

**TRUST-WIDE NON-CLINICAL POLICY DOCUMENT**

# Anti-Fraud, Corruption and Bribery Policy & Response Plan

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Version 4

Quality, recovery and  
wellbeing at the heart  
of everything we do

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# Anti-Fraud, Corruption and Bribery Policy & Response Plan

**Further information about this document:**

Document name	<b>F06 Anti-Fraud, Corruption and Bribery Policy &amp; Response Plan</b>
Document summary	<b>Mersey Care NHS Foundation Trust is committed to reducing the level of fraud, corruption and bribery within the NHS to an absolute minimum and keeping it at that level, freeing up public resources for better patient care. This policy has been produced by the Trust's Anti-Fraud Specialist (AFS and is intended as a guide for all employees on anti-fraud work within the NHS.</b>
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Published by Copies of this document are available from the Author(s) and via the trust's website	<b>Mersey Care NHS Foundation Trust V7 Building Kings Business Park Prescot Merseyside L34 1PJ Trust's Website <a href="http://www.merseycare.nhs.uk">www.merseycare.nhs.uk</a></b>
To be read in conjunction with	<b>Raising Concerns at Work Policy Disciplinary Policy Standing Orders Standing Financial Instructions</b>
<b>This document can be made available in a range of alternative formats including various languages, large print and braille etc</b>	
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**Version Control:**

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2.0	Approved by the Audit Committee	December 2014
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**SUPPORTING STATEMENTS** – this document should be read in conjunction with the following statements:

### **SAFEGUARDING IS EVERYBODY'S BUSINESS**

All Mersey Care NHS Foundation Trust employees have a statutory duty to safeguard and promote the welfare of children and vulnerable adults, including:

- being alert to the possibility of child/vulnerable adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child/vulnerable adult;
- knowing how to deal with a disclosure or allegation of child/adult abuse;
- undertaking training as appropriate for their role and keeping themselves updated;
- being aware of and following the local policies and procedures they need to follow if they have a child/vulnerable adult concern;
- ensuring appropriate advice and support is accessed either from managers, *Safeguarding Ambassadors* or the trust's safeguarding team;
- participating in multi-agency working to safeguard the child or vulnerable adult (if appropriate to your role);
- ensuring contemporaneous records are kept at all times and record keeping is in strict adherence to Mersey Care NHS Foundation Trust policy and procedures and professional guidelines. Roles, responsibilities and accountabilities, will differ depending on the post you hold within the organisation;
- ensuring that all staff and their managers discuss and record any safeguarding issues that arise at each supervision session

### **EQUALITY AND HUMAN RIGHTS**

Mersey Care NHS Foundation Trust recognises that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognises the *protected characteristics* of age, disability, gender, race, religion or belief, sexual orientation and transgender. The Equality Act also requires regard to socio-economic factors including pregnancy /maternity and marriage/civil partnership.

The trust is committed to equality of opportunity and anti-discriminatory practice both in the provision of services and in our role as a major employer. The trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

Mersey Care NHS Foundation Trust also is aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

Mersey Care NHS Foundation Trust is committed to carrying out its functions and service delivery in line the with a Human Rights based approach and the FREDA principles of **F**airness, **R**espect, **E**quality **D**ignity, and **A**utonomy

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## 1 EXECUTIVE SUMMARY

### 1.1 Aims

1.1.1 Mersey Care NHS Foundation Trust is committed to reducing the level of fraud, corruption and bribery within the NHS to an absolute minimum and keeping it at that level, freeing up public resources for better patient care. This policy has been produced by the Trust's Anti-Fraud Specialist (AFS) and is intended as a guide for all employees on anti-fraud work within the NHS.

1.1.2 Mersey Care will seek the appropriate disciplinary, regulatory, civil and criminal sanctions (as well as referral to professional bodies, where appropriate) against fraudsters and, where possible, will attempt to recover all losses to the NHS.

1.1.3 This policy is supported and endorsed by senior management, and the Board

1.1.4 Mersey Care wishes to encourage anyone having reasonable suspicions of fraud, bribery or corruption to report them and that it is the health body's policy that no employee will suffer in any way as a result of reporting such concerns

1.1.5 All genuine suspicions of fraud, corruption and bribery can be reported to the AFS; the Trust's Executive Director of Finance; through the NHS Fraud and Corruption Reporting Line (FCRL) on Freephone 0800 028 4060; or the online fraud reporting form [www.reportnhsfraud.nhs.uk](http://www.reportnhsfraud.nhs.uk).

