

Anti-Bribery and Fraud Policy

Human Resources Policy No. HR58

Additionally refer to: HR05 Whistleblowing ([link to intranet](#))
HR36 Disciplinary Procedure ([link to Intranet](#))
HR52 Standards of Business Conduct ([link to intranet](#))
COR1 Marketing Communications, Commercial Sponsorship and Advertising Policy
Trust Standing Orders ([link to Intranet](#))
Standing Financial Instructions ([link to Intranet](#))
Code of Conduct for NHS Managers ([link to Intranet](#))

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1 Policy Statement

- 1.1 This policy has been formulated in order to ensure compliance with relevant legislation, including the Bribery Act 2010 and the Fraud Act 2006 which imposes extensive obligations on all commercial organisations, including those in the healthcare sector, to ensure that they have adequate procedures in place to prevent bribery, fraud and corruption. The policy establishes a framework which will:
- Ensure that all employees understand their personal responsibility to protect the assets of the Trust, including all buildings, equipment, monies, information and goodwill from fraud, theft, corruption or any other irregularity;
 - Ensure that all employees understand about the risk of bribery and its unacceptability;
 - Assist in promoting a climate of openness and a culture where staff feel able to raise concerns sensibly and responsibly;
 - Set out the Trust's responsibilities in terms of the deterrence, prevention, detection and investigation of bribery and corruption; and
 - Ensure that appropriate sanctions are considered following an investigation, which may include any or all of the following:
 - Criminal prosecution
 - Civil prosecution
 - Internal/external disciplinary action (including referral to professional/regulatory bodies)
- 1.2 This policy should be used in conjunction with Trust policy HR52 Standards of Business Conduct and the Trust's Standing Financial Instructions.
- 1.3 This policy applies to all staff employed by the Trust. The principles of the policy also apply to volunteers, agency staff, external secondees working temporarily with the Trust or other individuals who are not directly employed by the Trust. Any concerns raised with regard to the standards set out in this policy will be investigated and appropriate action will be taken which will include raising the matter formally with the employing organisation.
- 1.4 In implementing this policy, managers must ensure that all staff are treated fairly and within the provisions and spirit of the Trust's Equality & Diversity Policy (HR01). Special attention should be paid to ensuring the policy is understood when using it for staff new to the NHS or Trust, or by staff who may have an essential skills need in literacy or those whose first language is not English or for persons with little experience of working life.

2 Overview

- 2.1 To maintain public confidence, as a public sector body, the Trust must be impartial and honest in the conduct of its business and its staff must remain beyond suspicion.
- 2.2 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. The three fundamental public service values are:

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

Probity: Absolute honesty and integrity should be exercised in dealing with NHS patients, assets, employees, suppliers and customers.

Openness: The Trust's actions should be sufficiently public and transparent to promote confidence between the Trust and its patients, our employees and the public.

2.3 These standards are national benchmarks that inform our local policies and procedures. The arrangements made in this policy have been designed to ensure compliance with the national standards, as well as with all prevailing legislation.

2.4 Any act of bribery or fraud will be normally be regarded as gross misconduct and subject to investigation in accordance with the Trust's Disciplinary Procedure (HR36) which could result in dismissal. Such acts may also result in criminal or civil prosecution and/or recovery of any losses being sought by the Trust.

3 Raising Concerns

3.1 All employees have a duty to act on or report any acts of misconduct, dishonesty, breach of Trust rules or breach of any rules of the relevant professional bodies which they believe may have been committed, contemplated or discussed by any other member of staff or by any third party.

3.2 Any concerns or allegations of bribery or fraud must be reported immediately to the Trust's Director of Corporate Governance or the Finance Director who will then ensure that appropriate procedures are followed. If the Director of Corporate Governance or the Finance Director are implicated the matter should be reported to the Chief Executive, the Chairman or a Non-Executive Director of the Trust.

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

3.4 Individuals who are worried about raising their concerns should refer to the Trust's Whistleblowing Policy (HR05).

3.5 Anyone who is unsure about whether a particular act constitutes fraud, corruption or bribery should contact the Director of Corporate Governance for guidance.

3.6 Anonymous letters, telephone calls etc are occasionally received from individuals who wish to raise matters of concern, but do not wish to use official channels. These will always be taken seriously.

3.7 Individuals must not, under any circumstances, communicate with any members of the press, media or other third party, in the first instance, about a suspected act of bribery as this may seriously damage the investigation and any subsequent actions to be taken. Anyone wishing to raise such issues should discuss the matter with the Director of Corporate Governance or the Chief Executive or refer to the Trust's Whistleblowing Policy (HR05).

