

Policy Title: Anti-Fraud and Bribery Policy

Policy Number: SWLCCG/FI03

| | Name | Role and Organisation | Date |
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| Approved By | Senior Management Team |
| Applies To | South West London CCG (SWL CCG) Governing Body Members, Committee Members and all staff working for, or on behalf of, NHS South West London CCG. |

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Controlled Document

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| Target Audience | South West London CCG (SWL CCG), Governing Body Members, Committee Members and all staff working for, or on behalf of, NHS South West London CCG. |
| Brief Description | This document sets out the South West London Clinical Commissioning Group's (SWL CCG) policy and advice to employees in dealing with fraud or suspected fraud. This policy details the arrangements made by SWL CCG for such concerns to be raised by employees or members of the public. |
| Action Required | Introduce provisions and requirements of the policy to all staff via appropriate team meeting and ongoing arrangements including induction. |

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1. Introduction

1.1 Introduction

- 1.1.1. The purpose of this document is to set out the South West London Clinical Commissioning Group's (Hereby known as the CCG) policy and advice to employees in dealing with fraud or suspected fraud. This policy details the arrangements made by SWL CCG for such concerns to be raised by employees or members of the public.
- 1.1.2. This policy applies to all SWL CCG employees, members of the Governing Body and its committees, sub-committees and working groups, any person working on behalf of the SWL CCG, employees and committee members of organisations funded by the CCG, employees and principals of partner organisations and agency staff. It also applies to consultants, vendors, contractors and any other parties who have a business relationship with the CCG and its service users.
- 1.1.3. It will be brought to the attention of all employees and form part of the induction process for new staff. It is incumbent on all those above to report any concerns they may have concerning fraud and bribery.
- 1.1.4. The CCG does not tolerate fraud and bribery within the NHS. The intention is to eliminate all NHS fraud and bribery as far as possible. The aim of the policy and procedure is to protect the property and finances of the NHS and of patients in our care.
- 1.1.5. The CCG is committed to taking all necessary steps to counter fraud and bribery. To meet this objective, they have adopted the four-stage approach developed by the NHS Counter Fraud Authority. NHS CFA now have a four headed approach to tackling fraud via:
 - Strategic Governance;
 - Inform and Involve;
 - Prevent & Deter; and
 - Hold to account.
- 1.1.6. The CCG will take all necessary steps to counter fraud and bribery in accordance with this policy, the NHS Counter Fraud and Bribery Manual, the policy statement 'Applying Appropriate Sanctions Consistently' published by the former NHS Protect and any other relevant guidance or advice issued by the new NHS Counter Fraud Authority.
- 1.1.7. This document sets out the CCG's policy for dealing with detected or suspected fraud and bribery, incorporated in the NHS Counter Fraud Authority's Standards for Commissioners.

1.2 Scope

1.2.1 This policy relates to all forms of fraud and bribery and is intended to provide direction and help to individuals 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 and bribery. The overall aims of this policy are to:

- improve the knowledge and understanding of everyone in the CCG, irrespective of their position, about the risk of fraud and bribery 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 the CCG's responsibilities in terms of the deterrence, prevention, detection and investigation of fraud and bribery
- ensure the appropriate sanctions are considered following an investigation, which may include any or all of the following:
 - criminal prosecution
 - civil proceedings
 - internal/external disciplinary action (including professional/regulatory bodies)

1.2.2 In implementing this policy, managers must ensure that all staff are treated fairly and within the provisions and spirit of the CCG's equal opportunities arrangements. Special attention should be paid to ensuring the policy is understood where there may be barriers to understanding caused by the individual's circumstances, where the individual's literacy or use of English is weak, or where the individual has little experience of working life. The policy will be referenced within fraud awareness material, presentations and induction. The policy will be available to all staff via the intranet.

2. Definitions

2.1 **Fraud** - any person who dishonestly makes a false representation to make a gain for himself or another or dishonestly fails to disclose to another person, information which he is under a legal duty to disclose, or commits fraud by abuse of position, including any offence as defined in the Fraud Act 2006. Appendix B is a summary of the Fraud Act 2006; <https://www.legislation.gov.uk/ukpga/2006/35/contents>

NHS Counter Fraud Authority (NHSCFA) - The NHSCFA has the responsibility for the detection, investigation and prevention of fraud and economic crime within the NHS. Its aim is to lead the fight against fraud affecting the NHS and wider health service, by using intelligence to understand the nature of fraud risks, investigate serious and complex fraud, reduce its impact and drive forward improvements.

A copy of the **NHSCFA strategy**: Leading the fight against NHS fraud: Organisational strategy 2017-2020 is available at: <https://cfa.nhs.uk/about-nhscfa/corporate-publications>.

