

Anti-Fraud, Bribery and Corruption Policy

Board library reference	Document author	Assured by	Review cycle
P115	Counter Fraud Specialist	Audit and Risk Committee	Annually

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1. Executive summary

Avon and Wiltshire Mental Health Partnership NHS Trust (AWP) ('the Trust') has a zero-tolerance approach to fraud, bribery and corruption and is committed to reducing these levels to an absolute minimum and keeping it at that level, freeing up public resources for better patient care.

AWP is committed to tackling fraud, bribery and corruption within the NHS and in doing so will take appropriate measures as set out under NHS Counter Fraud Authority's Key Principles of Strategic Governance; Inform and Involve; Prevent and Deter; and Hold to Account.

1.1 Reporting concerns: fraud, bribery and corruption

If an employee has any of the concerns about possible fraud, bribery or corruption, they should inform the nominated Local Counter Fraud Specialist (LCFS), either directly or through their line manager. Details can be found on the Counter Fraud pages of 'OurSpace'

If it suspected that the LCFS or AWP management is implicated reports should be made to the Chair of the Audit and Risk Committee, Trust Chief Executive, or to NHS Counter Fraud Authority(CFA) directly.

NHS CFA : Fraud and Corruption Line 0800 028 40 60 or <https://cfa.nhs.uk/reportfraud>

All reports will be treated in confidence.

The Fraud Act 2006 created the general offence of fraud and described the three ways in which an offence under the act may be committed. The Bribery Act 2010 created specific offences relating to the giving, offering and accepting of bribes, whether at home or abroad, as well as a corporate offence centred on negligence.

NHS codes of conduct require high standards of corporate and individual behaviour, embodied in the core public service values of accountability, probity and openness. AWP is committed to maintaining an ethical work environment where concerns can be raised without fear of reprisal.

The Chief Executive, Director of Finance, LCFS, Internal Audit, Human Resources staff, managers and all employees have a responsibility to uphold with regard to countering fraud, bribery and corruption.

AWP will take appropriate disciplinary action when an employee is suspected of being involved in fraudulent activity, which may include criminal prosecution. AWP will strive to recover all funds lost to such activity through a combination of the administrative, criminal and civil means at its disposal.

It should be noted that this policy has been produced by the Trust's Local Counter Fraud Specialist (LCFS), applies to all AWP employees, contractors, consultants, vendors and other stakeholders, both internal and external.

2. Introduction

One of the basic principles of public sector organisations is the proper use of public funds. The overwhelming majority of people who work in the NHS are honest, professional, and view the fraud committed by a minority as wholly unacceptable. AWP is committed to reducing fraud, bribery and corruption in the NHS and will seek the appropriate disciplinary, regulatory, civil and criminal sanctions against those who commit these crimes, and will seek to recover losses wherever possible. This policy is supported and endorsed by senior management at the Trust.

3. Aims, objectives and scope

This policy relates to all forms of fraud, bribery and corruption and is intended to provide direction and guidance for employees on what fraud is in the NHS, what everyone's

responsibility is to prevent fraud, bribery and corruption, and how to report it. Thus, the key aims of this policy are to:

- Improve the knowledge and understanding of everyone at AWP , irrespective of their position, about the risk of fraud, bribery and corruption within the Trust and its unacceptability
- Assist in promoting a climate of openness and an environment in which staff feel able to raise concerns responsibly and without fear of recrimination or reprisal
- Set out the responsibilities of AWP staff in terms of the deterrence, prevention, detection and investigation of fraud, bribery and corruption
- Help ensure appropriate sanctions are considered during an investigation, which may include any or all of the following:
 - criminal prosecution
 - civil proceedings
 - internal disciplinary action
 - external / regulatory disciplinary action

This policy applies to all employees of the AWP regardless of position held, as well as to consultants, vendors, contractors, and/or any other parties who have a business relationship with AWP. It will be brought to the attention of all employees and form part of the induction process for new staff.

3.1 NHS Counter Fraud Authority (NHS CFA)

NHS CFA leads on work to identify and tackle crime, including Economic Crime, across the health service. The aim is to protect NHS staff and resources from activities that would otherwise undermine their effectiveness and their ability to meet the needs of patients and professionals. Ultimately, this helps to ensure the proper use of valuable NHS resources and a safer, more secure environment in which to deliver and receive care.

