


# Anti-Fraud and Bribery Policy

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## Implementation Plan

<b>Development and Consultation:</b>	<p>The following individuals were consulted and involved in the development of this document:</p> <ul style="list-style-type: none"> <li>▪ Claire Baker, prior Lead Local Counter Fraud Specialist</li> </ul>
<b>Dissemination:</b>	<p>Staff can access this document via the website and will be notified of new / revised versions via the staff briefing.</p> <p>This document will be included in the organisation's Publication Scheme in compliance with the Freedom of Information Act 2000.</p>
<b>Training:</b>	<p>The following training will be provided to make sure compliance with this document is understood:</p> <ul style="list-style-type: none"> <li>▪ Counter Fraud training to all relevant staff on a regular basis to make them aware of the Anti-Fraud and Bribery Policy</li> </ul>
<b>Monitoring:</b>	<p>Monitoring and compliance of this document will be carried out via:</p> <ul style="list-style-type: none"> <li>▪ Reviewing system controls and identifying weaknesses in processes</li> <li>▪ Closure reports are prepared and issued by the LCFS</li> </ul> <p>Lessons learned and learning outcomes will be recorded, and trend analysis will be carried out.</p>
<b>Review:</b>	<p>The Document Owner will ensure this document is reviewed in accordance with the review date on page 2.</p>
<b>Equality, Diversity and Privacy:</b>	<p>Appendix 1 - Equality Impact Assessment</p> <p>Appendix 2 - Data Protection Impact Assessment</p>
<b>Associated Documents:</b>	<p>The following documents must be read in conjunction with this document:</p> <ul style="list-style-type: none"> <li>▪ Whistleblowing Policy</li> <li>▪ Standards of Business Conduct Policy</li> <li>▪ Conflict of Interest and Dispute Resolution Policy</li> <li>▪ Detailed Financial Policies</li> <li>▪ Disciplinary Policy</li> </ul>
<b>References:</b>	<p>The following articles were accessed and used to inform the development of this document:</p> <ul style="list-style-type: none"> <li>▪ The Fraud Act 2006 (<a href="https://www.legislation.gov.uk/ukpga/2006/35/contents">https://www.legislation.gov.uk/ukpga/2006/35/contents</a>)</li> <li>▪ Bribery Act 2010 (<a href="https://www.legislation.gov.uk/ukpga/2010/23/contents">https://www.legislation.gov.uk/ukpga/2010/23/contents</a>)</li> </ul>

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## 1.0 Introduction

- 1.1 NHS Bedfordshire, Luton and Milton Keynes Integrated Care Board (ICB) aims to ensure robust governance through its formal written procedural documents, such as this document, which communicate standard organisational ways of working. These documents help clarify operational requirements and consistency within day to day practice. They can improve the quality of work, increase the successful achievement of objectives and support patient safety, quality and experience. The ICB aims to ensure its policies are user friendly, up-to-date and easily accessible.
- 1.2 The ICB must design and implement procedural documents that meet the diverse needs of our service and workforce, ensuring that none is placed at a disadvantage over others, in accordance with the Equality Act 2010. The Equality Impact Assessment initial screening, which was used to determine the potential impact this policy might have with respect to the individual protected characteristics is incorporated at Appendix 1.
- 1.3 A Data Protection Impact Assessment is a process which helps assess privacy risks to individuals in the collection, use and disclosure of personal information. The Data Protection Impact Assessment initial screening, which was used to determine the potential impact this policy might have with respect to an individual's privacy is incorporated at Appendix 2.
- 1.4 This document sets out NHS Bedfordshire, Luton and Milton Keynes Clinical Commissioning Group's policy and advice to Governing Body and committee members, and to staff (permanent and temporary) in dealing with fraud or suspected fraud and details the arrangements for such concerns to be raised, including by members of the public.
- 1.5 The ICB is committed to helping reduce fraud, bribery and corruption in the NHS and will seek the appropriate disciplinary, regulatory, civil and criminal sanctions against fraudsters and where possible will attempt to recover losses. The aim of the policy and procedures is to protect the property and finances of the NHS and of patients in our care.
- 1.6 The ICB is committed to taking all necessary steps to counter fraud and bribery. To meet these objectives, the ICB complies with the NHS Requirements under the Government Functional Standards, effective April 2021 and which replace the previous NHS Counter Fraud Authority Standards for Fraud, Bribery and Corruption.
- 1.7 The ICB will take all necessary steps to counter fraud and bribery in accordance with guidance provided by the ICB's Local Counter Fraud Service and advice issued by NHS Counter Fraud Authority. This document sets out the ICB's policy for dealing with detected or suspected fraud and bribery.

