and corruption activity to the CCG's Audit Committee.
- 11.3 In respect of their investigatory remit, the AFS will:
- ensure that the Chief Finance and Strategy Officer is informed about all referrals/cases and approves any necessary investigation activity
  - conduct investigations of all alleged fraud, bribery and corruption in accordance with the NHS Anti-Fraud and Corruption Manual and associated legislation in consultation with the Chief Finance and Strategy Officer, report any relevant cases to the police or NHS Counter Fraud Authority as agreed and in accordance with the NHS Anti-Fraud and Corruption Manual
  - report any case and the outcome of an investigation through the NHS Counter Fraud Authority national case management system [FIRST]

- ensure that all other relevant parties are informed of an investigation where necessary, e.g. Human Resources [HR], if an employee is the subject of a referral
- ensure that the CCG'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
- at all time, adhere to the Counter Fraud Professional Accreditation Board (CFPAB) Principles of Professional Conduct, as set out in the NHS Anti-Fraud and Corruption Manual, which are, professionalism, objectivity, fairness, expertise, propriety and vision
- ensure that the Chief Finance and Strategy Officer is informed of regional NHS Counter Fraud Authority investigations, which may impact on the CCG
- In addition, the AFS will be responsible for the day-to-day implementation of the generic areas in accordance with NHS Counter Fraud Authority's strategy, as agreed in the work plan.

**The AFS for Dudley CCG is Lisa Hines, Tel: 02476 536880**  
**Email – [Lisa.hines@cwaudit.org.uk](mailto:Lisa.hines@cwaudit.org.uk) or [lisahines@nhs.net](mailto:lisahines@nhs.net)**

## **12.0 Chief Operating and Finance Officer**

- 12.1 The Chief Operating and Finance Officer, in conjunction with the Chief Accountable Officer, has overall responsibility regarding countering fraud, bribery and corruption. The Chief Operating and Finance Officer will, depending on the outcome of investigations (whether on an interim/ongoing or concluding basis) and/or the potential significance of suspicions that have been raised, inform appropriate Officers and Audit Committee accordingly.
- 12.2 The AFS shall be responsible, in discussion with the Chief Operating and Finance Officer, for informing third parties such as external audit or the police at the earliest opportunity, as circumstances dictate.
- 12.3 The Chief Operating and Finance Officer will inform and consult the Chief Accountable Officer in cases where the loss may be above the agreed limit or where the incident may lead to adverse publicity.
- 12.4 The Chief Operating and Finance Officer will inform the head of internal audit at the first opportunity. If an investigation is deemed to be appropriate, the Chief Operating and Finance Officer will delegate to Dudley CCG's AFS, who has responsibility for leading the investigation, whilst retaining overall responsibility himself.
- 12.5 The Chief Operating and Finance Officer or the AFS will consult and take advice from the Head of Human Resources if a member of staff is to be interviewed or disciplined. The Chief Operating and Finance Officer or AFS will not conduct a disciplinary investigation, but the employee may be the subject of a separate investigation by Human Resources. It should be noted that the use of AFS evidence and witness statements can be provided to Human Resources to assist in disciplinary cases, which ensures there will be no duplication in effort.

## **13.0 Internal and External Audit**

13.1 Any incident or suspicion that comes to internal or external audit's attention will be passed immediately to the nominated AFS. The outcome of the investigation may necessitate further work by internal or external audit to review systems. The AFS liaises regularly with Internal Audit management colleagues and regular updates are provided regarding system weaknesses and breaches identified in the course of investigations. Internal Audit provides feedback on systems analysis and other outliers identified during the course of testing undertaken as part of system reviews. The AFS will continue to provide relevant intelligence that may further shape the design of Internal Audit work and the level of assurance derived. Internal Audit will provide further updates on analytical tools, which may be adapted by the AFS for efficient criminal detection purposes.