1.2 **Areas Covered by this Policy** – setting out the Trust's position in respect of:

- (a) Its response to the NHS Protect Anti-Fraud Agenda
- (b) How the Trust will respond to any fraud referrals
- (c) The Trust's approach to the application of sanctions for those found to be committing fraud.
- (d) The Trust's approach to the recovery of any losses found to be due to fraudulent acts

1.3 **Applicable to** – this policy is applicable to:

- (a) All employees of Mersey Care NHS Foundation Trust
- (b) Organisations and individuals undertaking business or interacting with the Trust.

## 2 INTRODUCTION

- 2.1 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, corruption and bribery committed by a minority is wholly unacceptable as it ultimately leads to a reduction in the resources available for patient care.
- 2.2 NHS Protect is a business unit of the NHS Business Services Authority. It has responsibility for all policy and operational matters relating to the prevention, detection and investigation of fraud, corruption and bribery and the management of security in the NHS. All instances where fraud, corruption and bribery is suspected are properly investigated until their conclusion, by staff trained by NHS Protect. Any investigations will be handled in accordance with the NHS Counter Fraud and Corruption Manual.
- 2.3 Mersey Care NHS Foundation Trust does not tolerate fraud, corruption or bribery within the NHS. The aim is to eliminate all NHS fraud, corruption and bribery as far as possible.
- 2.4 Mersey Care NHS Foundation Trust is committed to taking all necessary steps to counter fraud, corruption and bribery. To meet its objectives, it has adopted the four stage approach developed by NHS Protect:
- (a) **Inform and Involve:** the creation of an anti-fraud culture.
  - (b) **Prevent and Deter:** maximum deterrence and successful prevention of fraud
  - (c) **Hold to Account:** prompt detection and/or investigation of detected fraud including the application of effective Sanctions and redress in respect of money defrauded.
  - (d) **Strategic Governance:** Effective support at a strategic level within the Trust to aid the maintenance of an effective anti-fraud agenda.

## 3 PURPOSE AND RATIONALE

- 3.1 This policy relates to all forms of fraud, corruption and bribery and is intended to provide a guide for employees on what fraud bribery and corruption are in the NHS and what everyone's responsibility is to prevent fraud ,bribery and corruption. It also provides direction and help to employees who may identify suspected fraud, corruption or bribery. It provides a framework for responding to suspicions of fraud, corruption and bribery, advice and information on various aspects of fraud, corruption and bribery and implications of an investigation. It is not intended to provide a comprehensive approach to preventing and detecting fraud, corruption and bribery.

- 3.2 The overall aims of this policy are to:
- (a) improve the knowledge and understanding of everyone in Mersey Care NHS Foundation Trust, irrespective of their position, about the risk of fraud, corruption and bribery within the organisation and its unacceptability;
  - (b) assist in promoting a climate of openness and a culture and environment where staff feel able to raise concerns sensibly and responsibly;
  - (c) set out Mersey Care NHS Foundation Trust's responsibilities in terms of the deterrence, prevention, detection and investigation of fraud, corruption and bribery;
  - (d) ensure the appropriate sanctions are considered following an investigation, which may include any or all of the following:
    - (i) criminal prosecution
    - (ii) civil prosecution
    - (iii) internal/external disciplinary action.

## 4 SCOPE

- 4.1 This policy applies to all employees of Mersey Care NHS Foundation Trust, regardless of position held, as well as consultants, vendors, contractors, and/or any other parties who have a business relationship with Mersey Care NHS Foundation Trust. It will be brought to the attention of all employees and form part of the induction process for new staff. Employees can access the policy at any time through the Trust's policy and anti-fraud intranet pages.

## 5 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. The focus is now on the dishonest behaviour of the suspect and their intent to make a gain or cause a loss.
- 5.1.2 The new offence of fraud can be committed in three ways:
- (a) Fraud by false representation (s.2) – lying about something using any means, e.g. by words or actions, i.e., lying on a CV or NHS job application form.
  - (b) Fraud by failing to disclose information (s.3) – not saying something when you have a legal duty to do so i.e. failing to declare a conviction, disqualification or commercial interest when such information may have an impact on your NHS role, duties or obligations and where you are required to declare these as part of your employment conditions.

- (c) Fraud by abuse of a position of trust (s.4) – abusing a position where there is an expectation to safeguard the financial interests of another person or organisation, i.e., a carer abusing their access to patient monies, or an employee using commercially confidential NHS information to make a personal gain. (The abuse of position occurs where there is an expectation on the individual to safeguard the financial interests of another, e.g. the NHS.)

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.

## **5.2 Corruption**

5.2.1 Generally, this is giving someone a financial or other advantage with the intention of inducing them to perform their functions or activities improperly, or rewarding them for already doing so. This could be attempting to influence a decision-maker by giving them an extra benefit in a tender process. It does not matter whether the corrupt person personally benefits from their actions; they may be unreasonably using their position to give some advantage to another.

