

TRUST-WIDE NON-CLINICAL POLICY DOCUMENT

Anti-Fraud, Corruption and Bribery Policy & Response Plan

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**Striving for perfect care
and a just culture**

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Anti-Fraud Corruption and Bribery Policy & Response Plan

Further information about this document:

Document name	F06 Anti-Fraud, Corruption and Bribery Policy & Response Plan
Document summary	Mersey Care NHS Foundation Trust is committed to reducing the level of fraud, corruption and bribery within the NHS to an absolute minimum and keeping it at that level, freeing up public resources for better patient care. This policy has been produced by the Trust's Anti-Fraud Specialist (AFS and is intended as a guide for all employees on anti-fraud work within the NHS.
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To be read in conjunction with	Raising Concerns at Work Policy Disciplinary Policy Standing Orders Standing Financial Instructions
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SUPPORTING STATEMENTS – this document should be read in conjunction with the following statements:

SAFEGUARDING IS EVERYBODY'S BUSINESS

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

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

EQUALITY AND HUMAN RIGHTS

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

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

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

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

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1 EXECUTIVE SUMMARY

1.1 Aims

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

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

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

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

1.1.5 All genuine suspicions of fraud, corruption and bribery can be reported to the AFS; the Trust's Director of Finance; through the NHS Fraud and Corruption Reporting Line (FCRL) on Freephone 0800 028 4060 Mon- Fri 8am-6pm; or the online fraud reporting form www.cfa.nhs.uk/reportfraud.

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

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

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

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

2 INTRODUCTION

- 2.1 One of the basic principles of public sector organisations is the proper use of public funds. The majority of people who work in the NHS conduct themselves in an honest and professional manner and they believe that fraud, bribery and corruption, committed by a minority, is wholly unacceptable as it ultimately leads to a reduction in the resources available for patient care.
- 2.2 Mersey Care NHS Foundation Trust (the Trust) is committed to reducing the level of fraud, bribery and corruption within the NHS to an absolute minimum and keeping it at that level, freeing up public resources for better patient care. The Trust does not tolerate fraud, bribery or corruption and aims to eliminate all such activity as far as possible.
- 2.3 The Trust wishes to encourage anyone having reasonable suspicions of fraud, bribery or corruption to report them. For the purposes of this policy “reasonably held suspicions” shall mean any suspicions other than those which are totally groundless (and/or raised maliciously).
- 2.4 It is the Trust’s policy that no employee will suffer in any way as a result of reporting these suspicions. This protection is given under the provisions of the Public Interest Disclosure Act which the Trust is obliged to comply with.
- 2.5 The Trust will take all necessary steps to counter fraud, bribery and corruption in accordance with this policy, the NHS Anti-Fraud, Bribery and Corruption Manual, the policy statement ‘Applying Appropriate Sanctions Consistently’ published by NHS Counter Fraud Authority (NHS CFA), formerly known as NHS Protect and in line with the NHS CFA’s strategy ‘Tackling crime against the NHS: A strategic approach’ plus any other relevant guidance or advice issued by NHS CFA. The Trust/CCG will seek the appropriate disciplinary, regulatory, civil and criminal sanctions [as well as referral to professional bodies, where appropriate] against fraudsters and where possible will attempt to recover losses.
- 2.6 Each Trust is required to appoint its own dedicated Anti-Fraud Specialist (AFS) who is accredited by the NHS CFA and is accountable for the completion of a range of preventative anti-fraud and corruption work, as well as for undertaking any necessary investigations. Locally, the AFS is accountable on a day-to-day basis to the Trust’s Director of Finance and also reports, periodically, to the Trust’s Audit Committee.
- 2.7 All instances where fraud, bribery and/or corruption is suspected are thoroughly investigated by staff trained by NHS CFA. Any investigations will be undertaken in accordance with the NHS Anti-Fraud and Corruption Manual. [NB. For staff awareness, theft issues are usually dealt with by local security management (LSMS), not the AFS. However, the AFS will be mindful of any potential criminality identified in the course of any investigation and will, with the agreement of the Director of Finance, notify the appropriate investigating authority.]

