

Board of Directors' Meeting 10 February 2022

Agenda item	10/22			
Report	Policy Approval - Anti Fraud, Bribery and Corruption			
Executive Lead	Director of Governance and Communications			
	Link to strategic pillar:		Link to CQC domain:	
	Our patients and community		Safe	√
	Our people		Effective	√
	Our service delivery		Caring	√
	Our partners		Responsive	√
	Our governance	√	Well Led	√
	Report recommendations:		Link to BAF / risk:	
	For assurance	√	All	
	For decision / approval	√	Link to risk register:	
	For review / discussion		All	
	For noting			
	For information			
	For consent			
Presented to:	Audit and Risk Assurance Committee Board of Directors Seminar (January 2022)			
Dependent upon (if applicable):	N/A			
Executive summary:	<p>As the Board is aware, the Trust has participated in anti-bribery review, undertaken by its internal auditors MIAA, in conjunction with counter fraud.</p> <p>The findings of the review resulted in an action plan aimed to support the Trust to strengthen the controls and arrangements already in place regarding fraud, bribery and corruption.</p> <p>The attached files have been produced in order to document the updated arrangements to ensure compliance with required standards.</p>			
Appendices	<p>1. Briefing note to the Board of Directors, re the Trust’s anti-bribery strategy</p> <p>2. Chief Executive Statement to appear on the Trust website</p> <p>3. Updated Anti-Fraud, Bribery and Corruption Policy</p>			
Lead Executive				

1.0 Anti-Fraud, Bribery and Corruption Review

- 1.1 The Audit and Risk Assurance Committee has been monitoring progress with the Trust's anti-fraud plan on a regular basis throughout the financial year, and colleagues across the Trust have been receiving regular newsletters and national fraud warnings through the Trust's email portal, reminding colleagues of their responsibilities regarding fraud.
- 1.2 As part of this work being undertaken by the Trust, the Board of Directors received Anti-Fraud, Bribery and Corruption training at the board seminar held in January at which they were reminded of the Six Principles upon which an effective Anti-Bribery Strategy framework is built:
- Proportionate Procedures
 - Top Level Commitment
 - Risk Assessment
 - Due Diligence
 - Communication (including training)
 - Monitoring and Review
- 1.3 Today, Board Members are being asked to consider the attached documentation arising from the work and training that has been undertaken:
- Briefing note to the Board of Directors, re the Trust's anti-bribery strategy
 - Chief Executive Statement, to appear on the Trust website
 - Updated Anti-Fraud, Bribery and Corruption Policy
- 1.4 The Board is asked to consider and **note** the Briefing Note, prepared by our Anti-Fraud Specialists to support me, as Fraud Champion for the Trust.
- 1.5 The Board is asked to consider and **note** the attached Chief Executive's Statement, which will be uploaded to the Trust's website. The statement provides a public declaration of the Trust's position on fraud, corruption and anti-bribery, and the implications of non-compliance.
- 1.6 Finally, the Board is asked to **approve** the updated Anti-Fraud, Bribery and Corruption Policy, which has been produced in conjunction with our counter fraud specialists and has been recommended by the Audit and Risk Assurance Committee for Board approval.

Anna Milanec
Director of Governance and Communications

February 2022

To: The Shrewsbury and Telford Hospital NHS Trust Board

CC: Helen Troalen, Director of Finance

From: Anna Milanec – Director of Governance and Communications and Fraud Champion
Ruth Barker – Anti Fraud Specialist, MIAA

Date: 10/02/2022

Re: Bribery Act 2010 & The Shrewsbury and Telford Hospital NHS Trust Anti-Bribery Strategy

1 Introduction and Background

- 1.1. The Bribery Act 2010, which came into force on 1st July 2011, reformed the criminal law of bribery making it easier to tackle this offence proactively in the public and private sectors. In addition to the main offences under Sections 1, 2 and 6 of the Act, which carry custodial sentences of up to 10 years and potentially unlimited fines, it introduced a corporate offence (under Section 7), exposing commercial organisations to criminal liability, punishable by an unlimited fine, for failing to prevent bribery.
- 1.2. Any organisation that is incorporated under the law in the United Kingdom falls under Section 7 of the Act, including NHS bodies such as CCGs, NHS trusts, foundation trusts, and special health authorities are all deemed to be relevant corporate bodies. Applicable organisations must ensure ‘adequate preventative procedures’ are in place for acts of bribery and corruption committed by ‘persons associated’ with them, in the course of their work, else the organisation will become liable.
- 1.3. ‘Persons associated’ can mean employees, temporary and agency personnel, contractors, agents, suppliers, partners and Joint Ventures, as well as other individuals or organisations (whether incorporated or not) that may provide a service.
- 1.4. For the purposes of the Bribery Act, a ‘trade’ or ‘profession’ is considered a business. This means that, whether individually or in partnership, GPs, pharmacists, dental practitioners, opticians, finance professionals etc will also be subject to, and personally liable under, the Bribery Act.

