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COUNTER-FRAUD POLICY AND RESPONSE PLAN

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FOREWORD

This document is intended to provide NHS Oxfordshire with a policy and a response plan for dealing with suspected fraud and corruption, and other illegal acts involving dishonesty or damage to property. It also includes a brief statement, which could be issued to all employees and independent contractors setting out the organisation's position on dealing with fraud, corruption etc. and what employees and independent contractors should do if they suspect a fraud.

The organisation has designated individuals as nominated officers, referred to throughout this document, whom staff/contractors may contact confidentially if they suspect a fraudulent act. The "Nominated Officers" for NHS Oxfordshire are the Director of Finance and the Local Counter Fraud Specialist (LCFS) in accordance with HSC 1999/062 and the Secretary of State's Directions, November 1999 and the latest guidance issued from the Secretary of State for Health in September 2002, November 2004 and subsequent guidance.

The PCT's Local Counter Fraud Specialists are Grant Bezuidenhout and Gareth Robins, of Counter Fraud Services, Parkhill.

THE PCT'S INHERITED FRAUD POLICIES & RESPONSE PLANS HAVE BEEN SUBSTANTIALLY AMENDED AND ALL PREVIOUS COPIES SHOULD BE DESTROYED.

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COUNTER FRAUD POLICY AND RESPONSE PLAN

1. INTRODUCTION

One of the basic principles of public sector organisations is the proper use of public funds. It is therefore important that all those who work in the public sector are aware of the risk of and means of enforcing the rules against fraud and other illegal acts involving dishonesty or damage to property. The definition of 'fraud and corruption' is detailed below.

Fraud – The Fraud Act 2006 came into force on the 15 January 2007 and will introduce the general offence of fraud. This is broken into three key sections;

- Fraud by false misrepresentation
- Fraud by failing to disclose information
- Fraud by abuse of position

The Fraud Act also creates new offences of;

- Possession and making or supplying articles for use in fraud
- Fraudulent trading (sole traders)
- Obtaining services dishonestly

Corruption – The Bribery Act 2010 replaces the fragmented and complex offences at common law and in the Prevention of Corruption Acts 1889-1916. This broadly defines the sections below;

- Two general offences of bribery – 1) Offering or giving a bribe to induce someone to behave, or to reward someone for behaving, improperly and 2) requesting or accepting a bribe either in exchange for acting improperly, or where the request or acceptance is itself improper;
- The new corporate offence of negligently failing by a company or limited liability partnership to prevent bribery being given or offered by an employee or agent on behalf of that organisation;
- Bribing a foreign official.

This document sets out the PCT's policy and response plan for detected or suspected fraud. The PCT endorses the NHS Counter Fraud Strategy as set out under HSC 1998/231.

The Board already has procedures in place that reduces the likelihood of fraud occurring. These include standing orders, standing financial instructions, documented procedures* and a system of internal control and a system of risk assessment. In addition, the Board tries to ensure that a risk (and fraud) awareness culture exists in the PCT, and have complied with the Secretary of State's Directions in nominating a Local Counter Fraud Specialist (LCFS).

This document is intended to provide direction and help to those officers and directors who find themselves having to deal with allegations of fraud or corruption. It gives a framework for a response and advice and information on various aspects and implications of an investigation. This document is not intended to provide detailed direction on the prevention of fraud in any particular departments or control systems.

Section 2 sets out the public service values that must underpin the activities and culture of the PCT. Section 3 sets out the Board's policy on dealing with fraud. Section 4 sets out the roles and responsibilities of directors and staff/contractors of the PCT in relation to alleged fraud. Section 5 is the response plan that the PCT will follow where a fraud is reported. Section 6 sets out the options available to the PCT in choosing how to investigate a fraud.

The LCFS conducts investigations as directed by the NHS Counter Fraud and Corruption Manual as required by the Secretary of State's directions.

2. PUBLIC SERVICE VALUES

A Code of Conduct for NHS Boards was first published by the NHS Executive in April 1994 and set out the initial public service values. This has been superseded by the seven fundamental public service values specified in the Nolan report. A further Code of Conduct was issued in October 2002 titled "Code of Conduct for NHS Managers".

SELFLESSNESS: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their families or their friends.