3 PURPOSE AND RATIONALE

- 3.1 The Trust is committed to taking all necessary steps to counter fraud, bribery and corruption.
- 3.2 Under the NHS Standards Contract all organisations providing NHS services are required to put in place appropriate anti-fraud management arrangements. The NHSCFA approach to tackling fraud and other economic crime against the NHS ('Leading the fight against NHS fraud: Organisational strategy 2017-20') is guided by four principles:
- **Inform and involve:** raise awareness of fraud against the NHS, and work with over 1.3 m NHS staff, with stakeholders and the public to highlight those risks and the consequences of fraud against the NHS;
 - **Prevent and deter:** provide solutions to identified fraud risks, discourage individuals who may be tempted to commit fraud against the NHS and ensure that opportunities for fraud to occur are minimised;
 - **Investigate, sanction and seek redress:** investigate allegations of fraud thoroughly and to the highest professional standards, where appropriate seek the full range of civil, criminal and disciplinary sanctions and seek redress where possible;
 - **Continuously review and hold to account:** fraud is constantly evolving and continuous re-evaluation and improvement is needed to ensure that we keep ahead of the problem. Where this does not take place, or where there is a reluctance to do so, then organisations must be held to account for their inaction.
- 3.3 The overall requirement underpinning these principles is effective **strategic governance**, strong leadership and a demonstrable level of commitment to tackling fraud from senior management within organisations

4 SCOPE

- 4.1 This policy has been produced by the Trust's AFS, and is intended to provide a guide for all employees [regardless of position], contractors, consultants, vendors and other internal and external stakeholders who have a professional or business relationship with the Trust, on what fraud and corruption are in the NHS; what everyone's responsibility are to prevent fraud, bribery and corruption; and also how to report concerns and/or suspicions with the intention of reducing fraud to a minimum within the Trust.
- 4.2 This policy relates to all forms of fraud, bribery and corruption and is intended to provide direction and help to employees who may identify suspected fraud, corruption or bribery. It provides a framework for responding to suspicions of fraud, bribery and corruption, advice and information on various aspects of fraud, bribery and corruption and implications of an investigation. It is not intended to provide a comprehensive approach to preventing and detecting fraud, bribery and corruption.

5 DEFINITIONS

5.1 The definitions applicable to this policy are as follows:

NHS Counter Fraud Authority

5.2 The NHS CFA is a new special health authority dedicated to tackling fraud, bribery and corruption within the health service. The NHS CFA provides a clear focus for both the prevention and investigation of fraud across the health service and works with NHS England and NHS Improvement to properly uncover fraud and tackle it effectively.

Fraud

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

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

The offence of fraud can be committed in three ways:

- **Fraud by false representation (s.2)** – lying about something using any means, e.g. falsifying a CV or NHS job application form
- **Fraud by failing to disclose (s.3)** – not saying something when you have a legal duty to do so, e.g. failing to declare a conviction, disqualification or commercial interest when such information may have an impact on your NHS role, duties or obligation and where you are required to declare such information as part of a legal commitment to do so.
- **Fraud by abuse of a position of Trust/CCG (s.4)** – abusing a position where there is an expectation to safeguard the financial interests of another person or organisation, e.g. a carer abusing their access to patients monies, or an employee using commercially confidential NHS information to make a personal gain.

5.5 It should be noted that all offences under the Fraud Act 2006 occur where the act or omission is committed dishonestly and with intent to cause gain or loss. The gain or loss does not have to succeed, so long as the intent is there.

5.6 Successful prosecutions under the Fraud Act 2006 may result in an unlimited fine and/or a potential custodial sentence of up to 10 years.