2 Definition

- 2.1. Bribery is generally defined as an inducement or reward offered, promised or provided to someone to perform their functions or activities improperly in order to gain a personal, commercial, regulatory and/or contractual advantage, on behalf of oneself or another.

3 Risks of Non-Compliance

- 3.1. There are a number of risks entailed in breaching the Bribery Act. These include:
- 3.1.1. Criminal justice sanctions against directors, board members and other senior staff (under Section 14);
 - 3.1.2. Damage to the organisation's reputation;
 - 3.1.3. Conviction of bribery or corruption may lead to the organisation being precluded from future public procurement contracts. *[Under the Public Contracts Regulations 2006 (which gives effect to EU law in the UK), a company is automatically and perpetually debarred from competing for public contracts where it is convicted of a corruption offence. There are no current plans to amend the 2006 Regulations for this to include the crime of failure to prevent bribery. Organisations which are convicted of failing to prevent bribery are not automatically barred from participating in tenders for public contracts; however, there is discretion to exclude organisations convicted of this offence if it is deemed appropriate.]*
 - 3.1.4. Potential diversion and/or loss of resources;
 - 3.1.5. Unforeseen and unbudgeted costs of investigations and/or defence of any legal action;
 - 3.1.6. Negative impact on patient/stakeholder perceptions.

4 Bribery Act Offences

- 4.1. In summary, there are 5 key offences under the Act:
- 4.1.1. **Section 1** - Offering, promising or giving a bribe to another person to perform a relevant 'function or activity' improperly, or to reward a person for the improper performance of such a function or activity.
 - 4.1.2. **Section 2** - 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 recipient's benefit.
 - 4.1.3. **Section 6** - Bribing a foreign public official (probably of limited applicability to most NHS organisations/staff).
 - 4.1.4. **Section 7** - Failure of a commercial organisation to prevent bribery (the corporate offence). This is a 'strict liability'* offence and an organisation can be found guilty of 'attempted' or 'actual' bribery on the organisation's behalf, even if the organisation

and its officers were not aware of the bribery itself. It should be noted that a corresponding Section 1 or Section 6 offence needs to be proven for a section 7 offence to apply.

** Strict liability offences do not require proof of intention or recklessness – in other words, it is not necessary for the prosecution to show that the organisation intended to make the bribe in bad faith, or that it was negligent as to whether any bribery activity took place.*

- 4.1.5. **Section 14** - where an offence under sections 1, 2 or 6 is committed with the consent or connivance of a 'senior officer' of an organisation, that person (as well as the organisation) is guilty of the offence and liable to be proceeded against and punished accordingly.
- 4.2. An organisation has a defence to the corporate offence if it can show that it had in place 'adequate procedures' as part of a cohesive and integrated corporate Anti-Bribery Strategy designed to prevent bribery by, or of, persons associated with the organisation.

5 Adequate Procedures

- 5.1. The Act is not prescriptive as to what constitutes 'adequate procedures', although both the Ministry of Justice (MoJ) and NHS Counter Fraud Authority have provided guidance as to what form these procedures might take, depending on the nature, size and type of organisation. Adequate procedures need to be applied proportionally, based on the level of risk of bribery across the organisation, and form part of an NHS body's overall governance arrangements.
- 5.2. Adequate procedures relate to relevant compliance protocols and transparent procedures and measures which an organisation can put in place to prevent bribery by individuals associated with it. These might include training, briefings or new internal controls and procedures. Whether the procedures are adequate will ultimately be a matter for the courts to decide on a case by case basis.
- 5.3. The MoJ suggests that an effective Anti-Bribery Strategy framework could be informed by six principles:
- 5.3.1. **Principle 1 – Proportionate Procedures.** An organisation's procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of the organisation's activities. They are also clear, practical, accessible, effectively implemented and enforced.
- 5.3.2. **Principle 2 – Top-Level Commitment.** The top-level management of an organisation (be it a board of directors, the owners or any other equivalent body or person) are committed to preventing bribery by persons associated with it. They foster a culture within the organisation in which bribery is never acceptable.

- 5.3.3. **Principle 3 – Risk Assessment.** The organisation assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented.
- 5.3.4. **Principle 4 – Due Diligence.** The organisation applies due diligence procedures, taking a proportionate and risk based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks.
- 5.3.5. **Principle 5 – Communication (inc. Training).** The organisation seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation via internal and external communication, including training, which is proportionate to the risks faced.
- 5.3.6. **Principle 6 – Monitoring & Review.** The organisation monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary. It considers independent assessment and/or certification of its arrangements.