5.2.2 Corruption prosecutions tend to be most commonly brought using specific pieces of legislation dealing with corruption. For example; Prevention of Corruption Acts 1906/1916 for offences pre 1st July 2011, repealed from 1st July 2011 and replaced with the Bribery Act 2010.

## **5.3 Bribery**

5.3.1 The Bribery Act 2010 [The Act] updates the criminal law of bribery making it a criminal offence to:

- (a) offer, promise, or give a bribe [section 1 offence], and;
- (b) to request, agree to receive, or accept a bribe [section 2 offence].

5.3.2 The Act covers offences committed in the UK, and also offences committed abroad by those with a close connection with the UK e.g. by a British citizen or a UK incorporated body. It also includes bribing a foreign public official [section 6 offence]. The maximum custodial sentence for bribery is 10 years imprisonment, with an unlimited fine.

5.3.3 The Act introduces a ‘corporate offence’ [section 7 offence] whereby an organisation may be liable [and punished with a potentially unlimited fine] where someone who performs services for it in business pays a bribe in order to get, keep or retain business for it, and the organisation has failed to prevent bribery by not having adequate preventative procedures in place. The corporate offence is not a stand-alone offence, but always follows from a bribery and/or corruption offence committed by an individual associated with the organisation in question. An organisation may also be liable if bribery has been committed by a very senior person in an organisation, whereby their activities would be attributed to the

organisation. For example a contractor attempting to influence a procurement decision-maker by giving them an extra benefit or gift (i.e. a bribe) 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 health body to purchase that company's particular clinical supplies.

- 5.3.4 The Bribery Act is applicable to everyone associated with the Trust. This includes those who work for the Trust, such as employees, contractors, agents, and also persons who perform services for the Trust. As with the Fraud Act a conviction under the Bribery Act may ultimately result in an unlimited fine and/or a custodial sentence of up to 10 years imprisonment

## 5.4 Employees

- 5.4.1 For the purposes of this policy, 'employees' includes NHS Protect and Mersey Care NHS Foundation Trust staff, as well as board, executive and non-executive members (including co-opted members) and honorary members.

## 6 CODE 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:
- (a) **Accountability** - everything done by those who work in the authority must be able to stand the tests of parliamentary scrutiny, public judgements on propriety and professional codes of conduct.
  - (b) **Probity** - absolute honesty and integrity should be exercised in dealing with NHS patients, assets, staff, suppliers and customers.
  - (c) **Openness** - the health body's activities should be sufficiently public and transparent to promote confidence between the authority and its staff and the public.
- 6.2 Mersey Care NHS Foundation Trust 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. We are fully committed to the objective of preventing bribery and will ensure that adequate procedures are in place to prevent bribery, which are proportionate to our risk and are regularly reviewed. We will, in conjunction with NHS Protect, seek to obtain the strongest penalties – including criminal prosecution, disciplinary, and civil sanctions – against anyone associated with Mersey Care NHS Foundation Trust who is found to be involved in any bribery activities.
- 6.3 All staff should be aware of and act in accordance with these values.

## 7 ROLES AND RESPONSIBILITIES

### 7.1 Introduction

- 7.1.1 Through our day-to-day work, we 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, corruption or bribery exists, whether because of poor procedures or oversight, you should report it to the AFS; the Trust’s Executive Director of Finance; the NHS Fraud and Corruption Reporting Line; or via the online Fraud Reporting Form.
- 7.1.2 This section states the roles and responsibilities of employees and other relevant parties in reporting fraud or other irregularities.
- 7.1.3 Mersey Care NHS Foundation Trust will take all necessary steps to counter fraud, corruption and bribery in accordance with this policy, the NHS Counter 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 Protect.

### 7.2 Generic Areas of Counter Fraud

- 7.2.1 Mersey Care NHS Foundation Trust 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) Inform and Involve: The creation of an anti-fraud culture
    - (i) Mersey Care NHS Foundation Trust will use counter fraud publicity material to persuade those who work in Mersey Care NHS Foundation Trust that fraud, corruption and bribery is serious and takes away resources from important services. Such activity will demonstrate that fraud, corruption and bribery is not acceptable and is being tackled.
  - (b) Maximum Prevention and Deterrence of fraud
    - (i) Deterrence is about increasing the expectation that someone will be caught if they attempt to defraud – this is more than just tough sanctions. Mersey Care NHS Foundation Trust will introduce such measures to minimise the occurrence of fraud, corruption and bribery.
    - (ii) Mersey Care NHS Foundation Trust has policies and procedures in place to reduce the likelihood of fraud, corruption and bribery occurring. These include a system of internal controls, Standing Financial Instructions, and documented procedures, which involve physical and supervisory checks, financial reconciliations, segregation and rotation of duties, and clear statements of roles and responsibilities. Where fraud, corruption and bribery has occurred, Mersey Care NHS

Foundation Trust will ensure that any necessary changes to systems and procedures take place immediately to prevent similar incidents from happening in the future.