## 2.0 Scope

- 2.1 This policy applies to all ICB staff members (irrespective of position held), including Governing Body Members and Practice Representatives, involved in the ICB's policy-making processes, whether permanent, temporary or contracted-in under a contract for service (either as an individual or through a third-party supplier) as well as consultants, vendors, contractors, and/or any other parties who have a business relationship with the ICB. It will be brought to the attention of all staff and form part of the induction process for new staff. It is incumbent on all of the above to report any concerns they may have concerning fraud and bribery.
- 2.2 This policy relates to all forms of fraud and bribery and is intended to provide direction and help to staff and others who may identify suspected fraud and/or bribery. It provides a framework for responding to suspicions of fraud and bribery, advice and information on various aspects of fraud and the implications of an investigation. It is not intended to provide a comprehensive approach to preventing and detecting fraud and bribery.
- 2.3 The overall aims of this policy are to:
- Improve the knowledge and understanding of everyone in the ICB, irrespective of their position, about the risk of fraud and bribery within the organisation and its unacceptability.
  - Assist in promoting a climate of openness and a culture and environment where staff members and others feel able to raise concerns sensibly and responsibly.
  - Set out the ICB's responsibilities in terms of the deterrence, prevention, detection and investigation of fraud and bribery.
  - Ensure the appropriate sanctions are considered following an investigation, which may include any or all of the following:
    - Criminal prosecution
    - Civil proceedings
    - Internal/external disciplinary action (including professional/regulatory bodies).
- 2.4 In implementing this policy, managers must ensure that all staff members are treated fairly and within the provisions and spirit of the ICB's Equal Opportunities Policy. Special attention should be paid to ensuring the policy is understood where there may be barriers to understanding caused by the individual's circumstances, for example,

where the individual's literacy or use of English is weak, or where the individual has little experience of working life.

### 3.0 Definitions

This section provides staff members with an explanation of terms used within this policy.

- 3.1 **Fraud** - any person who dishonestly makes a false representation to make a gain for themselves or another, or dishonestly fails to disclose to another person information which they are under a legal duty to disclose, or commits fraud by abuse of position, including any offence as defined in the Fraud Act 2006. Appendix 4 is a summary of the Fraud Act 2006.

- 3.2 **Bribery and corruption** - Giving or receiving a financial or other advantage in connection with the improper performance of a position of trust, or a function that it is expected will be performed impartially or in good faith. This may take forms other than payment of cash, including gifts, favours or lavish treatment. Appendix 5 is a summary of the Bribery Act 2010.

This can be broadly defined as the offer or acceptance of inducements, gifts, favours, payment or benefit-in-kind which may influence the action of any person. Bribery does not always result in a loss. The corrupt person may not benefit directly from their deeds, but may be unreasonably using their position to give some advantage to another.

It is a common law offence of bribery to bribe the holder of a public office and it is similarly an offence for the office holder to accept a bribe.

- 3.3 **NHS Counter Fraud Authority** – The NHS Counter Fraud Authority (NHSCFA) has the responsibility for the detection, investigation and prevention of fraud and economic crime within the NHS. Its aim is to lead the fight against fraud affecting the NHS and wider health service, by using intelligence to understand the nature of fraud risks, investigate serious and complex fraud, reduce its impact and drive forward improvements. Further information can be found in the NSHCFA Organisational Strategy 2020-23.

### 4.0 Policy Statement

- 4.1 All staff have a personal responsibility to protect the assets of the ICB, including all buildings, equipment and monies from fraud, theft, or bribery.
- 4.2 The ICB is absolutely committed to maintaining an honest, open and well-intentioned atmosphere, so as to best fulfil the objectives of the ICB and of the local NHS. It is, therefore, also committed to the elimination of fraud and bribery within the ICB, to the

rigorous investigation of any such allegations and to taking appropriate action against wrong doers, including possible criminal prosecution, as well as undertaking steps to recover any assets lost as a result of fraud.

- 4.3 The ICB has procedures in place that reduce the likelihood of fraud occurring. These include Standing Orders, Detailed Financial Policies, documented procedures, a system of internal control (including assurance from Internal and External Audit) and a system of risk assessment. In addition, the ICB seeks to ensure that a comprehensive anti-fraud and bribery culture exists throughout the organisation via the appointment of a dedicated Local Counter Fraud Specialist, in accordance with the requirements of the NHS Standard Contract, Section 24.
- 4.4 It is expected that Governing Body and Committee members and ICB staff at all levels will lead by example in acting with the utmost integrity and ensuring adherence to all relevant regulations, policies and procedures.
- 4.5 The ICB procures goods and services ethically and transparently with the quality, price and value for money determining the successful supplier/contractor, not the receipt (or offer of) improper benefits. The ICB will not engage in any form of bribery, neither in the UK nor abroad. The ICB, all Governing Body and Committee members, staff (independent of their grade and position) shall at all times comply with the Bribery Act 2010 and with this policy.
- 4.6 The ICB encourages anyone having reasonable suspicions of fraud to report them. The ICB recognises that, while cases of theft are usually obvious, there may initially only be a suspicion regarding potential fraud and, thus, it should be reported to the Local Counter Fraud Specialist (LCFS), or Chief Finance Officer who will then ensure that procedures are followed.
- 4.7 The ICB's policy, which will be rigorously enforced, is that no individual will suffer any detrimental treatment as a result of reporting reasonably held suspicions. The Public Interest Disclosure Act 1998 gives statutory protection, within defined parameters, to staff members who make disclosures about a range of subjects, including fraud and bribery, which they believe to be happening within the organisation. Within this context, 'reasonably held' means suspicions other than those which are raised maliciously and are subsequently found to be groundless.
- 4.8 As the ICB's functions are centred on commissioning and procuring goods and services, its principal exposure to bribery is the risk that external parties will attempt to bribe ICB officers and staff. Accordingly, ICB officers and staff must not ask for or receive a bribe from any individual or organisation. Equally, they must not offer or pay a bribe to any individual or organisation. This means that no one should