INTEGRITY: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that may influence them in the performance of their official duties.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS: Holders of public office should be as open as possible about all their decisions and the actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP: Holders of public office should promote and support these principles by leadership and example.

All those who work in the organisation should be aware of, and act in accordance with, these values.

3. THE BOARD'S POLICY

The Board is absolutely committed to maintaining an honest, open and well-intentioned atmosphere within the PCT. It is therefore committed to the elimination of any fraud and corruption within the PCT, and to the rigorous investigation of any such cases.

The Board wishes to encourage anyone having reasonable suspicions of fraud or corruption to report them. It is Board policy, which will be rigorously enforced; that no employee or independent contractor will suffer in any way because of reporting reasonably held suspicions. The Board fully endorses the provisions of the Public Interest Disclosure Act (1998) and will offer full and unconditional support to any member of staff/contractors who has a genuine concern to raise under the provisions of the Act. This is supported by the PCT's *Code of Conduct and Whistleblowing Policy*.

All members of staff can therefore be confident that they will not suffer in any way as a result of reporting reasonably held suspicions of fraud. For these purposes "reasonably held suspicions" shall mean any suspicions other than those which are raised maliciously. Reasonably held can mean groundless, as long as they were not raised maliciously.

4. ROLES AND RESPONSIBILITIES

Under the PCT's Standing Financial Instructions, the Local Counter Fraud Specialist (LCFS) is responsible for investigating allegations of fraud and corruption. Presently, the PCT has contracted with Parkhill to provide an LCFS service: Grant Bezuidenhout and Gareth Robins of Counter Fraud Services are our nominated LCFS. Anyone, whether an employee of the PCT or not, can refer such allegations to the LCFS and staff have a responsibility to the PCT to raise their genuine concerns. Upon receipt of a referral, the LCFS must comply with national regulations including the Secretary of States directions, regarding liaison with the NHS CFS Operational Fraud Team (OFT) and the NHS Counter Fraud Service (NHS CFS). The Director of Finance shall inform and consult the Chief Executive in cases where the loss may be above the delegated limit or where the incident may lead to adverse publicity.

Where a referral concerning fraud or corruption has been made to the Director of Finance, the Director shall inform the LCFS at the first opportunity and delegate to him/her responsibility for leading any investigation whilst retaining overall responsibility him/herself. A protocol for the referral, acknowledgement, investigation and reporting of allegations forms part of the PCT's Service Level Agreement for the LCFS service with Parkhill.

The Director of Human Resources shall advise those involved in the investigation in matters of employment law and in other procedural matters, such as disciplinary and complaints procedures, as requested.

The Nominated Officers are authorised to receive inquiries from staff / independent contractors confidentially and anonymously.

The Board 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 PCT's Whistleblowing Policy rigorously enforces that no employee should suffer because of reporting reasonably held suspicions under the provisions of the Act.

If you are concerned about speaking to another member of staff/contractors, you could ask for advice from the 'LCFS' telephone 020 8869 7433 or 07799 868 838.

Employees are expected to act in accordance with the PCT's Standards of Business Conduct and to follow guidance on the receipt of gifts or hospitality outlined in the PCT's Code of Conduct Policy. Employees also have a duty to protect the assets of the PCT, including information and goodwill as well as property.

5. THE RESPONSE PLAN

5.1 Introduction

The flowcharts in section 5.2 describe the PCT's intended response to a reported suspicion of fraud. The flowcharts are intended to provide guidance to management and staff / independent contractors on the authorised / approved approach to the referral and subsequent management of referrals.

The LCFS will conduct all investigations in accordance with national guidance and in particular in full compliance with the NHS Counter Fraud and Corruption Manual issued by the NHS Counter Fraud Service (NHS CFS). This will cover all aspects of conducting a professional investigation, including gathering evidence and interviewing.

Further details on the processes in the flowchart are provided in section 5.3 (Commentary on Flowchart Items).

Under no circumstances should a member of staff/contractor speak to, write to, or email representatives of the press, TV, radio or to another third party about a suspected fraud without the express authority of the Chief Executive. Care needs to be taken to ensure that nothing is done that could give rise to an action for slander or libel.

In some cases, e.g. if a major diversion of funds is suspected, speed of response will be crucial to avoid financial loss.