- (iii) Mersey Care NHS Foundation Trust will develop and maintain effective controls to prevent fraud, corruption and bribery and to ensure that if it does occur, it will be detected promptly and referred to the AFS for investigation.
- (c) Hold to Account: The Professional investigation of detected fraud
- (i) The AFS will be professionally trained and accredited to carry out investigations into suspicions of fraud, corruption and bribery, to the highest standards. In liaison with NHS Protect, the AFS will professionally investigate all suspicions of fraud, corruption and bribery to prove or disprove the allegation.
  - (ii) Following the conclusion of an investigation, if there is evidence of fraud, available sanctions will be considered in accordance with the guidance issued by NHS Protect – Applying Appropriate Sanctions Consistently. This may include criminal prosecution, civil proceedings, disciplinary action, as well as referral to a professional or regulatory body.
  - (iii) Recovery of any losses incurred will also be sought through civil proceedings if appropriate; to ensure losses to Mersey Care NHS Foundation Trust and the NHS are returned for their proper use.
- (d) Strategic Governance: The oversight of this Plan and the Trust’s anti-fraud arrangements

### **7.3 Role of Mersey Care NHS Foundation Trust and its Board**

7.3.1 Mersey Care NHS Foundation Trust also 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, Mersey Care NHS Foundation Trust has a duty to ensure that those concerns are listened to and addressed.

7.3.2 The Board (particularly via its Audit Committee) has a duty to provide adequate governance and oversight of the organisation to ensure that it’s funds, people and assets are adequately protected against criminal activity, including fraud, bribery and corruption. The Board are also responsible for setting the tone across the organisation that fraud, bribery and corruption will not be tolerated.

## **7.4 Chief Executive**

- 7.4.1 The Chief Executive as the organisation's accountable officer, has the overall responsibility for securing funds, assets and resources entrusted to it? This includes instances of fraud, bribery and corruption which may threaten those resources.
- 7.4.2 The Chief Executive must ensure adequate policies and procedures are in place to protect the organisation and the public funds it receives.
- 7.4.3 The Chief Executive is liable to be called to account for specific failures in Mersey Care NHS Foundation Trust'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 Mersey Care NHS Foundation Trust's employees. Mersey Care NHS Foundation Trust 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 Chief Executive and Executive Director of Finance will monitor and ensure compliance with this policy.

## **7.5 Executive Director of Finance**

- 7.5.1 The Executive Director of Finance, in conjunction with the Chief Executive, monitors and ensures compliance with the specified national requirements regarding fraud, corruption and bribery.
- 7.5.2 The Executive Director of Finance 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 senior management accordingly.
- 7.5.3 The AFS shall be responsible, in discussion with the Executive Director of Finance, for informing third parties such as external audit or the police at the earliest opportunity, as circumstances dictate.
- 7.5.4 The Executive Director of Finance will inform and consult the Chief Executive in cases where the loss may be above the agreed limit or where the incident may lead to adverse publicity.
- 7.5.5 The Executive Director of Finance will inform the head of internal audit at the first opportunity. If an investigation is deemed to be appropriate, the Executive Director of Finance will delegate to Mersey Care NHS Foundation Trust's AFS, who has responsibility for leading the investigation, whilst retaining overall responsibility.
- 7.5.6 The Executive Director of Finance or the AFS will consult and take advice from the Executive Director of Workforce if a member of staff is to be interviewed, suspended or disciplined. The Executive Director of Finance or AFS will not conduct a disciplinary investigation, but the employee may be the subject of a separate investigation by the Executive Director of Workforce.

## **7.6 Executive Director of Workforce**

- 7.6.1 The Executive Director of Workforce will liaise closely with managers and the AFS from the outset if an employee is suspected of being involved in fraud, corruption and/or bribery, in accordance with agreed liaison protocols. The Executive Director of Workforce and their staff are responsible for ensuring the appropriate use of Mersey Care NHS Foundation Trust's disciplinary procedure. The Workforce Directorate 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 the Workforce Directorate will be essential to ensure that any parallel sanctions (i.e. criminal, civil, and disciplinary sanctions) are applied effectively and in a coordinated manner. These liaison arrangements are set out in the joint working protocol that has been agreed by both the Executive Director of Workforce and the AFS.
- 7.6.2 The Executive Director of Workforce 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.