4. Fraud

The Fraud Act of 2006 came into force on 15 January 2007 and provided, for the first time, for a general offence of fraud. The act does not define fraud, but instead sets out the ways in which an offence under the Act may be committed, the main three of which are:

4.1 Fraud by false representation

A person is in breach of this section if he/she

- dishonestly makes a false representation; and
- intends, by making that representation
 - to make a gain for himself or another or
 - to cause loss to another or to expose another to a risk of loss.

A representation is false if it is untrue or misleading, and the person making it knows that it is, or might be, untrue or misleading.

4.2 Fraud by failing to disclose information

A person is in breach of this section if he/she

- dishonestly fails to disclose to another person information which he is under a legal duty to disclose; and

- intends, by failing to disclose the information
 - to make a gain for himself or another, or
 - to cause loss to another or to expose another to a risk of loss.

4.3 Fraud by abuse of position

A person is in breach of this section if he/she

- occupies a position in which he/she is expected to safeguard, or not to act against, the financial interests of another person,
- dishonestly abuses that position, and
- intends, by means of the abuse of that position-
 - to make a gain for himself or another or
 - to cause loss to another or to expose another to a risk of loss

A person may be regarded as having abused his position even if his conduct consists of an omission, rather than an act.

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 a gain or a loss. The fraud does not have to be successful, it is the intention behind the dishonest act (or omission) that is key.

5. Bribery and corruption

5.1 The Bribery Act 2010

The Bribery Act 2010, which came into force 1 July 2011, makes it a criminal offence to give, promise or offer a bribe, and to request, agree to receive or accept a bribe, either at home or abroad.

The Act also introduced a corporate offence of failing to prevent bribery, caused through negligence in not having in place adequate preventative procedures.

Corruption is not formally defined in law, but may be considered a spectrum of dishonest behaviour, on which sits bribery as a commonly known example. Corruption therefore extends beyond bribery, and may not always result in a loss, nor may the corrupt person benefit directly from their actions; however, they will be unreasonably using their influence to give some advantage to another.

5.2 The Corporate Offence of Bribery

The Act created a new corporate offence of failing to prevent bribery, which is predicated on negligence. The offence is complete when a person associated with a relevant commercial organisation bribes another person, intending to obtain or retain business for that organisation or to obtain or retain a business advantage in the conduct of business for that organisation. It is not necessary for the person associated with the organisation to be prosecuted for bribery only that he is or would be guilty.

The Act also provides a defence where the relevant commercial organisation had in place adequate procedures designed to prevent persons associated with the organisation from undertaking such conduct.

5.3 Theft

The legal definition of theft is: "A person is guilty of theft if he/she dishonestly appropriates property belonging to another person with the intention of permanently depriving the other of it."

Theft also covers the dishonest misuse of the resources of AWP or any resources which AWP may manage on behalf of others.

Theft is not the same as fraud and does not fall under the remit of the LCFS. Suspicions of theft should be reported to the Local Security Management Specialist (LSMS): Contact details can be found on 'OurSpace'

6. Public service values

The codes of conduct for NHS boards and NHS managers set out the key public service values. They state that high standards of corporate and personal conduct, based on the recognition that patients come first, have been a requirement throughout the NHS since its inception. These values are summarised as:

- **Accountability** Everything done by those who work in the authority must be able to stand the tests of parliamentary scrutiny, public judgements on propriety and professional codes of conduct.
- **Probity** Absolute honesty and integrity should be exercised in dealing with NHS patients, assets, staff, suppliers and customers.
- **Openness** The health body's activities should be sufficiently public and transparent to promote confidence between the authority and its staff and the public.

All staff should be aware of and act in accordance with these values.

7. Policy statement

AWP's Trust Board is committed to maintaining an ethical work environment characterised by the honesty and integrity of each Trust employee. It is therefore committed to eliminating any fraud, bribery and corruption within the Trust, and to the rigorous investigation of any such cases. Where any acts of fraud, bribery or corruption are proven, AWP will ensure that the culprits are appropriately dealt with, and will also take all appropriate steps to recover any losses in full.