4 Definitions

4.1 Bribery

4.1.1 Active Bribery is defined as *"offering or giving a bribe to another person to perform an illegal, unethical or other action which breaches trust, or to reward a person for performing such an action."*

4.1.2 Passive Bribery is defined as *“requesting, agreeing to receive or accepting a bribe to perform a function or activity improperly, irrespective of whether the recipient of the bribe requests or receives it directly or through a third party and irrespective of whether it is for the recipients benefit”*.

4.1.3 Examples of a bribe may include (this list is not exhaustive):

- A payment made to influence an individual who is responsible for deciding whether the Trust should be selected as the preferred bidder for the provision of services in a procurement process.
- A payment made to a third party by a contractor instructed by the Trust in order to facilitate quicker services from the third party. The Trust need have no knowledge of this payment.
- An offer made by a pharmaceutical company to a member of staff of payment (or other incentives such as employment of a family member) in an attempt to influence their decision-making in respect of the selection of a pharmaceutical product to appear on the Trust's drug formulary.
- An offer made by a patient to a member of staff of payment or a gift or any other incentive to place them at the top of a waiting list for a particular aspect of their care.

4.1.4 It should be noted that it is not necessary for the person involved to benefit directly from their actions for bribery still to have occurred.

4.2 Fraud

4.2.1 Fraud can be committed in three ways:

- By false representation (lying about something using any means, words or actions)
- By failing to disclose (not saying something when there is a duty to do so)
- By abuse of position of trust (abusing a position where there is an expectation to safeguard the financial interest of another person, the Trust or the organisation).

5 Duties

5.1 Board Members (Directors and Non-Executive Directors)

5.1.1 The Directors of the Trust are responsible for ensuring there are systems in place to ensure this and all related policies are implemented across the Trust.

5.1.2 The Directors of the Trust are expected to conduct themselves in an exemplary manner as regards all matters covered by this policy and to comply with all aspects of it.

5.1.3 All Board members are required to comply with the requirements of the Code of Conduct and Accountability for NHS Boards and the Standards for NHS Boards and CCG Governing Bodies in England. This is required by Trust's Standing Orders and any non-compliance will result in the appropriate investigation and action.

5.1.4 Directors are required to formally declare interests that are relevant and material to the Trust.

5.2 Senior Compliance Officer

5.2.1 The Director of Corporate Governance is the Trust's designated Senior Compliance Officer and is responsible for ensuring that this policy is implemented effectively and for carrying out various functions as described in this policy and others referred to within this policy.

5.2.2 The Director of Corporate Governance will be responsible for:

- Ensuring appropriate guidance and training, monitoring compliance and sanctioning changes to the policy.
- Reviewing annually the suitability, adequacy and effectiveness of Trust anti-bribery and fraud arrangements with Local Counter Fraud Service (LCFS) and implement improvements as and when appropriate.
- Reporting the results of annual reviews to the Trust Board.
- Reporting immediately to the LCFS any incident or suspicion that comes to their attention.

5.3 Finance Director

5.3.1 The Finance Director, in conjunction with the Chief Executive is responsible for monitoring compliance with the NHS Standard Contract Counter Fraud provisions set out in General Conditions 6.1 and the NHS Protect Standards for Providers: Fraud, Bribery and Corruption.

5.3.2 When any incident or suspicion of bribery or fraud comes to the attention of the Trust, the Finance Director, in consultation with NHS Protect, LCFS and the Director of Corporate Governance, is responsible for deciding whether there is sufficient cause to conduct an investigation and whether the Police and External Audit need to be informed.

5.3.3 The Finance Director, in conjunction with the LCFS, the Director of Corporate Governance and the Workforce Director, is responsible for determining the appropriate course of action to be taken when concerns are raised.

5.3.4 Investigations will be led by the LCFS in conjunction with a suitably competent manager of the Trust with accountability for the timely completion remaining with the Finance Director.

5.3.5 The Finance Director is also responsible for:

- consulting with the Chief Executive in cases where any loss resulting from an act of fraud may be above the agreed limit or where the incident may lead to adverse publicity;
- informing the Audit Committee of all categories of loss.

5.3.6 If, following investigation, any act of bribery or fraud is found to have occurred, the Finance Director will report to the Trust's Audit Committee:

- The circumstances
- The investigation process
- The estimated loss
- The steps taken to prevent a recurrence
- The steps taken to recover the loss.

This report should also be made available to the Trust's Board.

5.4 Local Counter Fraud Specialist

5.4.1 The role of the LCFS is to ensure that all case of actual or suspected bribery or fraud are notified to the Finance Director and the Director of Corporate Governance and for reporting regularly to the Finance Director on the progress of any investigations when/if referral to the Police is required.