5.2 Flowcharts

CHART 1 - REPORTING FRAUD

CHART 2 – DETERMINING THE COURSE OF AN INVESTIGATION: LCFS Vs DISCIPLINARY POLICY

See Appendix 1.

5.3 Commentary on Flowchart Items

Further explanation of many items is also given elsewhere in this document.

CHART 1 - REPORTING FRAUD

5.3.1 The Nominated Officers

The nominated officers are authorised to treat inquiries confidentially and anonymously if so requested by the employee or patient contacting them. The nominated officers should attempt to monitor requests for details of the fraud policy (over and above those issued as a staff guide) in case a fraudster attempts to obtain information on how the PCT deals with fraud.

The LCFS is a fully accredited NHS counter fraud officer who has undertaken specialist training provided by the NHS Counter Fraud Service (NHS CFS) and equally importantly in responding tactfully and appropriately to concerns raised by staff/contractors.

5.3.2 Discuss with your head of department or Nominated Officers

If an employee has good reason to suspect a colleague, patient or other person of fraud or corruption, involving the PCT, they should report it to the Director of Finance or the LCFS immediately.

An employee should normally discuss his/her concerns or queries, if they do not believe fraud or corruption is involved, with the head of department. If the concerns or queries then appear to indicate possible fraud or corruption, the head of department should immediately notify the Director of Finance or a Nominated Officer (effectively, the LCFS,) of the employee's concerns. The employee may also discuss the matter confidentially directly with a Nominated Officer themselves.

The Nominated Officer will then decide on the next course of action and advise the employee accordingly.

If an employee is unsure how to proceed then the LCFS can be contacted for advice, in complete confidence, on 020 8869 7433. An employee can choose, if they so wish, to contact the charity "Public Concern at Work" on 020 7404 6609 who will offer the employee advice on how to proceed.

If unable to talk to anyone within the PCT or the LCFS then staff/contractors can contact the National Fraud and Corruption reporting line on 0800 028 4060.

If the concern or query involves an executive director, the matter should be reported to the Chairman of the Audit Committee.

Time may be of the utmost importance to prevent further loss to the PCT. Staff/contractors should be encouraged to report their first suspicions and not undertake lengthy consideration of alternative explanations. They should be reassured that all initial investigation into their suspicions will be of the highest professional standard. There will be equal protection of i) the innocent suspect, (there can be “smoke without fire”) from publicity or character assassination, and ii) the well-intentioned, but mistaken, reporter from public ridicule or ostracism.

5.3.3 Director of Finance records details immediately in a log

The log will contain details of all reported suspicions, including those immediately dismissed as minor or otherwise not investigated. It will also contain details of subsequent actions taken and conclusions reached. This log will be reviewed by the Audit Committee at least once a year, which will report any significant matters to the Board. The LCFS will have open access to the log. Before the Director of Finance undertakes any of the following responsibilities he will consult with the LCFS. The log will be a confidential document and accessible only by authorised officers.

5.3.4 Director of Finance considers necessary lines of reporting

In all cases where fraud or corruption is not suspected, the Director of Finance shall consult the Chief Executive at the first opportunity in cases where the loss may exceed the delegated limit (or such lower limit as the Board may determine) or where the incident may lead to adverse publicity. The Chief Internal Auditor (CIA) should normally be informed immediately in all but the most trivial cases.

The NHS (delegated from the Department of Health) guidance on special payments and losses states that if a health body suspects losses due to arson, theft, neglect of duty or gross carelessness, except if trivial, its Director of Finance should at once inform the police and the external auditors. The Director of Finance will decide what is / is not trivial after taking advice if necessary. Where fraud or corruption is suspected, these cases are specifically excluded from the Director of Finance’s reporting responsibilities under this paragraph.

If a criminal act is suspected, particularly fraud or corruption, it is essential that the earliest possible consultation with the LCFS takes place. Nobody other than the Director of Finance or the LCFS may contact any outside agency including the NHS CFS Operational Fraud Team (OFT) or the NHS Counter Fraud Service (NHS CFS).