The Trust Board wishes to advise that it is the responsibility of all staff to report any reasonable suspicions of fraud, bribery or corruption. It is also the Board's policy that an employee should not suffer detriment as a result of reporting reasonably held suspicions.

8. Demonstrating commitment

The commitment of AWP to probity and public sector values manifests itself in the following:

- The promotion of an ethical environment
- The maintenance of an Audit Committee with clear terms of reference and unrestricted scope
- Maintenance of a register of interests and register of gifts and hospitality
- The use of clearly defined and documented policies including standing orders and standing financial instructions
- Compliance with statutory financial reporting requirements
- Operation of an effective accounting and budgetary control system
- An adequate and effective internal audit function
- Putting in place appropriate internal controls
- Investigating all cases of alleged fraud and corruption
- Nomination of a local counter fraud specialist (LCFS)

- Promotion of a risk and fraud awareness culture across the Trust.

9. Roles and responsibilities

9.1 Chief Executive

The Chief Executive has the overall responsibility for funds entrusted to the Trust, and must ensure adequate policies and procedures are in place to protect the Trust and the public funds entrusted to it.

9.2 Director of Finance

The Director of Finance is provided with powers to approve financial transactions initiated by directorates across the Trust. The Director of Finance prepares, documents and maintains detailed financial procedures and systems that incorporate the principles of segregation of duties and internal checks.

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

Depending on the outcome of initial inquiries, the Director of Finance will inform appropriate senior management of reported cases of fraud, bribery and corruption, especially where the loss may be deemed significant or where the incident may generate adverse publicity.

The Director of Finance will inform the Head of Internal Audit of any fraud, bribery or corruption case and will delegate to the LCFS the responsibility for leading the investigation.

The Director of Finance will seek to recover any Trust funds lost through fraud, bribery or corruption, and will;

- Meets with the LCFS/NHSCFA and, where required a legal advisor, to seek appropriate advice and guidance before deciding on a course of action for recovery.
- Agree an appropriate course of action for recovery.
- Ensure that the Trust is effective in recovering any losses incurred to fraud and corruption.
- Ensure that civil redress is progressed effectively through the Finance department.
- Monitor and records the progress of recoveries and report progress to the Audit Committee.

9.3 Internal and External Audit

The role of internal and external audit includes reviewing controls and systems and ensuring compliance with financial instructions. While this role does not include uncovering instances of fraud, bribery and corruption, there is a duty for internal and external audit to pass on any suspicions thereof to the LCFS.

9.4 Human Resources (HR)

HR staff will liaise closely with managers and the LCFS from the outset if an employee is suspected of being involved in fraud, bribery or corruption, in accordance with agreed liaison protocols. HR staff are responsible for ensuring the appropriate application of AWP's internal disciplinary procedures. The HR department will advise those involved in the investigation on points of employment law and other procedural matters, as requested.

Close liaison between the LCFS and HR will be essential to ensure that any parallel sanctions (i.e. criminal, civil and disciplinary) are applied effectively and in a coordinated manner.

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

9.5 Local Counter Fraud Specialist (LCFS)

The LCFS is responsible for taking forward all anti-fraud work locally, in accordance with national standards, and reports directly to the Director of Finance in this regard.

The LCFS will work with key colleagues and stakeholders at AWP to promote anti-fraud work, to effectively respond to system weaknesses, and to investigate allegations of fraud, bribery and corruption in accordance with the NHS Anti-Fraud Manual.