## **7.7 Managers**

- 7.7.1 Managers must be vigilant and ensure that procedures to guard against fraud, corruption and bribery are followed. They should be alert to the possibility that unusual events or transactions could be symptoms of fraud, corruption and bribery. If they have any doubts, they must seek advice from the nominated AFS.
- 7.7.2 Managers must instill and encourage an anti-fraud, corruption and bribery culture within their team and ensure that information on policies and procedures are made available to all employees. The AFS will proactively assist the encouragement of an anti-fraud, corruption and bribery culture by undertaking work that will raise fraud awareness.
- 7.7.3 All instances of actual or suspected fraud, corruption and 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; they have the clear responsibility to refer the concerns to the AFS as soon as possible.

- 7.7.4 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, corruption and bribery therefore primarily rests with managers but requires the co-operation of all employees. As part of that responsibility, line managers need to:
- (a) inform staff of Mersey Care NHS Foundation Trust's code of business conduct and anti- fraud, corruption and bribery policy as part of their induction process, paying particular attention to the need for accurate completion of personal records and forms;
  - (b) ensure that all employees for whom they are accountable are made aware of the requirements of the policy;
  - (c) assess the types of risk involved in the operations for which they are responsible;
  - (d) 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;
  - (e) ensure that any use of computers by employees is linked to the performance of their duties within Mersey Care NHS Foundation Trust;
  - (f) be aware of Mersey Care NHS Foundation Trust's anti-fraud, corruption and bribery policy and the rules and guidance covering the control of specific items of expenditure and receipts;
  - (g) identify financially sensitive posts;
  - (h) ensure that controls are being complied with;
  - (i) contribute to their director's assessment of the risks and controls within their business area, which feeds into Mersey Care NHS Foundation Trust's and the Department of Health Accounting Officer's overall statements of accountability and internal control.

## **7.8 Employees**

- 7.8.1 Mersey Care NHS Foundation Trust's Standing Orders, Standing Financial Instructions, policies and procedures place an obligation on all employees and non-executive directors to act in accordance with best practice and to protect the trust from fraud, bribery and corruption.
- 7.8.2 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. Employees that are involved in or manage internal control systems should be adequately trained and supported in order to carry out their responsibilities
- 7.8.3 Employees also have a duty to protect the assets of Mersey Care NHS Foundation Trust, including information, goodwill, and property.

- 7.8.4 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:
- (a) avoid acting in any way that might cause others to allege or suspect them of dishonest;
  - (b) behave in a way that would not give cause for others to doubt that Mersey Care NHS Foundation Trust's employees deal fairly and impartially with official matters;
  - (c) be alert to the possibility that others might be attempting to deceive.
- 7.8.5 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 contractors or suppliers.
- 7.8.6 If an employee suspects that there has been fraud, corruption or bribery, or has seen any suspicious acts or events, they must report the matter to the nominated AFS (see section 5.4 AFS); the Trust's Executive Director of Finance; the NHS Fraud and Corruption Reporting Line; or via the online Fraud Reporting Form.

## **7.9 Anti-Fraud Specialist (AFS)**

- 7.9.1 The Directions to NHS Bodies on Counter Fraud Measures 2004 require Mersey Care NHS Foundation Trust to appoint and nominate an AFS. The AFS's role is to ensure that all cases of actual or suspected fraud, corruption and bribery are notified to the Executive Director of Finance and reported accordingly.
- 7.9.2 The AFS will regularly report to the Executive Director of Finance on the progress of any investigations and when/if referral to the police is required
- 7.9.3 The AFS will:
- (a) ensure that the Executive Director of Finance is informed about all referrals/cases;
  - (b) be responsible for the day-to-day implementation of the four generic areas of anti-fraud, corruption and bribery activity and, in particular, the investigation of all suspicions of fraud, corruption and bribery;
  - (c) investigate all cases of fraud;
  - (d) in consultation with the Executive Director of Finance, report any case to the police or NHS Protect as agreed and in accordance with the NHS Counter Fraud and Corruption Manual;
  - (e) report any case and the outcome of the investigation on the NHS Protect national case management system (FIRST);

- (f) ensure that other relevant parties are informed where necessary, e.g. the Executive Director of Workforce will be informed if an employee is the subject of a referral;
- (g) ensure that Mersey Care NHS Foundation Trust's incident and losses reporting systems are followed;
- (h) ensure that any system weaknesses identified as part of an investigation are followed up with management and reported to internal audit;
- (i) adhere to the Counter Fraud Professional Accreditation Board (CFPAB)'s Principles of Professional Conduct as set out in the NHS Counter Fraud and Corruption Manual;
- (j) not have responsibility for or be in any way engaged in the management of security for any NHS body;
- (k) ensure that the Executive Director of Finance is informed of regional team investigations, including progress updates

## **7.10 Area Anti-Fraud Specialist**

7.10.1 Each Area Anti-Fraud Specialist (AAFS) works as part of the NHS Protect operations directorate, whose key objective is to combat fraud, corruption and bribery in the National Health Service. They provide support to the AFS in the conduct of their investigation as well as being a source of guidance and advice for Trust officers in relation to fraud and bribery matters.