- ask for or receive a financial or other advantage from any third party in order to induce them to perform their function or activities improperly or
  - offer, promise, reward in any way or give a financial or other advantage to any person or organisation in order to induce that person or organisation to perform his/her/their function or activities improperly.
- 4.9 Off-the-book accounts and false or deceptive booking entries are strictly prohibited. All gifts, payments or any other contribution made under the Anti-Fraud and Bribery Policy and associated guidelines, whether in cash or in kind, shall be documented, regularly reviewed, and properly accounted for in the accounts of the ICB. Record retention and archiving must be consistent with required accounting standards and other relevant guidance and regulations.
- 4.10 The ICB, may, in certain circumstances, be held responsible for acts of bribery committed by intermediaries acting on its behalf, such as subsidiaries, clients, business partners, contractors, suppliers, agents, advisors, consultants or other third parties. The use of intermediaries for the purpose of committing acts of bribery is prohibited.
- 4.11 All intermediaries shall be selected with care, and all agreements with intermediaries shall be concluded under terms that are in line with this policy. The ICB will contractually require its agents and other intermediaries to comply with this Anti-Fraud and Bribery Policy and to keep proper accounts and records available for inspection by the ICB, auditors or investigating authorities. Agreements with agents and other intermediaries shall at all times provide for the necessary contractual mechanisms to enforce compliance with the anti-bribery regime. The ICB will monitor performance and, in case of non-compliance, require the correction of deficiencies, apply sanctions, or eventually terminate the agreement even if this may result in a loss of business.
- 4.12 Where the ICB is engaged in commercial activity it could be considered guilty of a corporate bribery offence if an employee, agent, subsidiary or any other person acting on its behalf bribes another person with the intent to obtain or retain business or an advantage in the conduct of business for the ICB, and it cannot demonstrate that it has adequate procedures in place to prevent such. The ICB does not tolerate any bribery on its behalf, even if this might result in its suffering a commercial disadvantage. Criminal liability must be prevented at all times.
- 4.13 Recovery of any losses will always be sought – see section 6.5.

## **5.0 Roles and Responsibilities**

The following have specific responsibilities in relation to this policy.

## 5.1 **Governing Body**

The Governing Body (including executive and non-executive directors) should provide a clear and demonstrable support and strategic direction for anti-fraud, bribery and corruption work. They should review the proactive management, control and the evaluation of counter fraud, bribery and corruption work. Where applicable, the Governing Body should scrutinise NHSCFA assessment reports, and ensure that the recommendations are fully actioned.

## 5.2 **Audit & Risk Assurance Committee**

The Audit Committee is responsible for reviewing, approving and monitoring counter fraud work plans, 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 any NHSCFA quality assessment reports.

## 5.3 **Chief Executive Officer**

The Accountable Officer has overall responsibility for funds entrusted to the ICB. This includes instances of fraud, bribery and corruption. The Accountable Officer must ensure adequate policies and procedures are in place to protect the organisation and the public funds entrusted to it.

The ICB's Accountable Officer is liable to be called to account for specific failures in the ICB'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 ICB staff. The ICB therefore has a duty to ensure staff who are involved in, or who are managing, internal control systems receive adequate training and support in order to carry out their responsibilities.

## 5.4 **Chief Finance Officer**

The Chief Finance Officer is vested with powers to approve financial transactions initiated by directorates across the ICB. As part of this role the Chief Finance Officer is responsible for the maintenance and implementation of detailed financial procedures and systems which incorporate the principles of separation of duties and internal checks.

The Chief Finance Officer will report annually to the Governing Body on the adequacy of internal financial control and risk management as part of the Governing Body's overall responsibility to prepare a statement of internal control for inclusion in the ICB's annual report.

The Chief Finance Officer, in consultation with the NHS Counter Fraud Authority and the LCFS, will decide whether there is sufficient cause to conduct an investigation, and whether the Police and External Audit need to be informed.

## 5.5 Line Managers

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. Responsibility for the prevention and detection of fraud and bribery therefore primarily rests with managers but requires the co-operation of all staff.