To this end, the LCFS will:

- Ensure that the Director of Finance is informed of all referrals/cases of fraud, bribery and corruption and seek agreement on the most appropriate course of action.
- Be responsible for the day-to-day implementation of the counter fraud workplan and, in particular, the investigation of all suspicions of fraud, bribery and corruption and advise the Trust on the evidence available to be able to seek recovery of funds.
- Report cases of fraud, bribery and corruption to NHS CFA.
- Document casework and the outcome of investigations, including any sanctions or recoveries, using NHS CFA case management and intelligence-sharing database
- Ensure that relevant parties are informed where necessary, such as HR where internal disciplinary action is appropriate, and the Communications team where the case may generate public and/or press interest
- Ensure that AWP's incident and losses reporting systems are followed
- Ensure that any system weaknesses identified as part of an investigation are followed up with management and reported to internal audit
- Adhere to the Counter Fraud Professional Accreditation Board (CFPAB) Principles of Professional Conduct as set out in the NHS CFA Anti Fraud Manual
- Ensure that the Director of Finance is informed of regional NHS CFA investigations as they progress
- Where appropriate, publicise proven cases of fraud and bribery within the organisation with details of sanctions and redress.

9.6 Managers

Managers are responsible for ensuring that policies, procedures and processes within their local area are adhered to and kept under review. They have a responsibility to ensure that staff are aware of fraud, bribery and corruption and understand the importance of protecting the Trust from it. They are also responsible for the enforcement of disciplinary action against staff who do not comply with policies and procedures.

Managers should be alert to the possibility that unusual transactions, particularly those with no obvious commercial rationale, could be symptoms of fraud, bribery and corruption. If they have any doubts, they must seek advice from the LCFS.

Managers must instil and encourage a zero-tolerance culture within their team with regards to criminal wrongdoing. The LCFS will proactively assist in this endeavour by undertaking work to raise fraud awareness and create deterrence effects.

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

allegation themselves; they have a clear responsibility to refer concerns to the LCFS and / or NHS CFA instead.

Line managers at all levels have a responsibility to ensure that an adequate system of internal control exists within their areas of responsibility and that controls operate effectively. The responsibility for the prevention and detection of fraud and corruption therefore primarily rests with managers but requires the co-operation of all employees.

As part of that responsibility, line managers need to:

- Ensure that all employees for whom they are accountable are made aware of the requirements of this policy
- Assess the types of risk involved in the operations for which they are responsible
- Ensure that adequate control measures are put in place to minimise the risks, which must include clear roles and responsibilities, supervisory checks, staff rotation (particularly in key posts), segregation of duties, regular reviews, and reconciliation of key accounts
- Identify financially sensitive posts and ensure adequate pre-employment checks are completed for these
- Ensure that internal controls are being complied with
- Contribute to the assessment of risks and controls within their business area, which feeds into the AWP's overall statements of accountability and internal control

9.7 All Employees

Employees are required to comply with the Trust's policies and procedures 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 made aware of their own responsibilities in protecting the Trust from these crimes.

Employees who are involved in or manage internal control systems should receive adequate training and support in order to carry out their responsibilities.

Employees are expected to act in accordance with the standards laid down by their professional institutes, where applicable, and have a personal responsibility to ensure that they are familiar with them.

Employees also have a duty to protect the assets of the organisation, including information, goodwill and property.

This means, in addition to maintaining the normal standards of personal honesty and integrity, all employees should always:

- avoid acting in any way that might cause others to allege or suspect them of dishonesty
- behave in a way that would not give cause for others to doubt that AWP employees deal fairly and impartially with official matters
- be alert to the possibility that others might be attempting to deceive.

All employees have a duty to ensure that public funds are safeguarded, whether or not they are involved with cash or payment systems, receipts or dealing with contractors or suppliers.

If an employee suspects that there has been fraud, bribery or corruption, or has seen any suspicious acts or events, they must report the matter to the nominated LCFS.

9.8 Information Management and Technology

The Computer Misuse Act 1990 applies to the misuse of information technology and systems and has three offences:

- Unauthorised access to computer material
- Unauthorised access with intent to commit or facilitate the commission of further offences
- Unauthorised acts with intent to impair, or with recklessness as to impairing, operation of computer, etc.

The Head of Information Management and / or the Head of Information Technology will contact the LCFS immediately in all cases where there is suspicion that IT is being used for fraudulent purposes.

10. Investigations with clinical implications

When investigating suspicions of fraud, it is important to consider whether there may be any clinical or health and safety implications that could have an adverse impact on the Trust and its service users. An example of this would be an individual who is working with patients or vulnerable people, and is suspected to be using a false name/identity. In such cases, the overriding consideration must be one of patient care.