7.10.2 The AAFS:

- (a) is the face of NHS Protect for all health bodies within their region;
- (b) is responsible for the management and vetting of all local investigation case papers and evidence and witness statements submitted for the consideration of prosecutions;
- (c) ensures that local investigations are conducted within operational and legislative guidelines to the highest standards for all allegations of fraud and bribery in the NHS;
- (d) provides help, support, advice and guidance to DoFs, AFSs, Audit Committees and other key stakeholders in their region;
- (e) allocates, supervises and monitors fraud referrals and notifications to the AFS
- (f) provides support as to the direction of ensuing investigations, as required, and oversees the AFS's performance;
- (g) ensures that all information and intelligence gained from local investigative work is reported and escalated as appropriate, at both local and national level, so that fraud trends can be mapped and used to fraud-proof future policies and procedures

## **7.11 Internal and external audit**

7.11.1 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 controls and systems or to ensure compliance with financial instructions.



## **7.12 Information management and technology**

- 7.12.1 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.
- 7.12.2 Head of Information Security will liaise closely with the AFS to ensure that a subject's access (both physical and electronic) to the health body's IT resources is suspended, or removed, where an investigation identifies that it is appropriate
- 7.12.3 The Head of Information Security will assist the AFS in securing and facilitating appropriate access to any IT-related data controlled by the organisation (including subject-related data) as part of any anti-fraud or corruption investigation
- 7.12.4 The Executive Director of Workforce will also be informed if there is a suspicion that an employee is involved.

## **8 THE RESPONSE PLAN**

### **8.1 Reporting fraud, corruption and bribery**

- 8.1.1 This section outlines the action to be taken if fraud, corruption or bribery is discovered or suspected.
- 8.1.2 If an employee has any of the concerns mentioned in this document, they must inform either of the Trust's the nominated AFS' Darrell Davies or Ann Gregory or Mersey Care NHS Foundation Trust's Executive Director of Finance immediately, unless the Executive Director of Finance or AFS is implicated. If that is the case, they should report it to the Chair or Chief Executive, who will decide on the action to be taken. Concerns can also be raised via the Trust's whistleblowing processes (Raising Concerns at Work).
- 8.1.3 Form 1 provides a reminder of the key contacts and a checklist of the actions to follow if fraud, corruption and bribery, or other illegal acts, are discovered or suspected. Managers are encouraged to copy this to staff and to place it on staff notice boards in their department.
- 8.1.4 Mersey Care NHS Foundation Trust.
- 8.1.5 Employees can also call the NHS Fraud and Corruption Reporting Line on Freephone 0800 028 40 60 or via the Online Fraud Reporting Form [www.reportnhsfraud.nhs.uk](http://www.reportnhsfraud.nhs.uk)
- 8.1.6 This provides an easily accessible route for the reporting of genuine suspicions of fraud, corruption and bribery 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 trained staff and any caller who wishes to remain anonymous may do so.

- 8.1.7 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.
- 8.1.8 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.
- 8.1.9 Staff are encouraged to report reasonably held suspicions directly to the AFS. You can do this by completing the NHS Fraud and Corruption Referral Form (form 2) or by contacting the AFS by telephone or email using the contact details supplied on form 1.
- 8.1.10 Mersey Care NHS Foundation Trust 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, Mersey Care NHS Foundation Trust has produced a Raising Concerns at Work Policy. This procedure is intended to complement Mersey Care NHS Foundation Trust's Anti-Fraud, Corruption and Bribery 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.

## **8.2 Disciplinary action**

- 8.2.1 The disciplinary procedures of Mersey Care NHS Foundation Trust must be followed if an employee is suspected of being involved in a fraudulent or otherwise illegal act.
- 8.2.2 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.

## **8.3 Police involvement**

- 8.3.1 In accordance with the NHS Counter Fraud and Corruption Manual, the Executive Director of Finance, 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 Mersey Care NHS Foundation Trust.

## **8.4 Managing the investigation**

- 8.4.1 The AFS, in consultation with Mersey Care NHS Foundation Trust's Executive Director of Finance, will investigate an allegation in accordance with procedures documented in the NHS Counter Fraud and Corruption Manual issued by the NHS Protect



- 8.4.2 The AFS must be aware that staff under an investigation that could lead to disciplinary action have the right to be represented at all stages. In certain circumstances, evidence may best be protected by the AFS recommending to the trust that the staff member is excluded from duty. The trust will make a decision based on advice from the Executive Director of Workforce on the disciplinary options, which includes exclusion.
- 8.4.3 The trust will follow its disciplinary procedure if there is evidence that an employee has committed an act of fraud, corruption or bribery.