As part of that responsibility, line managers need to:

- Inform staff of the ICB's code of business conduct, gifts and hospitality, declarations of interest and counter fraud and bribery policies as part of their induction process, paying particular attention to the need for accurate completion of personal records and forms.
- Ensure that all staff for whom they are accountable are made aware of and understand the requirements of the policy and attend role-relevant training.
- Assess the types of risk involved in the operations for which they are responsible and escalate these appropriately.
- 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) and separation of duties wherever possible so that control of a key function is not invested in one individual, and regular reviews, reconciliations and test checks to ensure that control measures continue to operate effectively.
- Be aware of the ICB's Anti-Fraud and Bribery Policy and the rules and guidance covering the control of specific items of expenditure and receipts.
- Identify financially sensitive posts and apply appropriate safeguards where applicable.
- Ensure that controls are being complied with.
- Contribute to their director's assessment of the risks and controls within their business area, which feeds into the ICB's Risk Management processes.

All instances of actual or suspected fraud or bribery, which come to the attention of a manager, must be reported immediately. It is appreciated that some staff will initially raise concerns with their manager, though in such cases managers must not attempt

to investigate the allegation themselves, having a clear responsibility to refer concerns to the Local Counter Fraud Specialist, Chief Finance Officer and/or NHS Counter Fraud Authority as soon as possible (see Section 6.2 below).

## 5.6 All Staff

Staff should be aware that fraud and bribery (of finances of the NHS or of patients in our care) will normally, dependent upon the circumstances of the case, be regarded as gross misconduct thus warranting summary dismissal without previous warnings. However, no such action will be taken before a proper investigation and a disciplinary hearing have taken place. Such actions may be in addition to the possibility of criminal prosecution.

Staff will not request or receive a bribe from any person or organisation, nor imply that such an act might be considered, nor agree to receive or accept a financial or other advantage from a former, current or future client, business partner, contractor or supplier or any other person as an incentive or reward to perform function or activities improperly.

Staff must also act in accordance with the ICB's related policies as noted on page 3.

Staff must undertake fraud, bribery and corruption training relevant to their role.

Staff also have a duty to protect the assets of the ICB including information, goodwill and reputation, as well as property.

Staff are expected to act in accordance with the standards laid down by their Professional Institute(s), where applicable.

The ICB's Standing Orders and Detailed Financial Policies place an obligation on all staff to act in accordance with best practice. In addition, all staff must declare and register any interests that might potentially conflict with those of the ICB or the wider NHS.

In addition, all staff 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 staff should always:

- Act with honesty, integrity and in an ethical manner.
- Behave in a way that would not give cause for others to doubt that the ICB's staff deal fairly and impartially with official matters.

- Be alert to the possibility that others might be attempting to deceive.

All staff 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.

When an employee suspects that there has been fraud or bribery, they must report the matter to:

- The nominated Local Counter Fraud Specialist, James Shortall, by emailing [james.shortall@nhs.net](mailto:james.shortall@nhs.net) or
- The NHS Counter Fraud Authority by using their online reporting form (<https://cfa.nhs.uk/reportfraud>) or by calling freephone on 0800 028 4060, which is available 24 hours a day, 7 days a week. All reports are treated in confidence and there is the option to report anonymously.

## 5.7 Information Management and Technology

The Head of Information Security (or equivalent) will contact the LCFS immediately in all cases where there is suspicion that IT is being used for fraudulent purposes. This includes inappropriate internet/intranet, email, telephone or PDA use and any offence under the Computer Misuse Act 1990. HR will be informed if there is a suspicion that an employee is involved.

## 5.8 Local Counter Fraud Specialist (LCFS)

The LCFS is responsible for taking forward all anti-fraud work locally in accordance with the Government Functional Standards, and reports directly to the Chief Finance Officer.

The LCFS will ensure there is a counter fraud, bribery and corruption strategy, aligned to the NHSCFA Strategy. This will include:

- An assessment of the main risks and challenges facing the ICB
- An assessment of how the fraud landscape may change
- Where the organisation wants to be in the next two to five years
- How the ICB will actively counter fraud, bribery and corruption
- Objectives for the period of the strategy

The LCFS will ensure there is an annual action plan to show how the counter fraud bribery and corruption strategy is to be implemented. The plan will:

- Include the objectives and outcomes being targeted.
- Align to the risks and challenges facing the ICB, and the NHSCFA Strategy

- Describe prioritised improvement and detection activities
- Be tracked and maintained so that progress against the plan can be monitored and reviewed
- Be reviewed and updated in year as required

The LCFS will conduct risk assessments in relation to their work to prevent fraud, bribery and corruption. This will take into account data collected in the ICB relating to incidences and allegations of fraud, bribery and corruption, and proactive risk assessments carried out by managers.

The LCFS works with key colleagues and stakeholders to promote anti-fraud awareness, respond to system weaknesses and investigate allegations of fraud and corruption.