Bribery and Corruption

- 5.7 Bribery and corruption prosecutions can be brought using specific pieces of legislation:
- Prevention of Corruption Acts 1906 and 1916, for offences committed prior to 1st July 2011
 - Bribery Act 2010, for offences committed on or after 1st July 2011.
- 5.8 The Bribery Act 2010 reforms the criminal law of bribery, making it a criminal offence to:
- Give, promise or offer a bribe (s.1), and/or
 - Request, agree to receive or accept a bribe (s.2).
- 5.9 Corruption is generally considered to be an “umbrella” term covering such various activities as bribery, corrupt preferential treatment, kickbacks, cronyism, theft or embezzlement. Under the 2010 Act, however, bribery is now a series of specific offences.
- 5.10 Generally, bribery is defined as: an inducement or reward offered, promised or provided to someone to perform their functions or activities improperly in order to gain a personal, commercial, regulatory and/or contractual advantage.
- 5.11 Examples of bribery in an NHS context could be a contractor attempting to influence a procurement decision-maker by giving them an extra benefit or gift as part of a tender exercise; or, a medical or pharmaceutical company providing holidays or other excessive hospitality to a clinician in order to influence them to persuade their Trust to purchase that company’s particular clinical supplies.
- 5.12 A bribe does not have to be in cash; it may be the awarding of a contract, the provision of gifts, hospitality, sponsorship, the promise of work or some other benefit. The persons making and receiving the bribe may be acting on behalf of others – under the Bribery Act 2010, all parties involved may be prosecuted for a bribery offence.
- 5.13 All staff are reminded to ensure that they are transparent in respect of recording any gifts, hospitality or sponsorship and they should refer to the separate Trust’s policy, the ‘Standards of Business Conduct’ covering:
- Acceptance of Gifts and Hospitality
 - Declaration of Interests
 - Sponsorship.
- 5.14 The Bribery Act 2010 is also extra-territorial in nature. This means that anyone involved in bribery activity overseas may be liable to prosecution in the UK if the bribe is in respect of any UK activity, contract or organisation. To this end, the Bribery Act 2010 also includes an offence of bribing a foreign public official [s.6].

- 5.15 In addition, the Bribery Act 2010 introduces a new ‘corporate offence’ [s.7] of the failure of commercial organisations to prevent bribery. The Department of Health Legal Service has stated that NHS bodies are deemed to be ‘relevant commercial organisations’ to which the Act applies. As a result, an NHS body may be held liable (and punished with a potentially unlimited fine) when someone “associated” with it bribes another in order to get, keep or retain business for the organisation. However, the organisation will have a defence, and avoid prosecution, if it can show it had ‘adequate procedures’ in place designed to prevent bribery.
- 5.16 Finally, under section 14 of the Bribery Act 2010, a senior officer of the organisation (e.g. a Senior Manager, an Executive or Non-Executive Director) would also be liable for prosecution if they consented to or connived in a bribery offence carried out by another. Under such circumstances, the senior officer may be prosecuted for a parallel offence to that brought against the primary perpetrator. Furthermore, the organisation could also be subject to an unlimited fine because of the senior officer’s consent or connivance.
- 5.17 To re-iterate, the Bribery Act 2010 is applicable to NHS organisations including Mersey Care and, consequently, it also applies to (and can be triggered by) everyone “associated” with this Trust who performs services for us, or on our behalf, or who provides us with goods. This includes those who work for and with us, such as employees, agents, subsidiaries, contractors and suppliers (regardless of whether they are incorporated or not). The term ‘associated persons’ has an intentionally wide interpretation under the Bribery Act 2010.
- 5.18 The Trust adopts a ‘zero tolerance’ attitude towards bribery and does not, and will not, pay or accept bribes or offers of inducement to or from anyone, for any purpose. The Trust is fully committed to the objective of preventing bribery and will ensure that adequate procedures, which are proportionate to our risks, are in place to prevent bribery and which will be regularly reviewed. We will, in conjunction with NHS CFA, seek to obtain the strongest penalties – including criminal prosecution, disciplinary and/or civil sanctions – against anyone associated with the Trust who is found to be involved in any bribery or corruption activities.
- 5.19 As with the Fraud Act 2006, a conviction under the Bribery Act 2010 may ultimately result in an unlimited fine and/or a custodial sentence of up to 10 years imprisonment.

6 CODE OF CONDUCT

- 6.1 The codes of conduct for NHS boards and NHS managers set out the key public service values. They state that high standards of corporate and personal conduct, based on the recognition that patients come first, have been a requirement throughout the NHS since its inception. These values are summarised as:
- (a) **Accountability** - everything done by those who work in the authority must be able to stand the tests of parliamentary scrutiny, public judgements on propriety and professional codes of conduct.
 - (b) **Probity** - absolute honesty and integrity should be exercised in dealing with NHS patients, assets, staff, suppliers and customers.

- (c) **Openness** - the health body's activities should be sufficiently public and transparent to promote confidence between the authority and its staff and the public.