6 Existing Counter Measures & Action Required

- 6.1. Bribery should be seen as another business risk to the organisation and should be treated accordingly. It is the responsibility of everyone in the organisation playing their part to ensure both the likelihood of bribery occurring, and its adverse impact if it does, are kept to an absolute minimum. However, as with the counter fraud strategy, the implementation of an anti-bribery agenda backed by a zero tolerance culture should be driven from the very top of the organisation, at Board level.
- 6.2. MIAA's Internal Audit and Counter Fraud Services directly assist and support the Trust and its senior management with maintaining adequate procedures on an ongoing basis, primarily through existing IA and CF plans.
- 6.3. However, changes to the environment in which the Trust operates such as the introduction of new legislation and global pandemics, as well as organisational and operational changes for the Trust over time, can result in alterations to risk exposure. As a consequence, this brings the need for a more thorough review of the appropriateness of the anti-bribery measures in place.
- 6.4. The most significant change to the Trust's operating environment in recent times is the COVID-19 global pandemic, which has affected all organisations, and the NHS in particular. It is therefore timely for the Trust to reflect on whether changes in recent years, particularly the response to the COVID-19 pandemic, have had impact on the Trust's bribery risks, such as procuring PPE from non-typical sources and restricted procurement processes.
- 6.5. An anti-bribery review has been conducted by MIAA, which was primarily structured around the MoJ's six principles, and also gave consideration to the Trust's response

to the COVID-19 pandemic, to identify and evaluate any additional or increased bribery risks for the Trust.

- 6.6. The anti-bribery review resulted in a report on findings and an action plan, aimed to support the Trust to strengthen controls and arrangements around bribery, thereby improving the adequacy of procedures in place. The actions proposed are not exhaustive and should be subject to periodic review in light of experience, practice and any relevant developments, internally or externally.
- 6.7. A key step in this process is ensuring that the Anti-Bribery Strategy is driven from the very top of the organisation. To this end, it is requested that the Board note this paper, and continue to support the Trust's Top-Level Commitment with respect to adopting and applying bribery counter measures on an organisation-wide basis.

Chief Executive Statement

Bribery Act 2010 & Trust Anti-Bribery Strategy

The Bribery Act 2010, which came into force on 1st July 2011, reformed the criminal law of bribery making it easier to tackle this offence proactively in the public and private sectors. In addition to the main offences under Sections 1, 2 and 6 of the Act, which carry custodial sentences of up to 10 years and potentially unlimited fines, it introduced a corporate offence (under Section 7), exposing commercial organisations to criminal liability, punishable by an unlimited fine, for failing to prevent bribery.

Any organisation that is incorporated under the law in the United Kingdom falls under Section 7 of the Act, including NHS bodies such as CCGs, NHS trusts, foundation trusts, strategic health authorities and special health authorities are all deemed to be relevant corporate bodies. Applicable organisations must ensure 'adequate preventative procedures' are in place for acts of bribery and corruption committed by 'persons associated' with them, in the course of their work, else the organisation will become liable.

Bribery may be considered to be: ***"an inducement or reward offered, promised or provided to someone to perform their functions or activities improperly in order to gain a personal, commercial, regulatory and/or contractual advantage."***

Zero Tolerance

Bribery is a criminal offence. **The Shrewsbury and Telford Hospital NHS Trust** does not, and will not, pay bribes or offer improper inducements to anyone for any purpose; nor do we, or will we, accept bribes or improper inducements. This approach applies to **everyone** who works for us, or with us. To use a third party as a conduit to channel bribes to others is a criminal offence. We do not, and will not, engage indirectly in, or otherwise encourage, bribery.

Proactively combatting bribery has clear benefits for this Trust and the wider NHS. It helps prevent:

- adverse damage to or criticism of the organisation's reputation and funding;
- the potential diversion and/or loss of resources from NHS care;
- unforeseen and unbudgeted costs of investigations and/or defence of any legal action; and
- a negative impact on patient/stakeholder perceptions

We are committed to the prevention, deterrence and detection of bribery, just as we are to combatting fraud in the NHS. As an organisation, we have a zero-tolerance attitude towards bribery.

Penalties

This organisation, in conjunction with NHS Counter Fraud Authority, will seek to obtain the strongest penalties – including criminal prosecution, as well as disciplinary and civil sanctions

– against **anyone** associated with the **Shrewsbury and Telford Hospital NHS Trust** who is found to be involved in any bribery activities.

Active Counter Measures

We aim to maintain anti-bribery compliance as “business as usual”, rather than as a one off exercise.

To this end, everyone associated with the Trust is expected to play their part. The Trust has adopted and implemented a corporate Anti-Bribery Strategy, which, amongst other measures, includes:

- Top-level (Board) commitment to ensuring a zero-tolerance culture towards bribery;
- Risk-assessing those areas of the organisation which may be most vulnerable to the threat of bribery;
- Ensuring that all departments review their policies, protocols, procedures and core documentation (including contract documentation) to ensure that adequate procedures are in place to prevent and mitigate the bribery risk; and,
- Ensuring that everyone who works for or with the Trust is aware of the risks and knows what to do if they suspect or discover bribery.