The LCFS will ensure that all cases of actual or suspected fraud, bribery and corruption are notified to the Chief Finance Officer and reported accordingly.

Investigation of the majority of cases of alleged fraud within the ICB will be the responsibility of the LCFS. NHS Counter Fraud Authority will only investigate cases which should not be dealt with locally. Following receipt of a referral, NHS Counter Fraud Authority will consider relevant information or intelligence to determine if a case should be investigated by NHS Counter Fraud Authority. This list is not exhaustive but will include cases which:

- Have a strategic or national significance or are deemed to be in the public interest.
- From intelligence or information have been identified as being part of a suspected criminal trend or an area which is suspected of being targeted by organised crime and which requires a centrally coordinated investigation.
- Form part of a series of linked cases already being investigated or about to be by NHS Counter Fraud Authority.
- Are known or likely to have a high degree of complexity either in the nature of the fraud or the investigation required.
- Will require a significant investigation which could include the involvement of other agencies such as the National Crime Agency or Serious Fraud Office (not day to day involvement of agencies on lower level cases).
- Have any factors which would determine that the case should be investigated outside of the local NHS body, for example very senior management involvement, the need to use directed surveillance, obtain communications

data or use powers provided to NHS Counter Fraud Authority in the NHS Act 2006.

- Extend beyond the geographical, financial or legal remit of the NHS body affected by the fraud.

The LCFS will regularly report to the Chief Finance Officer and the Audit Committee on the progress of investigations.

The LCFS and the Chief Finance Officer, in conjunction with NHS Counter Fraud Authority, will decide who will conduct the investigation and when/if referral to the police is required. Cases, for instance, where more than £100,000 or where possible bribery is involved may be investigated by NHS Counter Fraud Authority (though the LCFS may assist); otherwise investigations will normally be undertaken by the ICB's own LCFS.

The LCFS in consultation with Chief Finance Officer will review the strategic objectives contained within the assurance framework to determine any potential fraud or bribery risks. Where risks are identified these will be included on the ICB's risk register so the risk can be proactively addressed.

## **5.9 Internal and External Audit**

The work of internal and external audit includes reviewing controls and systems and ensuring compliance with financial instructions.

Any incident or suspicion of fraud or bribery that comes to the attention of Internal or External Audit will be passed immediately to the LCFS.

## **5.10 Human Resources (HR)**

HR will liaise closely with managers and the LCFS, from the outset, where an employee is suspected of being involved in fraud in accordance with agreed procedures. HR are responsible for ensuring the appropriate use of the ICB's Disciplinary Procedure. The HR Department shall advise those involved in any investigation on matters of employment law and other procedural matters, such as disciplinary and complaints procedures. Close liaison between the LCFS and HR will be essential to ensure that any parallel sanctions (eg criminal and disciplinary) are applied effectively and in a coordinated manner.

HR will take steps at the recruitment stage to establish, as far as possible, the previous record of potential employees as well as the veracity of required qualifications and memberships of professional bodies in terms of their propriety and integrity. In this regard, temporary and fixed term contract employees are treated in the same manner as permanent employees.

## 6.0 Processes and Procedures

- Training
- The Response Plan
- Disciplinary Action
- Police Involvement
- Sanctions and Redress
- Additional Information

### 6.1 Training

The ICB will provide anti-bribery training to all relevant employees on a regular basis to make them aware of the Anti-Fraud and Bribery Policy, including possible types of fraud and bribery, the risks of engaging in fraud or bribery activity, and how employees may report suspicion of fraud or bribery, including the work of the LCFS.

### 6.2 The Response Plan

If any of the concerns mentioned in this document come to the attention of an employee, they must inform the Local Counter Fraud Specialist or the Chief Finance Officer immediately.

Contact information for the above is listed in Appendix A, which is designed to be a reminder of the key “what to do” steps (as well as contact details) to be taken where fraud or other illegal acts are discovered or suspected. Managers are encouraged to copy this to staff and to place it on staff notice boards in their departments.

Employees can also call the NHS Fraud and Corruption Reporting Line on Freephone 0800 028 4060 or by filling in an online form at [www.reportnhsfraud.nhs.uk](http://www.reportnhsfraud.nhs.uk) as an alternative to internal reporting procedures and if there is a wish to remain anonymous. This provides easily accessible routes for the reporting of genuine suspicions of fraud within or affecting the NHS, allowing staff members who are unsure of internal reporting procedures to report their concerns in the strictest confidence. All calls are dealt with by experienced caller handlers.

Anonymous letters, telephone calls, etc are received from time to time from individuals who wish to raise matters of concern, but not through official channels. While the allegations may be erroneous or unsubstantiated, they may also reflect a genuine cause for concern and should always be taken seriously. Sufficient enquiries will be made by the LCFS to establish whether or not there is any foundation to the

allegations. If the allegations are found to be malicious, they will also be considered for further investigation as to their source.