## **8.5 Gathering evidence**

- 8.5.1 The AFS will take control of any physical evidence, and record this in accordance with the procedures outlined in the NHS Counter 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.
- 8.5.2 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.
- 8.5.3 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.
- 8.5.4 The application of the Anti-Fraud, Corruption and Bribery Policy will at all times be in tandem with all other appropriate Mersey Care NHS Foundation Trust policies, e.g. Standing Financial Instructions (SFIs).

## **8.6 The Recovery of Losses to fraud and corruption**

- 8.6.1 The seeking of financial redress or recovery of losses should always be considered in cases of fraud, corruption and bribery that are investigated by either the AFS or NHS Protect where a loss is identified. As a general rule, recovery of the loss caused by the perpetrator should always be sought. The decisions must be taken in the light of the particular circumstances of each case.
- 8.6.2 The NHS Protect approach to pursuing sanctions in cases of fraud, bribery and corruption is that the full range of possible sanctions – including criminal, civil, disciplinary and regulatory – should be considered at the earliest opportunity and any or all of these may be pursued where and when appropriate. The consistent use of an appropriate combination of investigative processes in each case demonstrates this organisation's commitment to take fraud, bribery and corruption seriously and ultimately contributes to the deterrence and prevention of such actions.

8.6.3 This organisation endorses the NHS Protect approach and adopts the principles contained within their policy entitled, 'Parallel Criminal and Disciplinary Investigations'; as well as complying with the provisions of the NHS Protect Anti-Fraud Manual with regard to applying sanctions where fraud, bribery or corruption is proven. The organisation maintains an internal joint-working and data sharing protocol between the AFS and the HR department which also covers their respective investigative duties.

8.6.4 The types of sanction which this organisation may apply when a financial offence has occurred, include:

- (a) Civil Redress – We will seek financial redress, whenever possible, to recover losses (of money or assets), including interest and costs, to fraud, bribery and corruption. Redress can be sought in various ways. These include confiscation or compensation orders or use of the Proceeds of Crime legislation in the criminal courts, as well as civil legal sanctions such as an order for repayment or an attachment to earnings where appropriate, in addition to any locally agreed voluntary negotiations or repayments. As an organisation, we actively publicise the fact that redress will be sought where applicable to recover monies lost to fraud and corruption, thus creating a further deterrent effect.
- (b) Criminal Prosecution – The AFS will work in partnership with NHS Protect, the police and/or the Crown Prosecution Service, where appropriate, to bring a case to court against an alleged offender. Outcomes can range from a criminal conviction to fines and imprisonment.
- (c) Disciplinary Sanctions – Disciplinary procedures will also be initiated where an employee is suspected of being involved in a fraudulent or illegal act. The trust's disciplinary policy can be found in the policy and procedures section of the trust's website at <http://www.merseycare.nhs.uk/about-us/policies-and-procedures/>
- (d) Professional Body Disciplinary Sanctions – Where appropriate and if warranted, the organisation reserves the right to also report staff to their professional body as a result of a successful investigation and/or prosecution.

8.6.5 Redress allows resources that are lost to fraud, corruption and bribery to be returned to the NHS for use as intended, for provision of high-quality patient care and services. Redress can take the form of measures such as confiscation and compensation orders, a civil order for repayment, or a local agreement between the organisation and the offender to repay monies lost

## 8.7 Reporting the results of the investigation

8.7.1 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.

- 8.7.2 If fraud, corruption or bribery is found to have occurred, the AFS should prepare a report for the Executive Director of Finance and the next Mersey Care NHS Foundation Trust Audit Committee meeting, setting out the following details:
- (a) the circumstances;
  - (b) the investigation process;
  - (c) the estimated loss;
  - (d) the steps taken to prevent a recurrence;
  - (e) the steps taken to recover the loss.

This report should also be available to Mersey Care NHS Foundation Trust's board.

## **8.8 Action to be taken**

- 8.8.1 The NHS Counter Fraud and Corruption Manual provides for in-depth details of how sanctions can be applied where fraud, corruption and bribery is proven and how redress can be sought. To summarise, local action can be taken to recover money by using the administrative procedures of Mersey Care NHS Foundation Trust or the civil law.
- 8.8.2 In cases of serious fraud, corruption and bribery, 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.
- 8.8.3 NHS Protect can also apply to the courts to make a restraining order or confiscation order under the Proceeds of Crime Act 2002 (POCA). This means that a person's money is taken away from them if it is believed that the person benefited from the crime. It could also include restraining assets during the course of the investigation.
- 8.8.4 Actions which may be taken when considering seeking redress include:
- (a) no further action;
  - (b) criminal investigation;
  - (c) civil recovery;
  - (d) disciplinary action;
  - (e) confiscation order under POCA;
  - (f) recovery sought from ongoing salary payments.
- 8.8.5 In some cases (taking into consideration all the facts of a case), it may be that Mersey Care NHS Foundation Trust, under guidance from the AFS and with the approval of the Executive Director of Finance, decides that no further recovery action is taken.
- 8.8.6 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 POCA.