#### **14.0 Human Resources**

14.1 Human Resources will liaise closely with managers and the AFS from the outset if an employee is suspected of being involved in fraud, bribery or corruption, in accordance with agreed liaison protocols. Human Resources staff are responsible for ensuring the appropriate use of Dudley CCG's disciplinary procedure. The Human Resources 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 Human Resources will be essential to ensure that any parallel sanctions (i.e. criminal, civil and disciplinary sanctions) are applied effectively and in a coordinated manner. Parallel Sanctions is also referred to as "Triple Tracking" and allows a full range of actions to be taken against perpetrators and sends a strong message to discourage others intent on mis-appropriating local NHS resources. The approach conforms to the high level NHS Counter Fraud Authority policy statement "Applying Appropriate Sanctions Consistently".

14.2 The AFS will not conduct disciplinary investigations, which are subject to employment law provisions. Separate disciplinary investigations will be conducted by HR into matters of possible misconduct when potential fraud, bribery and/or corruption are present.

14.3 The Chief Finance and Strategy Officer will liaise regularly with HR throughout the course of a criminal investigation, in accordance with the AFS/Human Resources (HR) Interaction Protocol. Disposal decisions regarding the selection of specific sanctions and financial recovery methods will be applied at the end of a criminal investigation and be made in accordance with the Counter Fraud Redress Protocol. As a general principle criminal enquiries will be given initial precedence over civil enquiries for tactical and evidential reasons, conventionally associated with a higher burden of proof and the investigation of complex or serious crime. Patient safety concerns will be given due consideration when warranted in more extreme situations. Dialogue will also take place between the AFS and HR to assess scope on a case by case basis to make lawful information disclosures to HR at more advanced investigation stages for prevention and detection of crime purposes.

14.4 The AFS will ensure that criminal enquiries are handled efficiently and do not become subject to undue delay. HR will ensure that they do not undertake any activity, which either by its nature or timing could prejudice the outcome of criminal investigations. In cases where criminal enquiries are undertaken by NHS Counter Fraud Authority they will provide advice to the AFS, or in person, to update HR on relative operational status and any risks that could impact on investigation management.

14.5 Any referral to the Police will not prohibit action being taken under the local disciplinary procedures of the CCG. Discussion in the above contexts will also focus on the feasibility of applying civil or other redress measures, at the earliest possible juncture of a parallel sanction process. This method will also be adopted to facilitate the recovery of losses incurred by the CCG.

14.6 Human Resources 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.

## **15.0 Information Management and Technology**

15.1 The head of information security (or equivalent) will contact the AFS immediately in all cases where there is suspicion that IT is being used for fraudulent purposes. HR will also be informed if there is a suspicion that an employee is involved.

## **16.0 The Response Plan**

### **16.1 Reporting Fraud, Bribery or Corruption**

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

16.1.2 If an employee has any of the concerns mentioned in this document, they must inform the nominated AFS or Dudley CCG's Chief Operating and Finance Officer immediately, unless the Chief Operating and Finance Officer or AFS is implicated. If that is the case, they should report it to the Chair or Chief Accountable Officer, who will decide on the action to be taken.

16.1.3 The AFS has developed a desk top guide (see Appendix 2) which provides a reminder of the key contacts and a checklist of the actions to follow if fraud, bribery, corruption, or other illegal acts, are discovered or suspected. Managers are encouraged to copy this to employees and to place it available on notice boards.

16.1.4 Employees can also call the NHS Fraud and Corruption Reporting Line on freephone 0800 028 40 60. This provides an easily accessible route for the reporting of genuine suspicions of fraud within or affecting the NHS. It allows individuals to report their concerns in the strictest confidence. All calls are dealt with by experienced trained staff and any caller who wishes to remain anonymous may do so.

16.1.5 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.

16.1.6 The AFS 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.

16.1.7 Staff should always be encouraged to report reasonably held suspicions directly to the AFS. You can do this by filling in the NHS Counter Fraud Authority Referral Form which is available on the Dudley CCG Counter Fraud Intranet site or by contacting the AFS by telephone or email.

### **17.2 Whistleblowing**

17.2.1 Dudley 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, Dudley CCG has produced a whistleblowing policy. This procedure is intended to complement Dudley 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.