Counter fraud standards A requirement in the NHS standard contract is that providers of NHS services (that hold an NHS Provider Licence or is an NHS Trust) must take the necessary action to comply with the NHSCFA's counter fraud standards. Others should have due regard to the standards. The contract places a requirement on providers to have policies, procedures and processes in place to combat fraud, corruption and bribery to ensure compliance with the standards. The NHSCFA carries out regular assessments of health organisations in line with the counter fraud standards: <https://cfa.nhs.uk/counter-fraud-standards>

- 2.2 Bribery - "giving or receiving a financial or other advantage in connections with the "improper performance" of a position of trust, or a function that is expected to be performed impartially or in good faith. Bribery does not have to involve cash, or an actual payment exchanging hands and can take many forms such as a gift, lavish treatment during a business trip or tickets to an event. Bribery does not always result in a loss. The corrupt person may not benefit directly from their deeds; however, they may be unreasonably using their position to give some advantage to another.
- 2.3 It is a common law offence of bribery to bribe the holder of a public office and it is similarly an offence for the office holder to accept a bribe.
- 2.4 An organisation is guilty of a corporate bribery offence if an employee, agent of subsidiary or any other person acting on its behalf bribes another person intending to obtain or retain business or an advantage in the conduct of business for the organisation. It is a statutory defence for the CCG to demonstrate that, despite a particular case of bribery, the CCG had adequate procedures in place to prevent persons associated with it from bribery.
- 2.5 Procedures to be put in place by the CCG to prevent bribery should be informed by six principles proportionate procedure: top-level commitment, risk assessment, due diligence, communication (including training) monitoring and review. For more information please refer to the Ministry of Justice – The Bribery Act 2010 Guidance.
- 2.6 Bribery prosecutions tend to be most commonly brought using specific pieces of legislation dealing with bribery, i.e. under the following:
 - The Bribery Act 2010 <https://www.legislation.gov.uk/ukpga/2010/23/contents>
 - the Anti-Terrorism, Crime and Security Act 2001.
- 2.7 The CCG has procedures in place that reduce the likelihood of fraud occurring. These include prime financial policies, documented procedures, a system of internal control (including Internal and External Audit) and a system of risk assessment. In addition, the CCG seeks to ensure that a comprehensive anti-fraud and bribery culture exists throughout the CCG via the appointment of a dedicated Local Counter Fraud Specialist, in accordance with the NHS Counter Fraud Authority's Standards for Commissioners.
- 2.8 It is expected that Governing Body members and staff at all levels will lead by example in acting with the utmost integrity and ensuring adherence to all relevant regulations, policies and procedures.

3. Responsibilities

- 3.1 The 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 staff feel protected when carrying out their official duties and are not placed in a vulnerable position. If staff have concerns about any procedures or processes that they are asked to be involved in, the CCG has a duty to ensure that those concerns are listened to and addressed.
- 3.2 The Accountable Officer has the overall responsibility for funds entrusted to the CCG. This includes instances of fraud, bribery and corruption. The Accountable Officer must ensure adequate policies and procedures are in place to protect the organisations and the public funds entrusted to it.
- 3.3 The CCG's Accountable Officer is liable to be called to account for specific failures in the 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 CCG employees.
- 3.4 The CCG therefore has a duty to ensure employees 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 Accountable Officer and Chief Finance Officer will monitor and ensure compliance with this policy.
- 3.5 The NHS Counter Fraud Authority has responsibility for all policy and operational matters relating to the prevention, detection and investigation of fraud, bribery and corruption in the NHS. All investigations will be handled in accordance with NHS Counter Fraud Authority guidance.
- 3.6 For the purposes of this policy, 'Employees' includes all CCG staff and Governing Body members (including Co-Opted Members).
- 3.7 All employees should be aware that fraud and bribery (of finances of the NHS or of patients in our care) will normally, dependent upon the circumstances of the case, be regarded as gross misconduct thus warranting summary dismissal without previous warnings. However, no such action will be taken before a proper investigation and a disciplinary hearing have taken place. Such actions may be in addition to the possibility of criminal prosecution.
- 3.8 CCG employees will not request or receive a bribe from anybody, nor imply that such an act might be considered. This means that you will not agree to receive or accept a financial or other advantage from a former, current or future client, business partner, contractor or supplier or any other person as an incentive or reward to perform improperly your function or activities.
- 3.9 Employees must act in accordance with the CCG's Standards of Business Conduct, Gifts and Hospitality and Conflicts of Interest arrangements. This includes making declarations on the registers of interests, gifts, hospitality and sponsorship that are maintained by the CCG's corporate teams.
- 3.10 Employees also have a duty to protect the assets of the CCG including information, goodwill and reputation, as well as property.

- 3.11 Employees are expected to act in accordance with the standards laid down by their Professional Institute(s), where applicable.
- 3.12 The CCG's Constitution and Prime Financial Policies place an obligation on all staff and Governing Body members to act in accordance with best practice. In addition, all CCG staff and Governing Body members must declare and register any interests that might potentially conflict with those of the CCG or the wider NHS.
- 3.13 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:
- Act with honesty, integrity and in an ethical manner
 - Behave in a way that would not give cause for others to doubt that the CCG employees deal fairly and impartially with official matters
 - Be alert to the possibility that others might be attempting to deceive.
- 3.14 All employees have a duty to ensure that public funds are safeguarded, whether or not they are involved with cash or payment systems, receipts or dealing with contractors or suppliers.
- 3.15 When an employee suspects that there has been fraud or bribery, they must report the matter to the nominated Local Counter Fraud Specialist and/or the NHS Counter Fraud Authority. See Section 11 below.