To find out more about the Bribery Act and how it might affect your department or area of responsibility, please contact the **Executive Lead: Helen Troalen, Director of Finance**.

Reporting Concerns

If you have any concerns or suspicions regarding bribery, corruption or fraud, please contact:

- Your **Local Counter Fraud Specialists:**
Ruth Barker
Tel – 0151 285 4500 / 07584 774 763
Email – Ruth.Barker@miaa.nhs.uk
Darrell Davies
Tel – 0151 285 4500 / 07584 774 763
Email – Darrell.Davies@miaa.nhs.uk
- NHS Fraud & Corruption Reporting Line
Tel – 0800 028 40 60
- NHS Fraud & Corruption Reporting Form (online)
<http://www.reportnhsfraud.nhs.uk/>

Anti-Fraud, Bribery and Corruption Policy

February 2022

Anti-Fraud, Bribery and Corruption Policy & Response Plan for The Shrewsbury and Telford Hospital NHS Trust

Additionally refer to:

Disciplinary Policy
 Managing Conflict of Interest Policy and Guidance
 Code of Conduct
 SFIs
 NHS Anti-Fraud Manual & Investigation Toolkit
 NHS CFA Counter Fraud Standards
 Freedom to Speak Up: Raising Concerns (Whistleblowing)

Version:	V2
V1 issued	Date first issued – 28/10/2020
V2 approved by	<i>Board of Directors</i>
V2 date approved	<i>10 February 2022</i>
V2 Ratified by:	
V2 Date ratified:	
Document Lead	Job title – Anti-Fraud Specialist
Lead Director	Title – Director of Finance
Date issued:	Date this version issued – 06/09/2021
Review date:	Date for document review – usually 3 years
Target audience:	Who is the policy for – All staff
Version	2
Status	
Date Equality Impact Assessment completed	30/09/2021
Issue Date	
Review Date	
Distribution	Please refer to the intranet version for the latest version of this policy. Any printed copies may not necessarily be the most up to date.
Key Words	Fraud Bribery Corruption
Dissemination plan	Trust-wide dissemination, through staff bulletin and uploaded to anti-fraud intranet page.

Version History

Version	Date	Author	Status	Comment – include reference to Committee presentations and dates
V1	28/10/20	MIAA		
V2	06/09/21	MIAA		

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1 Introduction

1.1 General

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 conduct themselves in an honest and professional manner and they believe that fraud, bribery and corruption, committed by a minority, is wholly unacceptable as it ultimately leads to a reduction in the resources available for patient care.

The Shrewsbury and Telford Hospital NHS Trust (the 'Trust') is committed to reducing the level of fraud, bribery and corruption within the NHS to an absolute minimum and keeping it at that level, freeing up public resources for better patient care. The Trust does not tolerate fraud, bribery or corruption and aims to eliminate all such activity as far as possible.

The Trust, at its most senior levels, wishes to encourage anyone having reasonable suspicions of fraud, bribery or corruption to report them. For the purposes of this policy "reasonably held suspicions" shall mean any suspicions other than those which are totally groundless (and/or raised maliciously).

It is the Trust's policy that no employee will suffer in any way as a result of reporting these suspicions. This protection is given under the provisions of the Public Interest Disclosure Act, and other related legislation / regulations, which the Trust is obliged to comply with.

The Trust will take all necessary steps to counter fraud, bribery and corruption in accordance with this policy, with the Government Functional Standard GovS 013: Counter Fraud (NHS Requirements), NHS contractual requirements and with regard to the policies, directions, instructions and guidance as issued by the NHS Counter Fraud Authority (NHSCFA), as well as in accordance with relevant UK legislation.

The Trust 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 losses.

Each Trust is required to appoint its own dedicated Anti-Fraud Specialist (AFS), also known as Local Counter Fraud Specialist (LCFS), who is accredited by the NHSCFA and accountable to them professionally for the completion of a range of preventative anti-fraud and corruption work, as well as for undertaking any necessary investigations. Locally, the AFS is accountable on a day-to-day basis to the Trust's Director of Finance and also reports, periodically, to the Trust Audit and Risk Assurance Committee.

All instances where fraud, bribery and/or corruption is suspected are thoroughly investigated by suitable accredited personnel. Any investigations will be undertaken in accordance with the NHSCFA investigatory toolkit requirements.

[NB. For staff awareness, **theft issues** are usually dealt with by local security management (LSMS), not the AFS. However, the AFS will be mindful of any potential criminality identified in the course of any investigation and will, with the agreement of the Director of Finance, notify the appropriate investigating authority].