6.2 All staff should be aware of and act in accordance with these values. In addition, staff are expected to:

- Act impartially in all their work
- Refuse gifts, benefits, hospitality or sponsorship of any kind that might reasonably be seen to compromise their judgement or integrity; and, to avoid seeking to exert influence to obtain preferential consideration. All such gifts should be returned and hospitality refused
- Declare and register gifts, benefits or sponsorship of any kind, in accordance with limits agreed locally, whether refused or accepted
- Declare and record financial, non-financial or personal interest (e.g. company shares, research grant) in any organisation with which they have to deal, and be prepared to withdraw from those dealings if required, thereby ensuring that their professional judgement is not influenced by such considerations
- Make it a matter of policy that offers of sponsorship that could possibly breach the Code be reported to the Board
- Not misuse their official position or information acquired in the course of their official duties, to further their private interests or those of others
- Ensure professional registration (if applicable) and/or status are not used in the promotion of commercial products or services
- Beware of bias generated through sponsorship, where this might impinge on professional judgement or impartiality
- Neither agree to practice under any conditions which compromise professional independence or judgement, nor impose such conditions on other professionals.

6.3 All staff are also reminded that every NHS employee, regardless of position or status, must comply with the Conflicts of Interest in the NHS – Guidance for staff and organisations which may be accessed at: <https://www.england.nhs.uk/wp-content/uploads/2017/02/guidance-managing-conflicts-of-interest-nhs.pdf>

6.4 Relevant personnel are also reminded that their professional bodies will also have codes of conduct or standards of behaviour which they will be expected to adhere to.

6.5 Mersey Care NHS Foundation Trust adopts a zero tolerance attitude towards bribery and does not, and will not, pay or accept bribes or offers of inducement to or from anyone for any purpose. We are fully committed to the objective of preventing bribery and will ensure that adequate procedures are in place to prevent bribery, which are proportionate to our risk and are regularly reviewed. We will, in conjunction with NHS

CFA, seek to obtain the strongest penalties – including criminal prosecution, disciplinary, and civil sanctions – against anyone associated with Mersey Care NHS Foundation Trust who is found to be involved in any bribery activities.

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

7 ROLES AND RESPONSIBILITIES

7.1 Introduction

7.1.1 Through our day-to-day work, we are in the best position to recognise any specific risks within our own areas of responsibility. We also have a duty to ensure that those risks – however large or small – are identified and eliminated. Where you believe the opportunity for fraud, corruption or bribery exists, whether because of poor procedures or oversight, you should report it to the AFS; the Trust's Director of Finance; the NHS Fraud and Corruption Reporting Line; or via the online Fraud Reporting Form. This section states the roles and responsibilities of employees and other relevant parties in reporting fraud or other irregularities.

7.1.2 Mersey Care NHS Foundation Trust will take all necessary steps to counter fraud, corruption and bribery in accordance with this policy, the NHS Counter Fraud and Corruption Manual and any other relevant guidance or advice issued by NHS Counter Fraud Authority.

7.2 Generic Areas of Counter Fraud

7.2.1 Mersey Care NHS Foundation Trust will implement the four generic areas of counter fraud action outlined below. A key element in achieving this is the appointment of an AFS.

Inform and Involve: The creation of an anti-fraud culture

7.2.2 Mersey Care NHS Foundation Trust will use counter fraud publicity material to persuade those who work in Mersey Care NHS Foundation Trust that fraud, corruption and bribery is serious and takes away resources from important services. Such activity will demonstrate that fraud, corruption and bribery is not acceptable and is being tackled.

Maximum Prevention and Deterrence of fraud

7.2.3 Deterrence is about increasing the expectation that someone will be caught if they attempt to defraud – this is more than just tough sanctions. Mersey Care NHS Foundation Trust will introduce such measures to minimise the occurrence of fraud, corruption and bribery.

7.2.4 Mersey Care NHS Foundation Trust has policies and procedures in place to reduce the likelihood of fraud, corruption and bribery occurring. These include a system of internal controls, Standing Financial Instructions, and documented procedures, which involve physical and supervisory checks, financial reconciliations, segregation and rotation of

duties, and clear statements of roles and responsibilities. Where fraud, corruption and bribery has occurred, Mersey Care NHS Foundation Trust will ensure that any necessary changes to systems and procedures take place immediately to prevent similar incidents from happening in the future.

- 7.2.5 Mersey Care NHS Foundation Trust will develop and maintain effective controls to prevent fraud, corruption and bribery and to ensure that if it does occur, it will be detected promptly and referred to the AFS for investigation.