The ICB 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, the ICB has a whistleblowing policy. This is intended to complement the Anti-Fraud and Bribery Policy and Code of Business Conduct and ensure that 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.

### **6.3 Disciplinary Action**

The ICB's disciplinary procedures must be followed where an employee is suspected of being involved in a fraudulent or other illegal act.

It should be noted, however, that the duty to follow disciplinary procedures will not override the need for legal action to be taken (eg consideration of criminal action). In the event of doubt, legal statute shall prevail.

### **6.4 Police Involvement**

The Chief Finance Officer, in conjunction with the LCFS and NHS Counter Fraud Authority, will decide whether a case should be referred to the police. HR and line managers will be involved as necessary. A referral to the police will not preclude action being taken under ICB disciplinary procedures.

### **6.5 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 ICB and should be read in conjunction with the ICB's disciplinary policy.

The types of sanctions which the ICB may apply when a financial offence has occurred are as follows:

- Civil – civil sanctions can be taken to recover money and/or assets which have been fraudulently obtained, including interests and costs.
- Criminal – The LCFS will work in partnership with NHS Counter Fraud Authority, the police and the Crown Prosecution Service to bring a case to court against an offender. Outcomes, if found guilty, can include fines, a community order or imprisonment and of course a criminal record.

- Disciplinary – Disciplinary procedures will be initiated when an employee is suspected of being involved in fraudulent or illegal activity. Further information can be found in the ICB's Disciplinary Policy.
- Professional body disciplinary – An employee will be reported to their professional body where applicable at the outcome of an investigation or prosecution.

The ICB will seek financial redress wherever possible to recover losses to fraud, bribery and corruption. Redress can take the form of confiscation under the Proceeds of Crime Act 2002, compensation orders, a civil order for repayment, or a local agreement between the ICB and the offender to repay monies lost.

## 6.6 External Communications

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

## 6.7 Additional Information

Any abuse or non-compliance with this policy or related procedures will be subject to a full investigation and appropriate disciplinary action.

## Appendix 1 - Equality Impact Assessment Initial Screening

Please answer the questions against each of the protected characteristic and inclusion health groups. If there are significant impacts and issues identified a full Equality / Quality Impact Assessment (EQIA) must be undertaken. It is against the law to discriminate against someone because of these protected characteristics. For support and advice on undertaking EQIAs please contact: [agcsu.equalities@nhs.net](mailto:agcsu.equalities@nhs.net)

<b>Name of Policy:</b>	Anti-Fraud and Bribery Policy
<b>Date of assessment:</b>	dd-mm-yyyy
<b>Screening undertaken by:</b>	<insert name and role>

Protected characteristic and inclusion health groups.  Find out more about the Equality Act 2010, which provides the legal framework to tackle disadvantage and discrimination: <a href="https://www.equalityhumanrights.com/en/equality-act/protected-characteristics">https://www.equalityhumanrights.com/en/equality-act/protected-characteristics</a>	Could the policy create a disadvantage for some groups in application or access?  (Give brief summary)	If Yes - are there any mechanisms already in place to mitigate the potential adverse impacts identified?  If not, please detail additional actions that could help.  If this is not possible, please explain why
<b>Age</b> A person belonging to a particular age (for example 32 year olds) or range of ages (for example 18 to 30 year olds).	No	
<b>Disability</b> A person has a disability if she or he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.	No	
<b>Gender reassignment</b> The process of transitioning from one gender to another.	No	
<b>Marriage and civil partnership</b> Marriage is a union between a man and a woman or between a same-sex couple. Same-sex couples can also have their relationships legally recognised as 'civil partnerships'.	No	
<b>Pregnancy and maternity</b> Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth and is linked to maternity leave in the	No	

employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.		
<b>Race</b> Refers to the protected characteristic of race. It refers to a group of people defined by their race, colour and nationality (including citizenship) ethnic or national origins.	No	
<b>Religion or belief</b> Religion refers to any religion, including a lack of religion. Belief refers to any religious or philosophical belief and includes a lack of belief. Generally, a belief should affect your life choices or the way you live for it to be included in the definition.	No	
<b>Sex</b> A man or a woman.	No	
<b>Sexual orientation</b> Whether a person's sexual attraction is towards their own sex, the opposite sex, to both sexes or none.	No	
<b>Carers</b> Individuals within the CCG which may have carer responsibilities.	No	
<b>Please summarise the improvements which this policy offers compared to the previous version or position.</b>		
<b>Has potential disadvantage for some groups been identified which require mitigation?</b>		
No – (If there are significant impacts and issues identified a full Equality / Quality Impact Assessment (EQIA) must be undertaken.)		