In such an instance, the LCFS is responsible for ensuring that the Director of Finance is informed of the potential risk at the earliest opportunity. The Director of Finance or designated deputy will decide which of his/her senior colleagues should be informed and consulted with before reaching a decision. The relevant professional body may also be notified. It is essential that this liaison happens to ensure that the Director of Finance has full consideration of the clinical and non-clinical risks facing the organisation.

Under no circumstances will issues of fraud take priority over patient care.

11. Reporting fraud, bribery and corruption

If an employee has any of the concerns mentioned in this document, they should inform the nominated LCFS, either directly or through their line manager. If it suspected that the LCFS or AWP management is implicated reports should be made to the Chair of the Audit and Risk Committee or Trust Chief Executive, else to NHS CFA directly. Alternatively reports can be made to the Trust's Freedom to Speak Up Guardian.

The LCFS will make enquiries to establish whether or not there is any foundation to the suspicion that has been raised. If the allegations are found to be malicious, they will be considered for further investigation. AWP wants all employees to feel confident that they can expose any wrong doing without risk to themselves. In accordance with the provisions of the Public Interest Disclosure Act 1998, the Trust has a whistleblowing policy that complements this policy, as well as a code of business conduct. These policies ensure there is full provision for staff to raise concerns with parties other than AWP management, should they so wish.

12. Sanctions and Redress

The Trust will always seek to apply appropriate sanctions in response to financial crime perpetrated against the NHS. The range of available sanctions which may be pursued by the relevant decision makers includes:

- criminal prosecution (potentially resulting in fine, imprisonment, community penalty, confiscation and/or compensation order) or out-of-court disposal
- civil action, including action to preserve assets and recover losses
- disciplinary action by Trust
- regulatory action by a relevant regulatory body (e.g. GMC, GDC, NMC).

Each case will be considered individually on its own facts and merits; however, applying a consistent and thorough approach in all cases will ensure that:

- the most effective investigations are undertaken, including the gathering and assessment of all relevant material which may form evidence of fraud, bribery, corruption, misconduct and/or unfitness to practise
- the most appropriate sanction or combination of sanctions is sought where fraud, bribery, corruption or related misconduct is identified.

12.1 Financial Redress:

The Trust has an obligation to safeguard public funds. As such, the Trust will seek financial redress wherever possible due to losses to fraud, bribery or corruption. Financial redress can take the form of:

- a confiscation and/or compensation orders in accordance with the Proceeds of Crime Act.
- a civil order for repayment
- a local agreement between the organisation and offender to repay any monies

Actions which may be taken when considering seeking redress include:

- no further action
- penalty charges (falsely claiming assistance with NHS Health Charges)
- criminal investigation
- civil recovery
- disciplinary action
- confiscation order under the Proceeds of Crime Act 2002
- provisions available under Anti-money laundering (AML) legislation
- recovery sought from ongoing salary payments or pensions.

12.2 Criminal Sanctions:

The LCFS and the NHS CFA may conduct a criminal investigation with a view to submitting a case to the Crown Prosecution Service for a decision regarding prosecution for any number of reasons, for example:

- The case is serious and/or extensive.
- If a prosecution took place it would help to challenge beliefs about fraud, bribery and corruption and how and when they can occur.
- If a prosecution took place it would help to prevent or deter financial crime.
- If a prosecution took place it would demonstrate to potential offenders and the public that those who commit crimes against the NHS will be held to account.

This list is non-exhaustive; the NHS CFA and health bodies reserve complete discretion to conduct a criminal investigation in any case and to carry out investigations across a range of offences.

Actions which may be taken when considering seeking a criminal sanction include:

- no further action
- fine
- suspended sentence
- custodial sentence
- community penalty
- confiscation and/or compensation orders

12.3 Civil Sanctions:

A civil claim with the objective of financial recovery can be brought where financial redress via the criminal route is not thought to be appropriate, or where a health body was not (fully)

compensated following a criminal conviction. If successful the claimant is entitled to seek enforcement by various means, including the forced transfer of assets, the forced sale of property to realise capital, or insolvency proceedings.