### 17.3 **Disciplinary Action**

- 17.3.1 The disciplinary procedures of Dudley CCG must be followed if an employee is suspected of being involved in a fraudulent or otherwise illegal act.
- 17.3.2 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.

### 17.4 **Disclosure of Information**

- 17.4.1 Warning a fellow employee that they are/were under investigation for fraud could constitute misconduct. Where this disclosure is unauthorised and outside the terms of the investigation, and where it risks prejudicing the investigation (or the recovery of sums lost through frauds) it may constitute a breach of the term of mutual trust and confidence which is implied into every employment contract, and particularly the Whistleblowing Policy.
- 17.4.2 Depending on the position held by the employee who gave the warning, it may also be a breach of their duty of confidentiality. Essentially an employee who is/was closely involved with the investigation will have a higher duty of confidentiality than an employee who is/was merely passing on general gossip.
- 17.4.3 Failure to adhere to the policies of the CCG could result in disciplinary processes being invoked against the individual

### 17.5 **Police involvement**

- 17.5.1 In accordance with the NHS Anti Fraud and Corruption Manual, the Chief Operating and Finance 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 Dudley CCG.

### 17.6 **Managing the Investigation**

- 17.6.1 The AFS, in consultation with Dudley CCGs Chief Financial Officer, will investigate an allegation in accordance with procedures documented in the NHS Counter Fraud and Corruption Manual issued by NHS Counter Fraud Authority .
- 17.6.2 The AFS must be aware that individuals under 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 that the individual is suspended from their duties to preserve integrity of evidence. Dudley CCG will make a decision based on HR advice on the disciplinary options, which include suspension.
- 17.6.3 Dudley CCG will follow its disciplinary procedure if there is evidence that an employee has committed an act of fraud, bribery or corruption.

### 17.7 **Gathering Evidence**

- 17.7.1 The AFS will take control of any physical evidence, and record this in accordance with the procedures outlined in the NHS Anti-Fraud and Corruption Manual. If evidence consists of several items, such as many documents, AFSs 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.
- 17.7.2 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.

17.7.3 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.

17.7.4 The application of the counter fraud, bribery and corruption policy will at all times be in tandem with all other appropriate Dudley CCG policies, e.g. Prime Financial Policies and Irregularities.

## 17.8 ***Recovery of Losses incurred to Fraud and Corruption***

17.8.1 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 Counter Fraud Authority 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.

17.8.2 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.

## 17.9 ***Reporting the results of the investigation***

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

17.9.2 If fraud, bribery or corruption is found to have occurred, the AFS should prepare a report for the Chief Operating and Finance Officer and the next Dudley CCG 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.

This report should also be available to Dudley CCG Governing Body.

## 17.10 ***Action to be taken***

17.10.1 Sections 10 and 11 of the NHS Anti-Fraud and Corruption Manual provide in-depth details of how sanctions can be applied where fraud, bribery 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 Dudley CCG or the civil law.

17.10.2 In cases of serious fraud, bribery or 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.

17.10.3 NHS Counter Fraud Authority can also apply to the courts to make a restraining order or confiscation order under the Proceeds of Crime Act 2002. 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.

17.10.4 Actions which may be taken when considering seeking redress include:

- no further action
- criminal investigation
- civil recovery
- disciplinary action
- confiscation order under the Proceeds of Crime Act 2002
- recovery sought from ongoing salary payments.

17.10.5 In some cases (taking into consideration all the facts of a case), it may be that Dudley CCG, under guidance from the AFS and with the approval of the Chief Operating and Finance Officer, decides that no further recovery action is taken.

17.10.6 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 the Proceeds of Crime Act 2002.

17.10.7 The civil recovery route is also available to Dudley 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.

17.10.8 The appropriate senior manager, in conjunction with the Human Resources 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 Dudley CCG. In all cases, current legislation must be complied with.

#### 17.11 **Timescales**

17.11.1 Action to recover losses should be commenced as soon as practicable after the loss has been identified. Given the various options open to the Dudley CCG, it may be necessary for various departments to liaise about the most appropriate option.