3.1 Lead Manager

- 3.1.1 Line managers at all levels have a responsibility to ensure that an adequate system of internal control exists within their areas of responsibility and that controls operate effectively. The responsibility for the prevention and detection of fraud and bribery therefore primarily rests with managers but requires the co-operation of all employees.
- 3.1.2 As part of that responsibility, line managers need to:
- Inform staff of the CCG's code of business conduct, gifts and hospitality, declaration of interest and counter fraud and bribery arrangements as part of the induction process, paying particular attention to the need for accurate completion of personal records and forms;
 - Ensure that all employees for whom they are accountable are made aware of the requirements of the policy;
 - Assess the types of risk involved in the operations for which they are responsible;
 - Ensure that adequate control measures are put in place to minimise the risks. This must include clear roles and responsibilities, supervisory checks, staff rotation (particularly in key posts), separation of duties wherever possible so that control of a key function is

not invested in one individual, and regular reviews, reconciliations and test checks to ensure that control measures continue to operate effectively;

- Be aware of this Anti-Fraud and Bribery Policy and the rules and guidance covering the control of specific items of expenditure and receipts;
- Identify financially sensitive posts;
- Ensure that controls are being complied with; and
- Contribute to their Director's assessment of the risks and controls within their business area, which feeds into the CCG's and the Department of Health Accounting Officer's overall statements of accountability and internal control (as it applies to CCG's under the legislation).

3.1.3 All instances of actual or suspected fraud or bribery, 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, and they have the clear responsibility to refer the concerns to the Local Counter Fraud Specialist as soon as possible. See Section 11 below.

3.1.4 be reported immediately. See Section 11 below.

3.2 All Staff

All individuals working for, or on behalf of the organisation(s) listed within 1.4 Scope, including those employed on permanent or fixed term contracts, interims, self-employed contractors, Governing Body Members, Clinical Leads, Locality Leads, and volunteers are responsible for complying with this Policy.

3.3 Senior Responsible Officer

3.3.1 The CCG has appointed the Chief Finance Officer who will be responsible for ensuring compliance with the requirements of the Bribery Act 2010, implementing anti-bribery guidelines and monitoring compliance. They will review annually the suitability, adequacy and effectiveness of the CCG's anti-bribery arrangements and implement improvements as and when appropriate.

3.3.2 The Chief Finance Officer directly reports to the Accountable Officer and once a year, the Chief Finance Officer reports the results of the reviews to the Governing Body.

3.3.3 Any incident or suspicion that comes to attention of the Senior Compliance Officer will be passed immediately to the LCFS.

3.4 Local Counter Fraud Specialist (LCFS)

3.4.1 The NHS Counter Fraud Authority's Standards for Commissioners require the CCG to appoint and nominate an LCFS. The LCFS's role is to ensure that all cases of actual or suspected fraud and bribery are notified to the Chief Finance Officer and reported accordingly.

- 3.4.2 The LCFS is responsible for taking forward all anti-fraud work locally in accordance with national NHS Counter Fraud Authority standards and reports directly to the Chief Finance Officer (or equivalent).
- 3.4.3 The LCFS works with key colleagues and stakeholders to promote anti-fraud work and effectively respond to system weaknesses and investigate allegations of fraud and corruption. This will include the undertaking of risk assessments to identify fraud, bribery and corruption risks within the CCG.
- 3.4.4 Investigation of the majority cases of alleged fraud within the CCG will be the responsibility of the LCFS. The NHS Counter Fraud Authority will only investigate cases which should not be dealt with by the CCG. Following receipt of all referrals, the NHS Counter Fraud Authority will add any known information or intelligence and based on this case acceptance criteria determine if a case should be investigated by the NHS Counter Fraud Authority.
- 3.4.5 The LCFS will regularly report to the Chief Financial Officer (or equivalent) on the progress of the investigation and when/if referral to the police is required.
- 3.4.6 The LCFS and the Chief Financial Officer (or equivalent), in conjunction with the NHS Counter Fraud Authority, will decide who will conduct the investigation and when/if referral to the police is required. Cases, for instance, where more than £100,000 possible loss is identified or where possible bribery is involved, may be investigated by the NHS Counter Fraud Authority (though the LCFS may assist); otherwise the investigation will normally be undertaken by the CCG's own LCFS directly.
- 3.4.7 The LCFS in consultation with the Chief Finance Officer will review the strategic objectives contained within the assurance framework to determine any potential fraud or bribery risks. Where risks are identified these will be included on the CCG's risk register so the risk can be proactively addressed.

3.5 Chief Financial Officer

- 3.5.1 The Chief Finance Officer, in consultation with the NHS Counter Fraud Authority and the LCFS, will decide whether there is sufficient cause to conduct an investigation, and whether the Police and External Audit need to be informed.
- 3.5.2 The Chief Finance Officer or the LCFS will consult and take advice from the Director of Workforce if a member of staff is to be interviewed or disciplined. The Chief Finance Officer or LCFS will not conduct a disciplinary investigation, but the employee may be the subject of a separate investigation by HR.
- 3.5.3 The Chief Finance Officer will, depending on the outcome of investigations (whether on an interim/on-going or a concluding basis) and/or the potential significance of suspicions that have been raised, inform the Chair of the CCG and the Chair of the Audit Committee of cases, as may be deemed appropriate or necessary.
- 3.5.4 The Chief Finance Officer is also responsible for informing the Audit Committee of all categories of loss.