1.2 Aims and Objectives

The Trust is committed to taking all necessary steps to counter fraud, bribery and corruption.

The aim of this policy is to provide a guide for employees as to what fraud is in the NHS, to emphasise that it's everyone's responsibility to prevent fraud, bribery and corruption and to provide guidance on how to report it.

Tackling fraud in the NHS is guided by four key principles:

- **Inform and involve:** raise awareness of fraud against the NHS, and work with NHS staff, with stakeholders and the public to highlight those risks and the consequences of fraud against the NHS.
- **Prevent and deter:** provide solutions to identified fraud risks, discourage individuals who may be tempted to commit fraud against the NHS and ensure that opportunities for fraud to occur are minimised;
- **Investigate, sanction and seek redress:** investigate allegations of fraud thoroughly and to the highest professional standards, where appropriate seek the full range of civil, criminal and disciplinary sanctions and seek redress where possible;
- **Continuously review and hold to account:** fraud is constantly evolving and continuous re-evaluation and improvement is needed to ensure that we keep ahead of the problem. Where this does not take place, or where there is a reluctance to do so, then organisations must be held to account for their inaction.

The overall requirement underpinning these principles is effective strategic governance, strong leadership and a demonstrable level of commitment to tackling fraud from senior management within organisations.

1.3 Scope

This policy has been produced by the Trust's AFS, and is intended to provide a guide for all employees [regardless of position or employment status], contractors, consultants, vendors and other internal and external stakeholders who have a

professional or business relationship with the Trust, on what fraud and corruption are in the NHS; what everyone's responsibility are to prevent fraud, bribery and corruption; and also how to report concerns and/or suspicions with the intention of reducing fraud to a minimum within the Trust.

This policy relates to all forms of fraud, bribery and corruption and is intended to provide direction and help to employees who may identify suspected fraud, corruption or bribery. It provides a framework for responding to suspicions of fraud, bribery and corruption, advice and information on various aspects of fraud, bribery and corruption and implications of an investigation. It is not intended to provide a comprehensive approach to preventing and detecting fraud, bribery and corruption.

2 Definitions

2.1 NHS Counter Fraud Authority (NHSCFA) / NHS Counter Fraud Strategy¹

The NHS Counter Fraud Authority (NHSCFA) is a special health authority which 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.

NHSCFA also maintains a national NHS Counter Fraud Strategy which sets out the strategic approach and direction, key challenges and opportunities, and the priority areas identified for tackling fraud and corruption in the NHS. The Trust's local approach to tackling fraud and corruption, through the work of the Anti-Fraud Specialist, organisational resources and the annual risk-assessed counter fraud work-plan, fully acknowledges and aligns itself to the priorities set out in the national strategy.

2.2 Government Functional Standard GovS 013: Counter Fraud² (NHS Requirements)

A requirement in the NHS standard contract is that providers and commissioners of NHS services must take the necessary action to comply with the NHSCFA's counter fraud standards. Other's should have due regard to the standards. The contract places a requirement on providers / commissioners 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.

¹ NHS fraud: Organisational strategy 2020-2023 <https://cfa.nhs.uk/about-nhscfa/corporate-publications>

² Government Functional Standard 013: Counter Fraud <https://cfa.nhs.uk/counter-fraud-standards>

2.3 Fraud³

The Fraud Act 2006 introduced an entirely new way of investigating and prosecuting fraud, which can relate to money, property or other benefits of value. Previously, the word 'fraud' was an umbrella term used to cover a variety of criminal offences falling under various legislative acts. It is no longer necessary to prove that a person has been deceived, or for a fraud to be successful. The focus is now on the dishonest behaviour of the suspect and their intent to make a gain either for themselves or another; to cause a loss to another; or, expose another to a risk of a loss.

There are several specific offences under the Fraud Act 2006; however, there are three primary ways in which it can be committed that are likely to be investigated by the AFS;

The offence of fraud can be committed in three ways:

- **Fraud by false representation (s.2)** – lying about something using any means, e.g. falsifying a CV or NHS job application form
- **Fraud by failing to disclose (s.3)** – not saying something when you have a legal duty to do so, e.g. failing to declare a conviction, disqualification or commercial interest when such information may have an impact on your NHS role, duties or obligation and where you are required to declare such information as part of a legal commitment to do so.
- **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, e.g. a carer abusing their access to patients monies, or an employee using commercially confidential NHS information to make a personal gain.

It should be noted that all offences under the Fraud Act 2006 occur where the act or omission is committed dishonestly and with intent to cause gain or loss. The gain or loss does not have to succeed, so long as the intent is there. Successful prosecutions under the Fraud Act 2006 may result in an unlimited fine and/or a potential custodial sentence of up to 10 years.

2.4 Bribery and Corruption⁴

The 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.