Hold to Account: The Professional investigation of detected fraud

- 7.2.6 The AFS will be professionally trained and accredited to carry out investigations into suspicions of fraud, corruption and bribery, to the highest standards. In liaison with NHS CFA, the AFS will professionally investigate all suspicions of fraud, corruption and bribery to prove or disprove the allegation.
- 7.2.7 Following the conclusion of an investigation, if there is evidence of fraud, available sanctions will be considered in accordance with the guidance issued by NHS CFA – Applying Appropriate Sanctions Consistently. This may include criminal prosecution, civil proceedings, disciplinary action, as well as referral to a professional or regulatory body.
- 7.2.8 Recovery of any losses incurred will also be sought through civil proceedings if appropriate; to ensure losses to Mersey Care NHS Foundation Trust and the NHS are returned for their proper use.

Strategic Governance:

- 7.2.9 The oversight of this Plan and the Trust's anti-fraud arrangements

7.3 ROLE OF MERSEY CARE NHS FOUNDATION TRUST AND ITS BOARD

- 7.3.1 Mersey Care NHS Foundation Trust also has a duty to ensure that it provides a secure environment in which to work, and one where people are confident to raise concerns without worrying that it will reflect badly on them. This extends to ensuring that staff feel protected when carrying out their official duties and are not placed in a vulnerable position. If staff have concerns about any procedures or processes that they are asked to be involved in, Mersey Care NHS Foundation Trust has a duty to ensure that those concerns are listened to and addressed.
- 7.3.2 The Board (particularly via its Audit Committee) has a duty to provide adequate governance and oversight of the organisation to ensure that its funds, people and assets are adequately protected against criminal activity, including fraud, bribery and corruption. The Board are also responsible for setting the tone across the organisation that fraud, bribery and corruption will not be tolerated.

7.4 CHIEF EXECUTIVE

- 7.4.1 The Chief Executive as the organisation's accountable officer, has the overall responsibility for securing funds, assets and resources entrusted to it? This includes instances of fraud, bribery and corruption which may threaten those resources.
- 7.4.2 The Chief Executive must ensure adequate policies and procedures are in place to protect the organisation and the public funds it receives.
- 7.4.3 The Chief Executive is liable to be called to account for specific failures in Mersey Care NHS Foundation Trust's system of internal controls. However, responsibility for the operation and maintenance of controls falls directly to line managers and requires the involvement of all of Mersey Care NHS Foundation Trust's employees. Mersey Care NHS Foundation Trust therefore has a duty to ensure employees who are involved in or who are managing internal control systems receive adequate training and support in order to carry out their responsibilities. Therefore, the Chief Executive and Director of Finance will monitor and ensure compliance with this policy.

7.5 DIRECTOR OF FINANCE

- 7.5.1 The Director of Finance, in conjunction with the Chief Executive, monitors and ensures compliance with the specified national requirements regarding fraud, corruption and bribery.
- 7.5.2 The Director of Finance has powers to approve financial transactions initiated by directorates across the organisation. The Director of Finance prepares, documents and maintains detailed financial procedures and systems; and applies the principles of separation of duties and internal checks to supplement those procedures and systems.
- 7.5.3 The Director of Finance will report annually to the Board on the adequacy of internal financial controls and risk management as part of the Board's overall responsibility to prepare a statement of internal control for inclusion in the organisation's annual report.
- 7.5.4 The Director of Finance will, depending on the outcome of investigations (whether on an interim/ongoing or concluding basis) and/or the potential significance of suspicions that have been raised, inform appropriate senior management accordingly.
- 7.5.5 The AFS shall be responsible, in discussion with the Director of Finance, for informing third parties such as external audit or the police at the earliest opportunity, as circumstances dictate.
- 7.5.6 The Director of Finance will inform and consult the Chief Executive in cases where the loss may be above the agreed limit or where the incident may lead to adverse publicity.
- 7.5.7 The Director of Finance will inform the head of internal audit at the first opportunity. If an investigation is deemed to be appropriate, the Director of Finance will delegate to Mersey Care NHS Foundation Trust's AFS, who has responsibility for leading the investigation, whilst retaining overall responsibility.

7.5.8 The Director of Finance or the AFS will consult and take advice from the Executive Director of Workforce if a member of staff is to be interviewed, suspended or disciplined. The Director of Finance or AFS will not conduct a disciplinary investigation, but the employee may be the subject of a separate investigation by the Executive Director of Workforce.

7.6 DIRECTOR OF WORKFORCE

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

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

7.7 MANAGERS

7.7.1 Managers must be vigilant and ensure that procedures to guard against fraud, corruption and bribery are followed. They should be alert to the possibility that unusual events or transactions could be symptoms of fraud, corruption and bribery. If they have any doubts, they must seek advice from the nominated AFS.