3.6 Internal and External Audit

- 3.6.1 Any incident or suspicion that comes to Internal or External Audit's attention will be passed immediately to the LCFS.

3.7 Human Resources

- 3.7.1 Human Resources (HR) will liaise closely with managers and the LCFS, from the outset, where an employee is suspected of being involved in fraud in accordance with agreed liaison protocols. HR are responsible for ensuring the appropriate use of the CCG's Disciplinary Policy & Procedure. The HR advisors shall advise those involved in the investigation in matters of employment law and in other procedural matters, such as disciplinary and complaints procedures. Close liaison between the LCFS and HR will be essential to ensure that any parallel sanctions (i.e. criminal and disciplinary) are applied effectively and in a coordinated manner.
- 3.7.2 HR will take steps at the recruitment stage to establish, as far as possible, the previous record of potential employees as well as the veracity of required qualifications and memberships of professional bodies, in terms of their propriety and integrity. In this regard, temporary and fixed term contract employees are treated in the same manner as permanent employees.

4. Information Management & Technology

- 4.1 The Director lead for Information, Management and Technology (IM&T) will contact the LCFS immediately in all cases where there is suspicion that IT is being used for fraudulent purposes. This includes inappropriate internet/intranet, e-mail, telephone and Personal Digital Assistant use. HR will be informed if there is a suspicion that an employee is involved.

5. External Communications

- 5.1 Individuals (be they employees, agency staff, locums, contractors or suppliers) must not communicate with any member of the press, media or another third party about a suspected fraud as this may seriously damage the investigation and any subsequent actions to be taken. Anyone who wishes to raise such issues should discuss the matter with either the Chief Finance Officer or the Accountable Officer.

6. Training

- 6.1 The CCG will provide anti-fraud and anti-bribery training to all relevant employees on a regular basis to make them aware of the CCG's Anti-Fraud and Bribery Policy and guidelines, including possible types of fraud and bribery, the risks of engaging in fraud and bribery related activity, and how employees may report suspicions of fraud and bribery.
- 6.2 All employees have a personal responsibility to protect the assets of the CCG, including all buildings, equipment and monies from fraud, theft, or bribery.

7. Reporting Fraud, Bribery or Other Illegal Acts

- 7.1. The CCG is absolutely committed to maintaining an honest, open and well-intentioned atmosphere, so as to best fulfil the objectives of the CCG and of the NHS. It is, therefore, also committed to the elimination of fraud within the CCG, to the rigorous investigation of any such allegations and to taking appropriate action against wrong doers, including possible criminal prosecution, as well as undertaking steps to recover any assets lost as a result of fraud.
- 7.2. The CCG expects anyone having reasonable suspicions of fraud to report them. It recognises that, while cases of theft are usually obvious, there may initially only be a suspicion regarding potential fraud and, thus, individuals should report the matter to their Local Counter Fraud Specialist who will then ensure that procedures are followed (see appendix A).
- 7.3. Bribing anybody is absolutely prohibited. CCG employees will not pay a bribe to anybody. This means that you will not offer, promise, reward in any way or give a financial or other advantage to any person in order to induce that person to perform his/her function or activities improperly. It does not matter whether the other person is a UK or foreign public official, political candidate, party official, private individual, private or public sector employee or any other person (including creating the appearance of an effort to improperly influence another person). Off-the-book accounts and false or deceptive booking entries are strictly prohibited. All gifts, payments or any other contribution made under these guidelines, whether in cash or in kind, shall be documented, regularly reviewed, and properly accounted for on the books of the CCG. Record retention and archival policy must be consistent with the CCG's accounting standards, tax and other applicable laws and regulations.
- 7.4. The CCG may, in certain circumstances, be held responsible for acts of bribery committed by intermediaries acting on its behalf such as subsidiaries, clients, business partners, contractors, suppliers, agents, advisors, consultants or other third parties. The use of intermediaries for the purpose of committing acts of bribery is prohibited.
- 7.5. All intermediaries shall be selected with care, and all agreements with intermediaries shall be concluded under terms that are in line with this policy. The CCG will contractually require its agents and other intermediaries to comply with the Anti-Fraud and Bribery Policy and to keep proper books and records available for inspection by the CCG, auditors or investigating authorities. Agreements with agents and other intermediaries shall at all times provide for the necessary contractual mechanisms to enforce compliance with the anti-bribery regime. The CCG will monitor performance and, in case of non-compliance, require the correction of deficiencies, apply sanctions, or eventually terminate the agreement even if this may result in a loss of business.