#### 17.12 **Recording**

17.12.1 In order to provide assurance that policies were adhered to, the Chief Operating and Finance Officer and/or the AFS 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.

### 18.0 **General**

#### 18.1 **Equality and Diversity**

18.1.1 Dudley CCG recognises the diversity of the local community and those in its employ. Our aim is, therefore, to provide a safe environment free from discrimination and a place where all individuals are treated fairly, with dignity and appropriately to their need. Dudley CCG also recognises that equality impacts on all aspects of its day-to-day operations and has produced an Equality Policy Statement to reflect this. All policies are assessed in accordance with the Equality impact assessment tool, the results for which are monitored centrally.

#### 18.2 **Review**

18.2.1 This policy will be reviewed in two years' time. Earlier review may be required in response to exceptional circumstances, organisational change or relevant changes in legislation of guidance.



### 18.3 ***Training and Awareness***

18.3.1 The AFS will offer counter fraud awareness presentations to all employees who are encouraged to attend these when provided. The AFS will maintain records of presentations delivered each year and this evidence may be submitted to NHS Counter Fraud Authority as part of the annual quality assessment process.

### 18.4 ***Key Performance Indicators***

18.4.1 The AFS will meet regularly with the Chief Operating and Finance Officer in order to discuss and agree on counter fraud work plan progress. These will be formalised in the form of minutes for evidential purposes. In addition the AFS will also attend and present a formal counter fraud activity report to each Audit Committee meeting. At the end of the financial year the AFS will also present an annual counter fraud activity report to the Audit Committee which will be made available to the Board as required.

18.4.2 Evidence of all counter fraud activities will be submitted to NHS Counter Fraud Authority as part of the annual quality assessment process after which the organisation will be scored on the adequacy of the counter fraud service.

18.4.3 In addition the counter fraud provision will also be reviewed as part of the external auditors' assessment on Use of Resources.

### 18.5 ***References***

18.5.1 No references have been made in the development of this policy.



**REFERRAL FROM:**

**NAME**

**ORGANISATION/PROFESSION**

**ADDRESS**

**TEL.NO**

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**THIS ALLEGED FRAUD RELATES TO:**

**NAME**

**ADDRESS**

**DATE OF BIRTH**

*Referrals should only be made when you can substantiate your suspicions with one reliable piece of information*

**SUSPICION**

**PLEASE PROVIDE DETAILS**

**POSSIBLE USEFUL CONTACTS**

*Please attach any available additional information*

**Signed**..... **Date**.....

*The Anti Fraud Specialist will undertake to acknowledge receipt of this referral direct to you within 5 working days unless otherwise requested.*

**FRAUD** is the 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.

**BRIBERY & CORRUPTION** is the deliberate use of payment or benefit-in-kind to influence an individual to use their position in an unreasonable way to help gain advantage for another

## DO

### Note your concerns

Record details such as the nature of your concerns, names, date, 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 nominated Local Counter Fraud Specialist.

### Report your suspicions

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

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

- directly contacting the nominated **Local Counter Fraud Specialist**, or
- telephoning the **freephone** NHS Fraud and Corruption Reporting Line (see details on the right), or

## 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 lead to an innocent person being unjustly accused.

### Try to investigate, or contact the police directly

Never attempt to gather evidence yourself unless it is about to be destroyed; gathering evidence must be done in line with legal requirements in order for it to be useful. Your nominated Local Counter Fraud Specialist 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

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

NHS Fraud, Bribery and Corruption Reporting Line: **0800 028 40 60**

calls will be treated in confidence and investigated by professionally trained

Your Nominated Anti Fraud Specialist is, **Lisa Hines**  
who can be contacted by telephoning **02476 536880** or emailing [lisa.hines@cwaudit.org.uk](mailto:lisa.hines@cwaudit.org.uk) OR [lisahines@nhs.net](mailto:lisahines@nhs.net) OR  
[antifraudteam@cwaudit.org.uk](mailto:antifraudteam@cwaudit.org.uk)

*Tackling Economic Crime*