## Appendix 2 - Data Protection Impact Assessment Initial Screening

Data protection is the fair and proper use of information about people. Before completing this form, please refer to the Data Protection Impact Assessment (DPIA) Guidance in the Information Governance (IG) section on the staff Intranet or contact the Data Protection Officer for support via [blmkccg.ig@nhs.net](mailto:blmkccg.ig@nhs.net)

A DPIA is a process to help you identify and minimise the data protection risks. You must do a DPIA for processing that is likely to result in a high risk to individuals. You can use our screening checklist below to help you decide when to do one. If you have answered 'Yes' to any of the 10 screening questions, you must then carry out a full DPIA using the Stage 2 form, which is also available on the Intranet in the IG section.

<b>Name of Policy:</b>	Anti-Fraud and Bribery Policy
<b>Date of assessment:</b>	dd-mm-yyyy
<b>Screening undertaken by:</b>	<insert name and role>

### Stage 1 – DPIA form

please answer 'Yes' or 'No'

<b>1. Will the policy result in the processing of personal identifiable information / data?</b> This includes information about living or deceased individuals, including their name, address postcode, email address, telephone number, payroll number etc.	No
<b>2. Will the policy result in the processing of sensitive information / data?</b> This includes for living or deceased individuals, including their physical health, mental health, sexuality, sexual orientation, religious belief, National Insurance No., political interest etc.	No
<b>3. Will the policy involve the sharing of identifiers which are unique to an individual or household?</b> e.g., Hospital Number, NHS Number, National Insurance Number, Payroll Number etc.	No
<b>4. Will the policy result in the processing of pseudonymised information by organisations who have the key / ability to reidentify the information?</b> <b>Pseudonymised data</b> - where all identifiers have been removed and replaced with alternative identifiers that do not identify any individual. Re-identification can only be achieved with knowledge of the re-identification key. <b>Anonymised data</b> - data where all identifiers have been removed and data left does not identify any patients. Re-identification is remotely possible, but very unlikely.	No
<b>5. Will the policy result in organisations or people having access to information they do not currently have access to?</b>	No
<b>6. Will the policy result in an organisation using information it already holds or has access to, but for a different purpose?</b>	No
<b>7. Does the policy result in the use of technology which might be perceived as being privacy intruding?</b> e.g., biometrics, facial recognition, CCTV, audio recording etc.	No
<b>8. Will the policy result in decisions being made or action being taken against individuals in ways which could have a significant impact on them?</b> Including profiling and automated decision making. (This is automated processing of personal data to evaluate certain things about an individual i.e., diagnosis and then making a decision solely by automated means - without any human involvement)	No
<b>9. Will the policy result in the collection of additional information about individuals in addition to what is already collected / held?</b>	No

<b>10. Will the policy require individuals to be contacted in ways which they may not be aware of and may find intrusive? e.g., personal email, text message etc.</b>	No
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## Appendix 3 - Action to be taken if you discover or suspect fraudulent activity

**FRAUD** is the 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.

**BRIBERY & CORRUPTION** is the deliberate use of payment or benefit-in-kind to influence an individual to use their position in an unreasonable way to help gain advantage for another.

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

- Contacting the **Local Counter Fraud Specialist (LCFS)**, or
- Contacting the **Chief Finance Officer**, or
- telephoning the **Freephone NHS Fraud and Corruption Reporting Line** (see details on the right)

### Do you have concerns about a fraud taking place in the NHS?

NHS Fraud, Bribery and Corruption Reporting Line:

**0800 028 40 60**

Calls will be treated in confidence and investigated by professionally trained staff.

Online: [www.reportnhsfraud.nhs.uk](http://www.reportnhsfraud.nhs.uk)

#### DO

- **Note your concerns**

Record details such as the nature of 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 Local Counter Fraud Specialist (LCFS).

- **Report your suspicions**

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

#### DO NOT

- **Confront the suspect or convey concerns to anyone other than those authorised**

Never attempt to question a suspect yourself; this could alert the fraudster or lead to an innocent person being unjustly accused.

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

Never attempt to gather evidence yourself unless it is about to be destroyed; gathering evidence must be done in line with legal requirements in order for it to be useful. Your LCFS can conduct an investigation in accordance with this 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!**

Your Local Counter Fraud Specialist is James Shortall  
who can be contacted by telephoning 07815 000 289 or emailing [james.shortall@nhs.net](mailto:james.shortall@nhs.net)  
You can also report to the NHS Counter Fraud Authority directly, via <https://cfa.nhs.uk/reportfraud>

## Tackling fraud

## Appendix 4 – Summary of the Fraud Act 2006

### SUMMARY

**Section 1** of the Fraud Act 2006 sets out provisions for a general offence of fraud. There are several new offences created the main three being sections 2, 3 and 4. The Act also creates new offences of obtaining services dishonestly and of possessing, making and supplying articles for use in fraud, as well as containing a new offence of fraudulent trading applicable to non-corporate traders.