7.7.2 Managers must instill and encourage an anti-fraud, corruption and bribery culture within their team and ensure that information on policies and procedures are made available to all employees. The AFS will proactively assist the encouragement of an anti-fraud, corruption and bribery culture by undertaking work that will raise fraud awareness.

7.7.3 All instances of actual or suspected fraud, corruption and bribery which come to the attention of a manager must be reported immediately. It is appreciated that some employees will initially raise concerns with their manager. However, in such cases, managers must not attempt to investigate the allegation themselves; they have the clear responsibility to refer the concerns to the AFS as soon as possible.

7.7.4 Line managers at all levels have a responsibility to ensure that an adequate system of internal control exists within their areas of responsibility and that controls operate effectively. The responsibility for the prevention and detection of fraud, corruption and

bribery therefore primarily rests with managers but requires the co-operation of all employees. As part of that responsibility, line managers need to:

- inform staff of Mersey Care NHS Foundation Trust's code of business conduct and anti- fraud, corruption and bribery policy as part of their induction process, paying particular attention to the need for accurate completion of personal records and forms;
- ensure that all employees for whom they are accountable are made aware of the requirements of the 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. This must include clear roles and responsibilities; supervisory checks; staff rotation (particularly in key posts); separation of duties wherever possible so that control of a key function is not invested in one individual; and regular reviews, reconciliations, and test checks to ensure that control measures continue to operate effectively;
- ensure that any use of computers by employees is linked to the performance of their duties within Mersey Care NHS Foundation Trust;
- be aware of Mersey Care NHS Foundation Trust's anti-fraud, corruption and bribery policy and the rules and guidance covering the control of specific items of expenditure and receipts;
- identify financially sensitive posts;
- 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 Mersey Care NHS Foundation Trust's and the Department of Health Accounting Officer's overall statements of accountability and internal control.

7.8 EMPLOYEES

7.8.1 Mersey Care NHS Foundation Trust's Standing Orders, Standing Financial Instructions, policies and procedures place an obligation on all employees and non-executive directors to act in accordance with best practice and to protect the trust from fraud, bribery and corruption.

7.8.2 Employees are expected to act in accordance with the standards laid down by their professional institutes, where applicable, and have a personal responsibility to ensure that they are familiar with them. Employees that are involved in or manage internal control systems should be adequately trained and supported in order to carry out their responsibilities

- 7.8.3 Employees also have a duty to protect the assets of Mersey Care NHS Foundation Trust, including information, goodwill, and property.
- 7.8.4 In addition, all employees have a responsibility to comply with all applicable laws and regulations relating to ethical business behaviour, procurement, personal expenses, conflicts of interest, confidentiality and the acceptance of gifts and hospitality. This means, in addition to maintaining the normal standards of personal honesty and integrity, all employees should always:
- avoid acting in any way that might cause others to allege or suspect them of dishonest;
 - behave in a way that would not give cause for others to doubt that Mersey Care NHS Foundation Trust's employees deal fairly and impartially with official matters;
 - be alert to the possibility that others might be attempting to deceive.
- 7.8.5 All employees have a duty to ensure that public funds are safeguarded, whether or not they are involved with cash or payment systems, receipts, or dealing with contractors or suppliers.
- 7.8.6 If an employee suspects that there has been fraud, corruption or bribery, or has seen any suspicious acts or events, they must report the matter to the nominated AFS (see section 5.4 AFS); the Trust's Director of Finance; the NHS Fraud and Corruption Reporting Line; or via the online Fraud Reporting Form.

7.9 ANTI-FRAUD SPECIALIST (AFS)

- 7.9.1 The Directions to NHS Bodies on Counter Fraud Measures 2004 require Mersey Care NHS Foundation Trust to appoint and nominate an AFS. The AFS's role is to ensure that all cases of actual or suspected fraud, corruption and bribery are notified to the Director of Finance and reported accordingly.
- 7.9.2 The AFS will regularly report to the Director of Finance on the progress of any investigations and when/if referral to the police is required
- 7.9.3 The AFS will:
- ensure that the Director of Finance is informed about all referrals/cases;
 - be responsible for the day-to-day implementation of the four generic areas of anti-fraud, corruption and bribery activity and, in particular, the investigation of all suspicions of fraud, corruption and bribery;
 - investigate all cases of fraud in accordance with the NHS Anti- Fraud and Corruption Manual, Investigations Toolkit, NHS Standards for Providers and relevant criminal law.