8. Facilitation Payments

- 8.1 Facilitation payments are small payments made to secure or expedite the performance of a routine action, typically by a government official or agency (e.g. issuing licenses or permits, installation of a telephone line, processing goods through customs, etc.) to which the payer (or the company) has legal or other entitlement.
- 8.2 Facilitation payments are prohibited under the Bribery Act like any other form of bribe. They shall not be given by the CCG or its employees in the UK or any other country.

9. Gifts and Hospitality

- 9.1 Courtesy gifts and hospitality must not be given or received in return for services provided or to obtain or retain business but shall be handled openly and unconditionally as a gesture of esteem and goodwill only. Gifts and hospitality shall always be of symbolic value, appropriate and proportionate in the circumstances, and consistent with local customs and practices. They shall not be made in cash. Please refer to the CCG's Gifts and Hospitality Policy. (link to the Gifts and Hospitality Policy <http://www.swlondonccg.nhs.uk/wp-content/uploads/2020/04/Hospitality-and-Gifts-Policy.pdf>)

10. Political and Charitable Contributions

- 10.1 The CCG does not make any contributions to politicians, political parties or election campaigns.
- 10.2 As a responsible member of society, the CCG may make charitable donations. However, these payments shall not be provided to any organisation upon suggestion of any person of the public or private sector in order to induce that person to perform improperly the function or activities which he or she is expected to perform in good faith, impartially or in a position of trust or to reward that person for the improper performance of such function or activities.
- 10.3 Any donations and contributions must be ethical and transparent. The recipient's identity and planned use of the donation must be clear, and the reason and purpose for the donation must be justifiable and documented. All charitable donations will be publicly disclosed.
- 10.4 Donations to individuals and for-profit organisations and donations paid to private accounts are incompatible with the CCG's ethical standards and are prohibited.

11. Sponsoring

- 11.1 Sponsoring means any contribution in money or in kind by the CCG towards an event organised by a third party in return for the opportunity to raise the CCG's profile. All sponsoring contributions must be transparent, pursuant to a written agreement, for legitimate business purposes, and proportionate to the consideration offered by the event host. They may not be made towards events organised by individuals or organisations that

have goals incompatible with the CCG's ethical standards or that would damage the CCG's reputation. All sponsorships will be publicly disclosed.

- 11.2 Where commercial sponsorship is used to fund CCG training events, training materials and general meetings, the sponsorship must be transparent, pursuant to a written agreement, for legitimate business purposes, and proportionate to the occasion. Where meetings are sponsored by external sources, that fact must be disclosed in the papers relating to the meeting and in any published minutes/proceedings.
- 11.3 Where sponsorship links to the development of guidelines and advice, this should be carried out in consultation with the Chief Finance Officer and governance lead in conjunction with an appropriate CCG working group independent of the sponsors. While it is recognised that consultation with the industry may be necessary when developing a guideline, the overall decision on what is included should lie with the relevant CCG working group.

12. Reporting Fraud, Bribery or Other Illegal Acts

- 12.1 This section outlines the action to be taken where fraud, bribery or other illegal acts involving dishonesty, inappropriate Internet use, or damage to property are discovered or suspected. For completeness, it also deals with the action to be taken where theft is discovered or suspected.
- 12.2 If any of the concerns mentioned in this document come to the attention of an individual, they must inform the Local Counter Fraud Specialist or the Chief Finance Officer immediately. Employees can also call the NHS Counter Fraud Authority Fraud Reporting Line on Freephone 0800 028 40 60 or using their online reporting tool at <https://cfa.nhs.uk/reportfraud> as an alternative to internal reporting procedures should staff wish to remain anonymous. This provides an easily accessible route for the reporting of genuine suspicions of fraud within or affecting the NHS. It allows NHS staff who are unsure of internal reporting procedures, to report their concerns in the strictest confidence. All calls are dealt with by experienced caller handlers.
- 12.3 The attached Appendix A is designed to be a reminder of the key "what to do" steps - as well as contact details - to be taken where fraud or other illegal acts are discovered or suspected.
- 12.4 Managers are encouraged to copy this to staff and to place it on staff notice boards in their department.
- 12.5 Anonymous letters, telephone calls etc. are received from time to time from individuals who wish to raise matters of concern, but not through official channels. While the allegations may be erroneous or unsubstantiated, they may also reflect a genuine cause for concern and should always be taken seriously.
- 12.6 Sufficient enquiries will be made by the LCFS to establish whether or not there is any foundation to the allegations. If the allegations are found to be malicious, they will also be considered for further investigation as to their source.

- 12.7 To support the reporting of fraud using the NHSCFA fraud reporting process (as outlined above) all employees should be aware of NHS Improvement and NHS England's: Freedom to speak up: raising concern's (whistleblowing) policy for the NHS, April 2016 and NHS England's Freedom to speak up in Primary Care: Guidance to primary care providers on supporting whistleblowing in the NHS, November 2017. These all form the minimum standards for raising of concerns in the NHS for the benefit of all patients in England.

13. Disciplinary Action

- 13.1 The disciplinary procedures of the CCG must be followed where an employee is suspected of being involved in a fraudulent or other illegal act.
- 13.2 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 shall prevail.