³ Fraud Act 2006 1-4 <https://www.legislation.gov.uk/ukpga/2006/35/contents>

⁴ Bribery Act 2010 <https://www.legislation.gov.uk/ukpga/2010/23/contents>

The Trust is fully committed to the objective of preventing bribery and will ensure that adequate procedures, which are proportionate to our risks, are in place to prevent bribery.

The Bribery Act 2010 reformed the criminal law of bribery, making it a criminal offence to:

- Give, promise or offer a bribe (s.1), and/or
- Request, agree to receive or accept a bribe (s.2).

Corruption is generally considered to be an “umbrella” term covering such various activities as bribery, corrupt preferential treatment, kickbacks, cronyism, theft or embezzlement. Under the 2010 Act, however, bribery is now a series of specific offences.

Generally, bribery is defined as: ***an inducement or reward offered, promised or provided to someone to perform their functions or activities improperly in order to gain a personal, commercial, regulatory and/or contractual advantage.***

Examples of bribery in an NHS context could be a contractor attempting to influence a procurement decision-maker by giving them an extra benefit or gift as part of a tender exercise; or, a medical or pharmaceutical company providing holidays or other excessive hospitality to a clinician in order to influence them to persuade their Trust to purchase that company’s particular clinical supplies.

A bribe does not have to be in cash; it may be the awarding of a contract, the provision of gifts, hospitality, sponsorship, the promise of work or some other benefit. The persons making and receiving the bribe may be acting on behalf of others – under the Bribery Act 2010, all parties involved may be prosecuted for a bribery offence.

All staff are reminded to ensure that they are transparent in respect of recording any gifts, hospitality or sponsorship and they should refer to the separate Trust’s policy, the ‘Conflict of Interest Policy’ covering:

- Acceptance of Gifts and Hospitality
- Declaration of Interests
- Sponsorship

The Bribery Act 2010 applies to (and can be triggered by) everyone “associated” with this Trust who performs services for us, or on our behalf, or who provides us with goods. This includes those who work for and with us, such as employees, agents, subsidiaries, contractors and suppliers (regardless of whether they are incorporated or not). The term ‘associated persons’ has an intentionally wide interpretation under the Bribery Act 2010.

Sanctions, following a successful prosecution, are similar to those of the Fraud Act 2006.

3 Roles and Responsibilities

Through our day-to-day work, we, i.e. all staff, 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 or the NHS Fraud and Corruption Reporting Line and/or online Fraud Reporting Form.

This section states the roles and responsibilities of employees and other relevant parties in reporting fraud or corruption.

3.1 Chief Executive/ Chief Officer

The Trust's Chief Executive/ Chief Officer, as the organisations accountable officer, has overall responsibility for securing funds, assets and resources entrusted to it, including instances of fraud, bribery and corruption.

The Chief Executive/ Chief Officer must ensure adequate policies and procedures are in place to protect the organisation and the public funds it receives. However, responsibility for the operation and maintenance of controls falls directly to line managers and requires the involvement of all of Trust employees. The 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 Director of Finance/Chief Finance Officer will monitor and ensure compliance with this policy.

3.2 Board

The Trust's Board has a duty to provide adequate governance and oversight of the Trust to ensure that its funds, people and assets are adequately protected against criminal activity, including fraud, bribery and corruption.

The Board provides clear and demonstrable support and strategic direction for counter fraud, bribery and corruption work. They review the proactive management, control and the evaluation of counter fraud, bribery and corruption work. The Board and non-executive directors scrutinise NHSCFA assessment reports, where applicable, and ensure that the recommendations are fully actioned.

3.3 Director of Finance

The Director of Finance (DoF) has the power to approve financial transactions initiated by directorates across the organisation.

They prepare, document and maintain detailed financial procedures and systems and apply the principles of separation of duties and internal checks to supplement those procedures and systems.

The DoF will report annually to the Board on the adequacy of internal financial controls and risk management as part of the Board's overall responsibility to prepare a statement of internal control for inclusion in the annual report.

They also act as the Executive Lead for the organisation's counter fraud arrangements, liaising closely with the Anti-Fraud Specialist.

The DoF will, depending on the outcome of initial investigations, inform appropriate senior management of suspected cases of fraud, bribery and corruption, especially in cases where the loss may be above an agreed limit or where the incident may lead to adverse publicity.

3.4 Audit and Risk Assurance Committees

The role of Audit and Risk Assurance Committees is in reviewing, approving and monitoring counter fraud workplans, receiving regular updates on counter fraud activity, monitoring the implementation of action plans, providing direct access and liaison with those responsible for counter fraud, reviewing annual reports on counter fraud, and discuss NHSCFA quality assessment reports⁵.

3.5 Internal and External Audit

The role of internal and external audit includes reviewing controls and systems and ensuring compliance with financial instructions. They have a duty to pass on any suspicions of fraud, bribery or corruption to the Anti-Fraud Specialist (AFS).