5.4.2 The LCFS will also provide advice and guidance to the Trust to ensure that appropriate systems and processes are in place to prevent bribery and fraud and any system weaknesses are identified and rectified.

5.4.3 The LCFS is responsible for leading any investigations into bribery or fraud and providing support to the Trust's Investigating Officer.

5.4.5 The LCFS is responsible for:

- Ensuring all cases of actual or suspected bribery or fraud are properly investigated;
- Where appropriate and in consultation with the Finance Director, reporting cases to the Police;
- Reporting any case and the outcome of the investigation through the NHS Counter Fraud National Case Management System;
- Ensuring that the Trust's incident and losses reporting systems are followed;
- Liaising with the Workforce Director to ensure that appropriate disciplinary procedures are followed;
- Informing the Finance Director of regional team investigations, including progress updates.

5.4.6 If, following investigation, any act of bribery or fraud is found to have occurred, the LCFS will prepare a report for the Finance Director or Director of Corporate Governance to the Trust's Audit Committee detailing:

- The circumstances
- The investigation process
- The estimated loss
- The steps taken to prevent a recurrence
- The steps taken to recover the loss.

5.5 Workforce Director

5.5.1 The Workforce Director will ensure that appropriate employment policies are in place and consistent with this policy and that these are effectively communicated to all staff.

5.5.2 The Workforce Director (or his/her designated representative) is responsible for ensuring the appropriate use of the Trust's Disciplinary Procedure and for ensuring compliance with employment legislation.

5.5.2 The Workforce Director (or his/her designated representative) will work closely with the Director of Corporate Governance, Finance Director and LCFS to ensure that all matters are resolved effectively.

5.6 Internal and External Audit

5.6.1 Members of the Internal and External Audit teams are responsible for reporting any incident or suspicion to the Finance Director immediately.

5.7 Procurement

5.7.1 The Procurement team are responsible for:

- ensuring compliance with the Trust's Standing Financial Instructions and all relevant policies and procedures;
- designing appropriate systems and processes to ensure that any risks of bribery or fraud in procurement practices are eliminated;

- providing advice and guidance to managers and staff;
- ensuring that all procurement practices are conducted in a fair and transparent manner and are documented with due diligence;
- ensure that agreements are in place with contractors and suppliers that provide assurance of compliance with anti-bribery arrangements.
- Monitoring performance against contracts/agreements and requiring correction of deficiencies, applying sanctions or terminating contracts/agreements if appropriate;
- ensuring that the Trust does not deal with contractors or suppliers known or reasonably suspected to pay bribes;
- reporting any breaches or concerns immediately to the Finance Director.

5.8 Managers

5.8.1 Managers of the Trust are responsible for ensuring that these guidelines are brought to the attention of all employees; also that systems are put in place for ensuring that they are effectively implemented within their areas of responsibility.

5.8.2 Managers are responsible for promoting a culture within their teams where bribery and/or fraud will not be tolerated.

5.8.2 In addition, all managers are required to comply with all aspects of this policy. As part of that responsibility, line managers must:

- Inform staff of the all relevant policies as part of their induction process, paying particular attention to the need for accurate completion of personal records and forms;
- Assess the types and extent of bribery risks involved in the operations for which they are responsible;
- Ensure that adequate control measure are put in place to minimise the risks. Typical controls include defining clear roles and responsibilities, identifying and assessing sensitive/at-risk roles, supervisory checks, staff rotation (particularly in key posts), separation of duties wherever possible so that control of key functions are not invested in one individual and regular reviews, reconciliations and test checks to ensure that control measures continue to operate effectively;
- Ensure that controls are complied with;
- Ensure that all related policies and procedures are complied with;
- Take action in accordance with this policy in all instances of actual or suspected bribery.

5.9 All Staff

5.9.1 All staff employed by the Trust, volunteers, agency staff, external secondees working temporarily with the Trust and other individuals who are not directly employed by the Trust are required to comply with this policy, Trust Policy HR52 Standards of Business Conduct and all other Trust policies and with the Trust's Standing Orders and Standing Financial Instructions.