14. Police Involvement

- 14.1 In accordance with the NHS Counter Fraud Manual, the Chief Finance Officer, in conjunction with the LCFS and the NHS Counter Fraud Authority, will decide whether a case should be referred to the police. HR and line managers will be involved as necessary. Any referral to the police will not prohibit action being taken under the CCG's disciplinary procedures.

15. Recovery of Losses Incurred by Fraud or Bribery

- 15.1 In cases of serious fraud and bribery, parallel sanctions may be 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.
- 15.2 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). Outcomes can range from a criminal conviction to fines and imprisonment.
- 15.3 The civil recovery route is also available to the CCG if this is cost-effective and desirable for deterrence purposes. This could involve a number of options such as applying through the Small Claims Court and/or recovery through debt collection agencies. Each case needs to be discussed with Chief Finance Officer to determine the most appropriate action.
- 15.4 Disciplinary procedures will be initiated where an employee is suspected of being involved in a fraudulent or illegal act. The appropriate senior manager, in conjunction with the HR department, will be responsible for initiating any necessary disciplinary action.

Arrangements may be made to recover losses via payroll if the subject is still employed by the CCG. In all cases, current legislation must be complied with.

- 15.5 The seeking of financial redress or recovery of losses will always be considered in cases of fraud or bribery that are investigated by the LCFS or the NHS Counter Fraud Authority where a loss is identified. Redress can take the form of confiscation and compensation orders, a civil order for repayment, or a local agreement between the organisation and the offender to repay monies lost. The decisions for redress will be taken in the light of the particular circumstances of each case.
- 15.6 Redress allows resources that are lost to fraud and bribery to be returned to the NHS for use as intended, for provision of high-quality patient care and services. 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 Proceeds of Crime Act 2002 (POCA). This means that a person's money or assets are 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. When considering seeking redress recovery may also be sought from on-going salary payments or pensions.
- 15.7 In some cases (taking into consideration all the facts of a case), it may be that the CCG, under guidance from the LCFS and with the approval of Chief Finance Officer, decides that no further recovery action is taken.
- 15.8 Action to recover losses should be commenced as soon as practicable after the loss has been identified. Given the various options open to the CCG, it may be necessary for various departments to liaise about the most appropriate option.
- 15.9 In order to provide assurance that policies were adhered to, Chief Finance Officer will maintain a record highlighting when recovery action was required and issued and when action taken. This will be reviewed and updated on a regular basis.

16. Monitoring Effectiveness

- 16.1 Monitoring is essential to ensuring that controls are appropriate and robust enough to prevent or reduce fraud. Arrangements might include reviewing system controls on an on-going basis and identifying weaknesses in processes. Where deficiencies are identified as a result of monitoring, the CCG will ensure that appropriate recommendations and action plans are developed and progress of the implementation of recommendations is tracked.
- 16.2 As a result of reactive and proactive work completed throughout the financial year, closure reports are prepared and issued by the LCFS. System and procedural weaknesses are identified in each report and suggested recommendations for improvement are highlighted.
- 16.3 The CCG, together with the LCFS will track the recommendations to ensure that they have been implemented. The CCG is required to complete the NHSCFA Self Review Tool and Annual Report and submit these annually to NHSCFA. The CCG must mark themselves against each standard in the Standards for Providers/ Commissioners as either Compliant (green), Partially Compliant (Amber) or Non-Compliant (Red). A work-plan is required to

address all non-compliant standards which will be monitored by the Audit Committee. An assessment process may be conducted by NHSCFA Quality and Compliance which will evaluate the CCG's effectiveness in dealing with the fraud, bribery and corruption risks it faces through one of four types of assessment: Full, Focused, Thematic or Triggered.

17. Additional Information

- 17.1 Any abuse or non-compliance with this policy or procedures will be subject to a full investigation and appropriate disciplinary action, and where abuse or non-compliance constitutes a criminal offence, appropriate criminal sanctions may be applied. This policy will be subject to annual review.

18. Linked Policies/Guidance

Policies:

- Raising a Concern (Whistleblowing) Policy
- Conflicts of Interests Policy
- Gifts and Hospitality Policy
- Standards of Business Conduct
- Managers Guide
- Disciplinary Policy and Procedure
- Constitution
- Prime Financial Policies

Guidance:

- ABPI Code of Professional Conduct relating to hospitality/gifts from pharmaceutical/external industry; <https://www.abpi.org.uk/publications/code-of-practice-for-the-pharmaceutical-industry-2019/>
- Cabinet Office (2010), Bribery Act 2010. London. HMSO
- Code of Conduct for NHS Managers – http://www.nhsemployers.org/~media/Employers/Documents/Recruit/Code_of_conduct_for_NHS_managers_2002.pdf
- Department of Health's guidance (November 2000) - Commercial Sponsorship – Ethical Standards for the NHS
- The Bribery Act 2010