3.6 Human Resources

Human Resources (HR) plays a role in relation to employees in suspected cases of fraud, bribery and corruption, including liaison with the AFS and the conduct of any investigation, and instigating the necessary disciplinary action against those who fail to comply with the policies, procedures and processes. HR work with the AFS to ensure that appropriate parallel sanctions are applied (in accordance with the NHSCFA Anti-Fraud Manual) where fraud, bribery or corruption is proven against employees'. Appropriate joint working protocols exist to detail this relationship.

⁵ The NHS Audit Committee Handbook 2018 <https://www.hfma.org.uk/publications?Type=Guide>

3.7 Anti-Fraud Specialist

The AFS is responsible for taking forward all anti-fraud work locally in accordance with the national functional counter fraud standards (NHS requirements), as well as the NHS Counter Fraud Strategy, and reports directly to the DoF.

Adhering to NHSCFA functional counter fraud standards (NHS requirements) is important in ensuring that the organisation has appropriate counter fraud, bribery and corruption arrangements in place and that the AFS will look to achieve the highest standards possible in their work.

The AFS will work with key colleagues and stakeholders to promote counter fraud work, apply effective preventative measures and investigate allegations of fraud and corruption.

The AFS will conduct risk assessments in relation to their work to prevent fraud, bribery and corruption.

The AFS has responsibility for investigating any allegations of fraud and corruption within the organisation.

3.8 Fraud Champion

Where a Fraud Champion has been appointed, their role and duties include:

- Promoting awareness of fraud, bribery and corruption within the organisation,
- Understanding the threat posed by fraud, bribery and corruption and,
- Understanding best practice on counter fraud.
- They do not have any remit to investigate allegations of fraud or corruption.

3.9 Freedom to Speak-Up Guardians ('Whistleblowing')

Speak-Up Guardian has a responsibility to report allegations they receive relating to fraud or corruption against the organisation to the AFS (whilst protecting the identity of the referrer, if necessary).

3.10 Managers

All managers are responsible for ensuring that policies, procedures and processes within their local area are adhered to and kept under constant review.

Managers have a responsibility to ensure that staff are aware of fraud, bribery and corruption and understand the importance of protecting the organisation from it. Managers will also be responsible for the enforcement of disciplinary action for staff who do not comply with policies, procedures and processes.

Managers should report any instances of actual or suspected fraud, bribery or corruption brought to their attention to the AFS immediately. It is important that managers do not investigate any suspected financial crimes themselves.

Other responsibilities managers have include conducting risk assessments and mitigating identified risks.

3.11 All Employees

Employees are required to comply with the organisation's policies, procedures and processes and apply best practice in order to prevent fraud, bribery and corruption (for example in the areas of procurement, personal expenses and ethical business behaviour). Staff should be aware of their own responsibilities in accordance with the organisation's standards of behaviour and in protecting the organisation from these crimes.

Employees who are involved in or manage internal control systems should be adequately training and supported in order to carry out their responsibilities.

If an employee suspects that fraud, bribery or corruption has taken place, they should ensure it is reported to the AFS and/or to NHSCFA as explained below.

3.12 Information Management and Technology

The Head of Information Security (or equivalent) will contact the AFS immediately in all cases where there is suspicion that Trust ICT (Information and Communications Technology) is being used for fraudulent purposes in accordance with the Computer Misuse Act 1990. Similarly, the Head of Information Security or equivalent will liaise closely with the AFS to ensure that a subject's access (both physical and electronic) to Trust ICT resources is suspended or removed where an investigation identifies that it is appropriate to do so.

4 The Response Plan

4.1 Bribery and Corruption

The AFS undertakes an annual fraud and bribery risk assessment, in conjunction with the organisation conducting periodic assessments (in line with Ministry of Justice

guidance⁶) to assess how bribery and corruption may affect it. Proportionate procedures and measures have been put in place to mitigate identified risks.

The organisation also has a policy and procedure in place in relation to the completion of declarations of interest, declarations of secondary employment and the hospitality/gifts register. The relevant policy and procedures are accessible via the Trust's intranet policies page, and staff are required to comply with these arrangements. Instances of non-compliance may be referred to the AFS for further investigation.

The AFS has primary organisational responsibility for investigating allegations of fraud and corruption against or with the organisation.

4.2. Reporting Fraud, Bribery or Corruption

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

All genuine suspicions of fraud, bribery and corruption must be reported directly to the AFS – Ruth.Barker@miaa.nhs.uk or 07584 774 763.

If the referrer believes that the Director of Finance or AFS is implicated, they should notify whichever party is not believed to be involved who will then inform the Chief Executive and Audit and Risk Assurance Committee Chairperson.

An employee can contact any executive or non-executive director of the Trust to discuss their concerns if they feel unable, for any reason, to report the matter to the AFS or Director of Finance.