CHART 2 – Determining the Course of the Investigation: LCFS Vs Disciplinary Policy

5.3.5 Director of Finance informs the LCFS who will initiate and supervise the initial assessment.

The circumstances of each case will dictate who will be involved and when. The following is intended to be general guidance to assist management in understanding their normal role.

5.3.6 Diary of Events

The LCFS will initiate a Diary of Events (or such record as required by the NHS Counter Fraud and Corruption manual) to record the progress of the investigation.

5.3.7 Does it appear that either a criminal act has taken place or fraud or corruption may be involved? (“Initial assessment” stage)

The LCFS will conduct an “initial assessment”. Where appropriate, this will involve consultation with, and as far as practicable, be a joint approach with the internal auditors.

The answer to the question obviously determines if there is to be a fraud investigation (or other criminal investigation). In practice, it may not be obvious if a criminal act has taken place. If a criminal event is believed to have occurred but fraud and corruption are not suspected, the police, LSMS, external audit and the Board should be informed. It is at this time that the LCFS will review criminal proceedings with the Director of Finance if appropriate.

The LCFS is required to advise the Operational Fraud Team (OFT) of every case under investigation and the investigation will be undertaken in accordance with the “operational responsibilities” set down by the Secretary of State’s Directions for the various NHS counter-fraud specialists. Cases outside of the LCFS’s operational responsibilities may nevertheless be “referred back” if the NHS CFS OFT and the Director of Finance so decide.

5.3.8 Investigate internally

If it appears a criminal act has not taken place, the next step will be an internal management investigation co-ordinated by the *LCFS and* Head of Department to determine:-

- i) the full facts,
- ii) what, if any, disciplinary action is needed
- iii) what can be done to recover a loss
- iv) what may need to be done to improve internal control to prevent the event happening again
- v) if the ‘Conflict of Interest’ or other policies have been breached.

Broadly, where no criminal act has taken place the event will have three outcomes. The most serious would be where it is decided there was gross misconduct, this could involve dishonesty but not with a criminal intent. The outcome is likely to be dismissal if a member of staff/contractor is involved. Less serious would be if it was decided that there was negligence or an error of judgement that caused the event. This is unlikely to lead to dismissal but might involve disciplinary procedures. (Just as where as a result of an investigation of suspected criminal activity it was considered there was sufficient evidence of gross misconduct to justify dismissal). Finally, it may be concluded there is no case for an individual to answer. When the above situations arise it is essential that managers seek advice/guidance from their HR Managers.

In each case, the LCFS, LSMS and the internal auditors should consider what can be done to recover any loss and whether anything should be done to improve control to reduce the risk of the event happening again.

5.3.9 Recovering a loss

Where recovering a loss is likely to require a civil action it will probably be necessary to seek legal advice. Where external legal advisors are used, the LCFS must ensure there is co-ordination between the various parties involved.

If the loss may be covered by insurance, the LCFS should inform the manager responsible for insurance matters.

5.3.10 Disciplinary/Dismissal Procedures

The disciplinary procedures of the PCT have to be followed in any disciplinary action taken by the PCT towards an employee (including dismissal). However, in any matters of 'Fraud and Corruption' the PCT's LCFS must have previously investigated the matter and a decision reached by the Director of Finance to use the Disciplinary Policy. This may involve the LCFS recommending a disciplinary hearing to consider the facts, the results of the investigation (a formal report) and take appropriate action against the employee.

5.3.11 Losses and Compensations Register

Guidance on losses and special payments is provided in the PCT Manual for Accounts. For all fraud cases a copy of the fraud report must be sent to the NHS Counter Fraud Services (NHS CFS), as stated in the latest Model SFIs for PCTs.

5.3.12 Civil Penalties

The NHS Counter Fraud Service (NHS CFS), under the Health Act 1999 and the Penalty charge Regulation's 1999 can impose a civil penalty where a person wrongly fails to pay any amount in respect of NHS charges, or receives a payment or benefit towards the cost of NHS charges or services to which he or she is not entitled.

5.3.13 Insurance

The possibility of recovering a loss through insurance should not be overlooked. There may be time limits for making a claim and in certain cases; claims may be invalidated if legal action has not been taken.