#### **Section 2: Fraud by False Representation**

It is an offence to commit fraud by false representation. The representation must be made dishonestly. This test applies also to sections 3 and 4 below. The current definition of dishonesty was established in *R v Ghosh* [1982] Q.B.1053. That judgment sets a two-stage test. The first question is whether a defendant's behavior would be regarded as dishonest by the ordinary standards of reasonable and honest people. If answered positively, the second question is whether the defendant was aware that his conduct was dishonest and would be regarded as dishonest by reasonable and honest people.

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

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

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

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

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

A representation may be regarded as being made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention). The main purpose of this provision is to ensure that fraud can be committed where a person makes a representation to a machine and a response can be produced without any need for human involvement (an example is where a person enters a number into a "CHIP and PIN" machine).

#### **Section 3: Fraud by Failing to Disclose Information**

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

For example, the failure of a solicitor to share vital information with a client within the context of their work relationship, in order to perpetrate a fraud upon that client, would be covered by this section. Similarly, an offence could be committed under this section if for example an NHS employee failed to disclose to the ICB that certain patients referred by him for private treatment are private patients, thereby avoiding a charge for the services provided by that NHS employee during NHS time.

#### **Section 4: Fraud by Abuse of Position**

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

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

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

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

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

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

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

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

Section 6 makes it an offence for a person to possess or have under his control any article for use in the course of or in connection with any fraud. This wording draws on that of the existing law in section 25 of the Theft Act 1968 (these provisions make it an offence for a person to "go equipped" to commit a burglary, theft or cheat, although they apply only when the offender is not at his place of abode).

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

#### **Section 7: Making or Supplying Articles for Use in Frauds**

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

#### **Section 8: "Article"**

Section 8 extends the meaning of "article" for the purposes of sections 6 and 7 and certain other connected provisions so as to include any program or data held in electronic

form. Examples of cases where electronic programs or data could be used in fraud are: a computer program can generate credit card numbers; computer templates can be used for producing blank utility bills; computer files can contain lists of other peoples' credit card details or draft letters in connection with 'advance fee' frauds.

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

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

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

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

### **Section 11: Obtaining Services Dishonestly**

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

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

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

### **Section 12: Liability of Company Officers for Offences by Company**

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

The Fraud Act 2006 repeals the following Theft Act offences:

Theft Act 1968

- Section 15 (obtaining property by deception)
- Section 15A (obtaining a money transfer by deception)
- Section 15B (Section 15A: supplementary)

- Section 16 (obtaining a pecuniary advantage by deception)
- Section 20(2) (procuring the execution of a valuable security by deception)

#### Theft Act 1978

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

The Act came into force on 15 January 2007 and carries a maximum sentence of 10 years imprisonment with the exception of the 'going equipped offence' which is 5 years.

Any suspicions of fraud against NHS Bedfordshire, Luton and Milton Keynes ICB should be reported to:

James Shortall, Local Counter Fraud Specialist via [james.shortall@nhs.net](mailto:james.shortall@nhs.net) or 07815 000 289

Alternatively you can telephone the NHS Fraud & Corruption Line in confidence on

0800 028 40 60 (24 hours freephone)

or online: <https://cfa.nhs.uk/reportfraud>

## Appendix 5 – Summary of the Bribery Act 2010

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

### **Offences of bribing another person**

Case 1 is where a NHS Bedfordshire, Luton and Milton Keynes ICB employee offers, promises or gives a financial or other advantage to another person and intends the advantage

- (i) to induce that or another person to perform improperly a relevant function or activity, or
- (ii) to reward that or another person for the improper performance of such a function or activity

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

The bribery must relate to

- (i) a function of a public nature
- (ii) an activity connected with a business
- (iii) an activity performed in the course of a person's employment, or
- (iv) an activity performed by or on behalf of a body of persons (whether corporate or unincorporated)

The person performing the function or activity must be expected to perform it in good faith, impartially or in a position of trust. It does not matter whether the function or activity is performed inside or outside the UK, whether the other person(s) involved is/are in the public or private sector and whether the advantage is offered, promised or given directly by a NHS Bedfordshire, Luton and Milton Keynes ICB employee or through a third party, eg an agent or other intermediary.

### **Offences relating to being bribed**

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

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

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

Case 6 is where, in anticipation of or in consequence of a NHS Bedfordshire, Luton and Milton Keynes ICB employee requesting, agreeing to receive or

accepting a financial or other advantage, a relevant function or activity is performed improperly

- (i) by that person, or
- (ii) by another person at his/her request or with his/her assent or acquiescence

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

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

In Cases 4 to 6, it does not matter whether a NHS Bedfordshire, Luton and Milton Keynes ICB employee knows or believes that the performance of the function or activity is improper.

### **Bribery of foreign public officials**

Case 7 is where a NHS Bedfordshire, Luton and Milton Keynes ICB employee bribes a foreign public official and intends

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

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

### **Failure of commercial organisations to prevent bribery**

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

### **Facilitation Payments**

Facilitation payments are prohibited under the Bribery Act like any other form of bribe. They shall not be made by the ICB or by the ICB's employees or other representatives.