5.9.2 Employees are expected to act in accordance with the standards laid down by their Professional Organisations and statutory standards where applicable and are expected to:-

- Ensure that the interest of patients remains paramount at all times;
- Be impartial and honest in the conduct of their official business;
- Protect the assets of the Trust, including information and goodwill as well as property from fraud, theft, corruption or any other irregularity;
- Use the public funds entrusted to them to the best advantage of the service, always ensuring value for money;
- Ensure that they **do not** abuse their official position for personal gain or to avoid a loss or to benefit their family or friends, religious belief, professional affiliation or political alignment;

- Ensure that they **do not** seek to advantage or further private business or other interest, in the course of their official duties;
- Behave at all times in ways that engender the trust of patients, relatives and other users of the service, fellow employees and the public at large;
- Ensure that they are not placed in a position which leaves them at risk of being open to being bribed or of accusations of fraud or corruption;
- Be alert to the possibility that others might be attempting to deceive;
- Consult with their line Manager if in any doubt;

5.9.3 Due to the nature of the Trust's work it is expected that all staff will act with due diligence and utmost honesty at all times. Any matters of concern must be acted upon and reported to a manager or Director as is appropriate. All employees have a duty to act on or report any acts of misconduct, dishonesty, breach of Trust rules or breach of any rules of the relevant professional bodies committed, contemplated or discussed by any other member of employee or by any third party. Any failure to do so, may be regarded as serious or gross misconduct depending on the circumstances. Similarly, where genuine concerns are raised, employees will be protected from any action for defamation. The Trust's Whistleblowing policy set out arrangements under which concerns may be raised.

5.9.4 All staff should fully understand that any breach of the Bribery Act 2010 renders the employee liable to prosecution and may also lead to loss of their **employment and pension rights**.

6 Legislation

6.1 The Bribery Act 2010 has introduced the offences of offering and/or receiving a bribe. It also places specific responsibility on organisations to have in place *sufficient and adequate procedures* to prevent bribery taking place. Under the Act, bribery is defined as *"inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of gifts, loans, fees, rewards or other privileges"*.

6.2 Bribery is a criminal offence for both individuals and organisations and can be punished with imprisonment of up to 10 years or unlimited fines. If any employee were to be accused of bribery, the Trust's reputation might be damaged considerably and any subsequent enforcement action will be time-consuming and hinder the Trust from focussing on its core business and service delivery.

6.3 Corruption is broadly defined as *"the offering or the acceptance of inducements, gifts or favours, payments or benefit in kind which may influence the improper action of any person. Corruption 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. To demonstrate the Trust has in place sufficient and adequate procedures and to show openness and transparency, all staff are required to comply with the requirements of the Standards of Business Conduct Policy.

7 Training Needs

7.1 Training requirements to fulfil this policy will be provided in accordance with the Trust's Training Needs Analysis. Management and monitoring of training will be in accordance with the Trust's Risk Management Training Policy. These can be accessed via the Learning Zone pages on the Trust's intranet.

8 Review Process

- 8.1 It is recognised that as legislation changes the policy will need to be updated to reflect these requirements. Any revision will be made in consultation with recognised Trade Unions and professional staff organisations.
- 8.2 This policy will be reviewed 3 years from the date of ratification by Trust Board.

9 Equality Impact Assessment (EQIA)

- 9.1 This policy applies to all employees equally and does not discriminate positively or negatively between protected characteristics.

10 Process for Monitoring Compliance

- 10.1 All reports of bribery, fraud or corruption will be reported to the Trust Board in the private session.

Aspect of compliance or effectiveness being monitored	Monitoring method	Responsibility for monitoring	Frequency of monitoring	Group or Committee that will review the findings and monitor completion of any resulting action plan
Policy statement	Review of policy when updated	Deputy Head of HR	On policy review	TNCC
Duties	Review of policy when updated	Deputy Head of HR	On policy review	TNCC
Effectiveness of procedure	Retrospective review of cases to determine effectiveness of action taken	Director of Corporate Governance	On completion of investigation	Trust Audit Committee

11 References

- Fraud Act 2006 (www.legislation.gov.uk)
- Bribery Act 2010 (www.legislation.gov.uk)
- Code of Conduct for NHS Managers (www.nhsemployers.org/EmploymentPolicyAndPractice/UKEmploymentPractice/Pages/CoreStandardsForNHSManagers.aspx)
- Standards of Business Conduct for NHS Staff (www.dh.gov.uk/en/PublicationsAndStatistics/LettersAndCirculars/HealthServiceGuidelines/DH_4017845)
- Code of Conduct and Accountability for NHS Boards

12 Useful Contacts

Senior Compliance Officer

Julia Clarke, Director of Corporate Governance
 Tel: 01743 261467
 Mob: 07803 757715
 Email: Julia.clarke@sath.nhs.uk

Local Counter Fraud Specialist

Lorna Barry

Tel: 0121 695 5539

Mob: 07909 890690

Email: lobarry@deloitte.co.uk

NHS Fraud and Corruption Reporting Line

Tele: 0800 028 40 60 (FREEPHONE)