6. INVESTIGATION RESOURCE OPTIONS

Once a case has been referred to the PCT's Nominated officers, it is up to the LCFS to report continuing progress and stages of an investigation directly to the Director of Finance. The Director of Finance is the sole person who can determine the next steps of an investigation; however, guidance can be sought from the Chief Executive and the LCFS in such cases.

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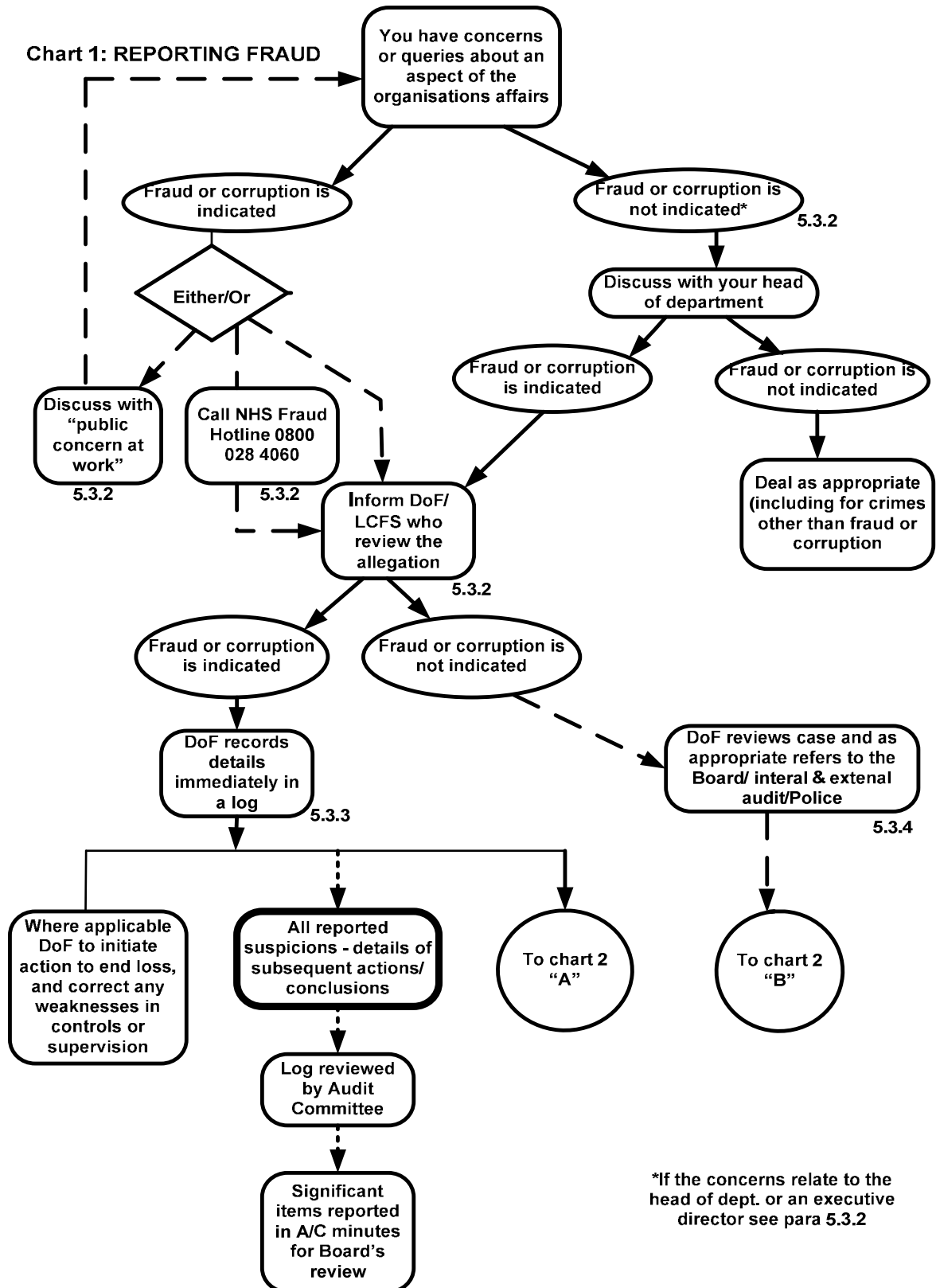


Chart 2: Determining the Course of the Investigation:

LCFS Vs Disciplinary Policy