8.8.7 The civil recovery route is also available to Mersey Care NHS Foundation Trust 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 Executive Director of Finance to determine the most appropriate action.

8.8.8 The appropriate senior manager, in conjunction with the Workforce 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 Mersey Care NHS Foundation Trust. In all cases, current legislation must be complied with.

## **8.9 Timescales**

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

## **8.10 Recording**

8.10.1 In order to provide assurance that policies were adhered to, the Executive Director of Finance will maintain a record highlighting when recovery action was required and issued and the action taken. This will be reviewed and updated on a regular basis.

# **9 TRAINING AND SUPPORT**

9.1 The Trust's AFS will provide on-going anti-fraud training across the Trust to ensure that all employees are aware of the policy and its key messages

# **10 MONITORING AND REVIEWING**

## **10.1 Process for Review of this Policy**

10.1.1 The AFS will periodically review the policy to ensure that it reflects the latest guidance from NHS Protect.

10.1.2 The AFS will also ensure that any organizational changes are reflected in updated versions of this policy

## A desktop guide for Mersey Care NHS Foundation Trust

**FRAUD** is the dishonest 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.

**CORRUPTION/ BRIBERY** is the deliberate use of bribery or payment of 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 your concerns, names, dates, times, details of conversations and possible witnesses. Time, date, and sign your notes.

- **retain evidence**

Retain any evidence that may be destroyed, or make a note and advise your AFS.

- **report your suspicion**

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

Complete a fraud report and submit in a sealed envelope marked 'Restricted – Management' and 'Confidential' for the personal attention of the AFS.

### 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 accuse an innocent person.

- **try to investigate, or contact the police directly**

Never attempt to gather evidence yourself unless it is about to be destroyed; gathering evidence must take into account legal procedures in order for it to be useful. Your AFS can conduct an investigation in accordance with legislation.

- **be afraid of raising your concerns**

The Public Interest Disclosure Act 1998 protects employees who have reasonable concerns. You will not suffer discrimination or victimisation by following the correct procedures.

- **Do nothing!**

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

- directly contacting the **Anti-Fraud Specialist**, or
- telephoning the **freephone** NHS Fraud and Corruption Reporting Line, or
- online via the fraud reporting form [www.reportnhsfraud.nhs.uk](http://www.reportnhsfraud.nhs.uk) or
- contacting the **Executive Director of Finance**

### Any information can be passed to

Darrell Davies ([Darrell.davies@miaa.nhs.uk](mailto:Darrell.davies@miaa.nhs.uk)) or

Ann Gregory ([ann.gregory@miaa.nhs.uk](mailto:ann.gregory@miaa.nhs.uk))

NHS Fraud and Corruption Reporting Line: **0800 028 40 60** All calls will be treated in confidence

Your nominated Anti-Fraud Specialists Darrell Davies or Ann Gregory can be contacted by telephoning 0151 285 4500

If you would like further information about NHS Protect, please visit [www.nhsbsa.nhs.uk/fraud](http://www.nhsbsa.nhs.uk/fraud)

## Protecting your NHS



## FORM 2

# NHS FRAUD, CORRUPTION AND BRIBERY REFERRAL FORM

*All referrals will be treated in confidence and investigated by professionally trained staff*

Note: **Referrals should only be made when you can substantiate your suspicions with one or more reliable pieces of information. Anonymous applications are accepted but may delay any investigation.**

**1. Date**

**2. Anonymous application <Delete as appropriate>**

*Yes (If 'Yes' go to section 6) or No (If 'No' complete sections 3-5)*

**3. Your name**

**4. Your organisation/profession**

**5. Your contact details**

**6. Suspicion**

**7. Please provide details including the name, address and date of birth (if known) of the person to whom the allegation relates**

**8. Possible useful contacts**

**9. Please attach any available additional information.**

Submit the completed form (in a sealed envelope marked 'Restricted – Management' and 'Confidential') for the personal attention of the MIAA Fraud Team at Mersey Internal Audit Agency, Regatta Place, Summers Road, Brunswick Business Park, Liverpool, L3 4BL. Under no circumstances should this report, which contains personal details, be transmitted electronically.