- in consultation with the Director of Finance, report any case to the police or NHS CFA as agreed and in accordance with the NHS Counter Fraud and Corruption Manual; report any case and the outcome of the investigation on the NHS CFA national case management system;
- ensure that other relevant parties are informed where necessary, e.g. the Director of Workforce will be informed if an employee is the subject of a referral;

7.9.4 ensure that Mersey Care NHS Foundation Trust's incident and losses reporting systems are followed;

7.9.5 ensure that any system weaknesses identified as part of an investigation are followed up with management and reported to internal audit;

7.9.6 adhere to the Counter Fraud Professional Accreditation Board (CFPAB)'s Principles of Professional Conduct as set out in the NHS Counter Fraud and Corruption Manual;

7.9.7 not have responsibility for or be in any way engaged in the management of security for any NHS body;

7.10 NHS COUNTER FRAUD AUTHORITY (NHS CFA)

7.10.1 NHS CFA deliver anti-crime work that cannot be carried out by NHS health bodies regionally or in isolation. They use intelligence to identify serious and complex economic crime, reduce the impact of crime and drive improvements in anti-crime work.

7.10.2 Local NHS organisations are primarily accountable for dealing with crime risks in the NHS. NHS CFA provides information and guidance to local AFSs to improve anti-fraud, bribery and corruption work across the NHS.

NHSCFA's main objectives are:

7.10.3 to deliver the Department of Health (DH) strategy, vision and strategic plan, and be the principal lead for counter fraud activity in the NHS in England;

7.10.4 to be the single expert intelligence led organisation providing a centralised investigation capacity for complex economic crime matters;

7.10.5 to lead, guide and influence the improvement of standards in counter fraud work, in line with HM Government Counter Fraud Professional Standards, across the NHS and wider health group, through review, assessment and benchmark reporting of counter fraud provision across the system;

7.10.6 to take the lead and encourage fraud reporting across the NHS and wider health group, by raising the profile of fraud and its effect on the health care system.

7.11 INTERNAL AND EXTERNAL AUDIT

- 7.11.1 The role of internal and external audit includes reviewing controls and systems and ensuring compliance with financial instructions.
- 7.11.2 Any incident or suspicion that comes to internal or external audit's attention will be passed immediately to the nominated AFS. The outcome of the investigation may necessitate further work by internal or external audit to review controls and systems or to ensure compliance with financial instructions.

7.12 INFORMATION MANAGEMENT AND TECHNOLOGY

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

8 THE RESPONSE PLAN

8.1 REPORTING FRAUD, CORRUPTION AND BRIBERY

- 8.1.1 This section outlines the action to be taken if fraud, corruption or bribery is discovered or suspected.
- 8.1.2 If an employee has any of the concerns mentioned in this document, they must inform the nominated AFS or Mersey Care NHS Foundation Trust's Director of Finance immediately, unless the Director of Finance or AFS is implicated. If that is the case, they should report it to the Chair or Chief Executive, who will decide on the action to be taken. Concerns can also be raised via the Trust's whistleblowing processes (Raising Concerns at Work).
- 8.1.3 Form 1 provides a reminder of the key contacts and a checklist of the actions to follow if fraud, corruption and bribery, or other illegal acts, are discovered or suspected. Managers are encouraged to copy this to staff and to place it on staff notice boards in their department.
- 8.1.4 Employees can also call the NHS Fraud and Corruption Reporting Line on Freephone 0800 028 40 60 or via the Online Fraud Reporting Form www.cfa.nhs.uk/reportfraud