Details of a suspected fraud, bribery and corruption may also be reported through the **NHS Fraud and Corruption Reporting Line** on **Freephone 0800 028 40 60**, (powered by 'Crimestoppers 24/7') or online at **<https://cfa.nhs.uk/reportfraud>**, in addition to the AFS or the organisation's Director of Finance.

The AFS and/or NHSCFA will undertake an investigation and seek to apply criminal and civil sanctions, where appropriate. Any investigation would follow set investigative procedures.

Investigations may also include police involvement, where appropriate.

⁶ Ministry of Justice Guidance to the Bribery Act 2010
<https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>

All NHS bodies including private providers, commissioners and trusts refer to the Home Office's bribery and corruption assessment template⁷ in order to assess their response to bribery and corruption.

Whistleblowing

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 2016⁸ and NHS England's Freedom to speak up in Primary Care: Guidance to primary care providers on supporting whistleblowing in the NHS, November 2017⁹. These form the minimum standard to help normalise the raising of concerns in the NHS for the benefit of all patients in England.

4.3 Disciplinary Action

Disciplinary procedures, in the context of fraud allegations, will be initiated where an employee is suspected of being directly involved in a fraudulent or illegal act, or where their negligent action has led to a fraud being perpetrated. The disciplinary policy can be located on the Trust's intranet policies page.

4.4 Sanctions and Redress

This section outlines the sanctions that can be applied and the redress that can be sought against individuals who commit fraud, bribery and corruption against the organisation.

The Trust's 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.

⁷ Home Office Bribery and corruption assessment template
<https://www.gov.uk/government/publications/bribery-and-corruption-assessment-template>

⁸ NHS Improvement and NHS England's Freedom to speak up: raising concern's (whistleblowing) policy for the NHS, April 2016 <https://improvement.nhs.uk/resources/freedom-to-speak-up-whistleblowing-policy-for-the-nhs/>

⁹ NHS England's Guidance Freedom to speak up in primary care: Guidance to primary care providers on supporting whistleblowing in the NHS, November 2017 <https://www.england.nhs.uk/wp-content/uploads/2016/11/whistleblowing-guidance.pdf>

Briefly, the types of sanction which the organisation may apply when a financial offence has occurred include:

Civil – civil sanctions can be taken against those who commit fraud, bribery and corruption to recover money and/or assets which have been fraudulently obtained, including interest and costs.

Criminal – The AFS will work in partnership with NHSCFA, the police and/or the Crown Prosecution Service to bring a case to court against an alleged offender. Outcomes can range from a criminal conviction to fines and imprisonment.

Disciplinary – Disciplinary procedures will be initiated where an employee is suspected of being involved in a fraudulent or illegal act, as per Section 4.3 of this policy.

Professional Body Disciplinary – If warranted, staff may be reported to their professional body as a result of a successful investigation/prosecution.

The organisation will seek financial redress whenever possible to recover losses to fraud, bribery and corruption. 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.

5 Review

5.1 Monitoring and auditing of policy effectiveness

Monitoring is essential to ensuring that controls are appropriate and robust enough to prevent or reduce fraud. Monitoring arrangements include reviewing system controls on an ongoing basis and identifying weaknesses in processes.

Where deficiencies are identified as a result of monitoring, appropriate recommendations and action plans are developed and implemented.

See appendix A.

5.2 Dissemination of the policy

This policy will be brought to the attention of all employees and will form part of the induction process for new staff.

This policy will be disseminated Trust wide for all employees to understand and be made aware of via awareness presentations, the Trust's Staff Bulletin and on the Trust's Anti-Fraud intranet and internet pages.

It is important that staff understand and are aware of this policy.

5.3 Review of the policy

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

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

Appendix A – monitoring matrix

Monitoring	Lead	Reported to	Process	Frequency
Number of instances of suspected fraud, bribery or corruption	Local Counter Fraud Specialist (LCFS)	Director of Finance / Audit and Risk Assurance Committee.	LCFS referrals included in regular LCFS updates. Year on year trends included in LCFS annual report.	Quarterly Annually
Number of proven cases of fraud, bribery or corruption	Local Counter Fraud Specialist	Director of Finance / Audit and Risk Assurance Committee.	Actual fraud, bribery or corruption cases included in the regular LCFS updates.	Quarterly
Attendance at counter fraud, bribery or corruption training sessions	Local Counter Fraud Specialist	Director of Finance / Audit and Risk Assurance Committee.	Number of training sessions run, and numbers of staff and board members attending are included in the LCFS annual report.	Annually
Meet criteria set by NHS Counter Fraud Authority	Local Counter Fraud Specialist	Director of Finance / Audit and Risk Assurance Committee	Agree annual work plan for counter fraud to meet the criteria set out by NHS Counter Fraud Authority. This will include a progress report on implementation of the plan.	Annually