19. Appendix A – What to do

| This includes: | What to do: | DO |
|--|--|---|
| <p>Fraud</p> <p>Any deliberate intention to make a gain for themselves or anyone else or inflicting a loss (or a risk of loss) on another i.e. the NHS. This could be through the falsification of any records or documents or obtaining any service(s) and/or failing to disclose information.</p> <p>Bribery</p> <p>Anything that induces or intends to induce improper performance. This covers offering, promising or giving a bribe, requesting, agreeing to receive or accepting a bribe, and failing to prevent bribery.</p> <p>Where someone is influenced by bribery, payment of benefit-in-kind to unreasonably use their position to give some advantage to another.</p> | <p>If any of these concerns come to light you must immediately report your suspicions and what you have discovered to one of the following:</p> <ul style="list-style-type: none"> <p>The Local Counter Fraud Specialist:</p> <p>Mike Harling Mobile No :07800 617276 Email: mike.harling@rsmuk.com</p> <p>Chief Finance Officer</p> <p>James Murray Email: james.murray@swlondon.nhs.uk</p> <p>The NHS Fraud Reporting Line</p> <p>0800 0284060</p> <p>Or online https://cfa.nhs.uk/reportfraud</p> <p>020 3117 2520</p> <p>Confidentiality will be maintained, and all matters will be dealt with in accordance with the NHS Counter Fraud standards. You will not suffer any recriminations as a result of raising concerns – You have protection under The Public Interest Disclosure Act 1998.</p> | <p>✓ Tell someone!</p> <p><i>Confidentiality will be respected.</i></p> <p><i>Any delay might cause the organisation to suffer further financial loss.</i></p> <p>✓ Make a note of your concerns!</p> <p><i>Note all relevant details, what was said, the date time and names of all parties involved.</i></p> <p>✓ Keep a record or copy any documentation that arouses your suspicion.</p> <hr/> <p>DO NOT</p> <p>× Confront the individual(s) with your suspicions.</p> <p>× Try to investigate the matter yourself.</p> <p>× Contact the police directly.</p> <p>× Convey your suspicions to anyone other than those with the proper authority as listed.</p> <p>× Do nothing!</p> |

20. Appendix B – The Fraud Act

THE FRAUD ACT 2006

SUMMARY

Section 1 of The Fraud Act sets out provisions for a general offence of fraud. There are several new offences created the main three being sections 2, 3 and 4. The Act also creates new offences of obtaining services dishonestly and of possessing, making and supplying articles for use in fraud, as well as containing a new offence of fraudulent trading applicable to non-corporate traders.

Section 2: Fraud by False Representation

It is an offence to commit fraud by false representation. The representation must be made dishonestly. This test applies also to sections 3 and 4 below. The current definition of dishonesty was established in *R v Ghosh* [1982] Q.B.1053 and updated by *Ivey v Genting Casinos* [2017] UKSC 67. That judgment identifies that to prove dishonesty we must establish whether a defendant's behaviour would be regarded as dishonest by the ordinary standards of reasonable and honest people.

The person must make the representation with the intention of making a gain or causing loss or risk of loss to another. The gain or loss does not actually have to take place.

A representation is defined as false if it is untrue or misleading and the person making it knows that it is, or might be, untrue or misleading. A representation means any representation as to fact or law, including a representation as to a person's state of mind.

A representation may be express or implied. It can be stated in words or communicated by conduct. There is no limitation on the way in which the representation must be expressed. It could be written or spoken or posted on a website.

A representation may also be implied by conduct. An example of a representation by conduct is where a person dishonestly misuses a credit card to pay for items. By tendering the card, he is falsely representing that he has the authority to use it for that transaction. It is immaterial whether the merchant accepting the card for payment is deceived by the representation.

This offence would also be committed by someone who engages in "phishing": i.e. where a person disseminates an email to large groups of people falsely representing that the email has been sent by a legitimate financial institution. The email prompts the reader to provide information such as credit card and bank account numbers so that the "phisher" can gain access to others' personal financial information.

A representation may be regarded as being 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). The main purpose of this provision is to ensure that fraud can be committed where a person makes a representation to a machine and a response can be produced

without any need for human involvement. (An example is where a person enters a number into a "CHIP and PIN" machine.)

Section 3: Fraud by Failing to Disclose Information

Section 3 makes it an offence to commit fraud by failing to disclose information to another person where there is a legal duty to disclose the information. A legal duty to disclose information may include duties under oral contracts as well as written contracts.

For example, the failure of a solicitor to share vital information with a client within the context of their work relationship, in order to perpetrate a fraud upon that client, would be covered by this section. Similarly, an offence could be committed under this section if for example a CCG employee holds a previous criminal conviction and fails to disclose this.

Section 4: Fraud by Abuse of Position

Section 4 makes it an offence to commit a fraud by dishonestly abusing one's position. It applies in situations where the defendant has been put in a privileged position, and by virtue of this position is expected to safeguard another's financial interests or not act against those interests.

The necessary relationship will be present between trustee and beneficiary, director and company, professional person and client, agent and principal, employee and employer, or between partners. It may arise otherwise, for example within a family, or in the context of voluntary work, or in any context where the parties are not at arm's length.

The term "abuse" is not limited by a definition, because it is intended to cover a wide range of conduct. The offence can be committed by omission as well as by positive action. For example, an employee who fails to take up the chance of a crucial contract in order that an associate or rival company can take it up instead at the expense of the employer commits an offence under this section.