12.4 Disciplinary Sanctions:

As per the Disciplinary Policy, there are a number of actions that may be taken when considering disciplinary sanctions, including:

- no further action
- verbal warning
- written warning
- dismissal
- recovery of any losses via payroll
- referral to regulatory body

12.5 Regulatory Body Sanctions:

In certain cases where the conduct of an individual contravenes their regulatory body's Code of Conduct, the Trust may refer the matter to the regulatory body, for example the GMC, GDC, and NMC. It is the responsibility of the Director of Finance to make or direct such referrals.

Following an investigation by the regulatory body the following sanctions may include:

- no further action
- restrictions to licence
- being struck off by the regulatory body (i.e. no longer being able to practice profession)

In addition, NHS England may suspend or remove doctors, dentists, and ophthalmic medical practitioners from performers lists comprising those who may provide NHS services. Where clear evidence exists that a healthcare professional has been involved in fraud or corruption, there is likely to be a strong public interest in informing NHS England to enable it to undertake enquiries regarding the allegations and to take action where appropriate. In making its decision, NHS England may consider whether the instances of fraud in question, as well as any current or past investigations relating to the professional, justify such action. The duty to protect patients is a major factor in deciding what action is necessary.

12.6 Process

Once the loss has been identified and all investigations have been fully undertaken and reported to the Audit Committee, the Chief Finance Officer and LCFS will consider all recovery of losses options in line with the Fraud and Bribery Policy.

The Chief Finance Officer will authorise the appropriate recovery method considering the advice and guidance of the LCFS. The chosen method of recovery will be reported to the Audit Committee.

Appropriate action in relation to the recovery of the loss will be applied by the relevant staff of the Trust liaising with the LCFS.

The ongoing monitoring and recovery of the loss will be regularly reported to the Audit Committee within part 2 of the meeting. The reporting of the outstanding loss will be reported until full recovery has been accomplished or if the Audit Committee decide to write off the debt. The writing off of the debt will be in line with the Losses and Special Payments/Debt Recovery policy.

This process applies to:

- all employees and prospective employees of the Trust, regardless of position held;

- agency staff;
- consultants;
- vendors;
- contractors and subcontractors;
- service users;
- committee, sub-committee and advisory group members (who may not be directly employed or engaged by the organisation) members of organisations funded by the Trust
- employees and principals of partner organisations; and/or
- any other parties who have a business relationship with the Trust.

13. Monitoring and auditing of policy effectiveness

Monitoring is essential to ensuring that controls are appropriate and robust enough to prevent or reduce fraud. System controls will be subject to ongoing review through the key assurance providers to the Trust, including Internal and External Audit, the LCFS and LSMS. Where control weaknesses are identified, these will be brought to the attention of the Director of Finance and the Audit and Risk Committee, who will oversee the follow up of remedial actions.

14. Dissemination of this policy and review cycle

This policy will be made available to all staff via the AWP intranet. It will be reviewed every three years by the nominated LCFS and more frequently, should significant policy and administrative changes dictate.

15. References

- [NHS Anti Fraud Policy](#)
- [Criminal Procedure and Investigations Act 1996](#)
- [Police and Criminal Evidence Act 1984](#)
- [Fraud Act 2006](#)
- [Bribery Act 2010](#)

16. Links to other policies

- [Whistleblowing Policy](#)
- [Security Policy](#)
- [Standing Financial Instructions \(SFIs\)](#)
- [HR Policies and Procedures](#)
- Local Standard Operating Procedures

17. Appendix

[NHS fraud, bribery and corruption – do's and don'ts](#)

Version History				
Version	Date	Revision description	Editor	Status
1.0	17 Dec 2010	Approved by Quality & Healthcare Governance Committee – December 2010	DD	Approved
2.0	10 May 2012	Quality & Healthcare Governance Committee	DD	Approved
3.0	15 August 2013	Approved by Audit Committee	BE	Approved
4.0	14/10/2016	Approved by audit and risk committee	Counter Fraud Specialist	Approved
5.0	13/11/2019	Updating of terminology and contact details. Addition of a section on sanctions and redress	Counter Fraud Specialist	DRAFT