An employee of a software company who uses his position to clone software products with the intention of selling the products on would commit an offence under this section.

Another example covered by this section is where a person who is employed to care for an elderly or disabled person has access to that person's bank account and abuses his position by removing funds for his own personal use.

Note: It is now no longer necessary to prove a person has been deceived in the above offences. The focus is now on the dishonest behaviour of the suspect and their intent to make a gain or cause a loss.

Section 5: (not relevant for the purposes of this document)

Section 6: Possession etc. of Articles for Use in Frauds

Section 6 makes it an offence for a person to possess or have under his control any article for use in the course of or in connection with any fraud. This wording draws on that of the existing law in section 25 of the Theft Act 1968 (These provisions make it an offence for a person to "go

equipped" to commit a burglary, theft or cheat, although they apply only when the offender is not at his place of abode.

Proof is required that the defendant had the article for the purpose or with the intention that it be used in the course of or in connection with the offence, and that a general intention to commit fraud will suffice.

Section 7: Making or Supplying Articles for Use in Frauds

Section 7 makes it an offence to make, adapt, supply or offer to supply any article knowing that it is designed or adapted for use in the course of or in connection with fraud, or intending it to be used to commit or facilitate fraud. For example, a person makes devices which when attached to electricity meters cause the meter to malfunction.

Section 8: "Article"

Section 8 extends the meaning of "article" for the purposes of sections 6 and 7 and certain other connected provisions so as to include any program or data held in electronic form. Examples of cases where electronic programs or data could be used in fraud are a computer program can generate credit card numbers; computer templates can be used for producing blank utility bills; computer files can contain lists of other peoples' credit card details or draft letters in connection with 'advance fee' frauds.

Section 9: Participating in fraudulent business carried on by sole trader etc.

Section 9 makes it an offence for a person knowingly to be a party to the carrying on of fraudulent business where the business is not carried on by a company or (broadly speaking) a corporate body.

- A person commits the offence of fraudulent trading;
- dishonesty is an essential ingredient of the offence;
- the mischief aimed at is fraudulent trading generally, and not just in so far as it affects creditors;
- the offence is aimed at carrying on a business but that can be constituted by a single transaction; and
- It can only be committed by persons who exercise some kind of controlling or managerial function within the company.

Section 10: (not relevant for the purposes of this document)

Section 11: Obtaining Services Dishonestly

Section 11 makes it an offence for any person, by any dishonest act, to obtain services for which payment is required, with intent to avoid payment. The person must know that the services are made available on the basis that they are chargeable, or that they might be. It is not possible to commit the offence by omission alone and it can be committed only where the dishonest act was done with the intent not to pay for the services as expected.

It requires the actual obtaining of the service. For example, data or software may be made available on the Internet to a certain category of person who has paid for access rights to that service. A person dishonestly using false credit card details or other false personal information to obtain the service would be committing an offence under this section. The section would also cover a situation where a person climbs over a wall and watches a football match without paying the entrance fee - such a person is not deceiving the provider of the service directly, but is obtaining a service which is provided on the basis that people will pay for it.

Section 11 also covers the situation where a person attaches a decoder to her television to enable viewing access to cable / satellite television channels for which they have no intention of paying for.

Section 12: Liability of Company Officers for Offences by Company

This section repeats the effect of section 18 of the Theft Act 1968. It provides that company officers who are party to the commission of an offence under the Bill by their body corporate will be liable to be charged for the offence as well as the company. It applies to directors, managers, secretaries and other similar officers of a company. If the body corporate charged with an offence is managed by its members the members involved in management can be prosecuted too.

The Fraud Act 2006 repeals the following Theft Act offences:

Theft Act 1968

- Section 15 (obtaining property by deception).
- Section 15A (obtaining a money transfer by deception).
- Section 15B (Section 15A: supplementary).
- Section 16 (obtaining a pecuniary advantage by deception).
- Section 20(2) (procuring the execution of a valuable security by deception).

Theft Act 1978

- Section 1 (Obtaining services by deception).
- Section 2 (evasion of liability).

The Act came into force on 15th January 2007 and carries a maximum sentence of 10 years imprisonment with the exception of the 'going equipped offence' which is five years.

Any suspicions of fraud against the SWL CCG should be reported to the LCFS or alternatively you can telephone the NHS Fraud Reporting Line. Details are provided in Appendix A.

21. Appendix C – The Bribery Act

BRIBERY ACT 2010

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

Offences of bribing another person

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

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

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

Offences relating to being bribed

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

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

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

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

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

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

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

Bribery of foreign public officials

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

The following paragraph will apply if any part of the organisation is considered as a 'commercial' one.

Failure of commercial organisations to prevent bribery

A corporate or partnership is guilty of a corporate bribery offence if an employee, agent, subsidiary or any other person acting on its behalf bribes another person intending to obtain or retain business or an advantage in the conduct of business for the corporate or partnership. For a definition of bribery, please refer to Cases 1, 2 and 7 above.

It should be the policy of a corporate or partnership not to tolerate any bribery on its behalf, even if this might result in a loss of business for it. Criminal liability must be prevented at all times.