- 8.1.5 This provides an easily accessible route for the reporting of genuine suspicions of fraud, corruption and bribery within or affecting the NHS. It allows NHS staff who are unsure of internal reporting procedures to report their concerns in the strictest confidence. All calls are dealt with by experienced trained staff and any caller who wishes to remain anonymous may do so.
- 8.1.6 Anonymous letters, telephone calls, etc. are occasionally received from individuals who wish to raise matters of concern, but not through official channels. While the suspicions may be erroneous or unsubstantiated, they may also reflect a genuine cause for concern and will always be taken seriously.
- 8.1.7 The AFS will make sufficient enquiries to establish whether or not there is any foundation to the suspicion that has been raised. If the allegations are found to be malicious, they will also be considered for further investigation to establish their source.
- 8.1.8 Staff are encouraged to report reasonably held suspicions directly to the AFS. You can do this by completing the NHS Fraud and Corruption Referral Form (form 2) or by contacting the AFS by telephone or email using the contact details supplied on form 1.
- 8.1.9 Mersey Care NHS Foundation Trust wants all employees to feel confident that they can expose any wrongdoing without any risk to themselves. In accordance with the provisions of the Public Interest Disclosure Act 1998, Mersey Care NHS Foundation Trust has produced a Raising Concerns at Work Policy. This procedure is intended to complement Mersey Care NHS Foundation Trust's Anti-Fraud, Corruption and Bribery Policy and Code of Business Conduct and ensures there is full provision for staff to raise any concerns with others if they do not feel able to raise them with their line manager/management chain.

8.2 SANCTIONS AND REDRESS

- 8.2.1 The Trust's approach to pursuing sanctions in cases of fraud, bribery and corruption is that the full range of possible sanctions – including criminal, civil, disciplinary and regulatory – should be considered at the earliest opportunity and any or all of these may be pursued where and when appropriate. The consistent use of an appropriate combination of investigative processes in each case demonstrates this organisation's commitment to take fraud, bribery and corruption seriously and ultimately contributes to the deterrence and prevention of such actions.
- 8.2.2 This organisation endorses the NHS CFA's approach and complies with the provisions of the NHS Anti-Fraud Manual with regard to applying sanctions where fraud, bribery or corruption is proven.
- 8.2.3 The organisation maintains an internal joint-working and data sharing protocol between the AFS and the HR department which also covers their respective investigative duties.

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

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

8.3 REPORTING THE RESULTS OF THE INVESTIGATION

8.3.1 The investigation process requires the AFS to review the systems in operation to determine whether there are any inherent weaknesses. Any such weaknesses identified should be corrected immediately.

8.3.2 If fraud, corruption or bribery is found to have occurred, the AFS should prepare a report for the Director of Finance and the next Mersey Care NHS Foundation Trust Audit Committee meeting, setting out the following details:

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

8.3.3 This report should also be available to Mersey Care NHS Foundation Trust’s Board.

8.4 ACTION TO BE TAKEN

- 8.4.1 The NHS Counter Fraud and Corruption Manual provides for in-depth details of how sanctions can be applied where fraud, corruption and bribery is proven and how redress can be sought. To summarise, local action can be taken to recover money by using the administrative procedures of Mersey Care NHS Foundation Trust or the civil law.
- 8.4.2 In cases of serious fraud, corruption and bribery, it is recommended that parallel sanctions are applied. For example: disciplinary action relating to the status of the employee in the NHS; use of civil law to recover lost funds; and use of criminal law to apply an appropriate criminal penalty upon the individual(s), and/or a possible referral of information and evidence to external bodies – for example, professional bodies – if appropriate.
- 8.4.3 The NHS CFA can also apply to the courts to make a restraining order or confiscation order under the Proceeds of Crime Act 2002 (POCA). This means that a person's money is taken away from them if it is believed that the person benefited from the crime. It could also include restraining assets during the course of the investigation.
- 8.4.4 Actions which may be taken when considering seeking redress include:
- no further action;
 - criminal investigation;
 - civil recovery;
 - disciplinary action;
 - confiscation order under POCA;
 - recovery sought from ongoing salary payments.
- 8.4.5 In some cases (taking into consideration all the facts of a case), it may be that Mersey Care NHS Foundation Trust, under guidance from the AFS and with the approval of the Director of Finance, decides that no further recovery action is taken.
- 8.4.6 Criminal investigations are primarily used for dealing with any criminal activity. The main purpose is to determine if activity was undertaken with criminal intent. Following such an investigation, it may be necessary to bring this activity to the attention of the criminal courts (Magistrates' Court and Crown court). Depending on the extent of the loss and the proceedings in the case, it may be suitable for the recovery of losses to be considered under POCA.
- 8.4.7 The civil recovery route is also available to Mersey Care NHS Foundation Trust if this is cost-effective and desirable for deterrence purposes. This could involve a number of options such as applying through the Small Claims Court and/or recovery through debt collection agencies. Each case needs to be discussed with the Director of Finance to determine the most appropriate action.
- 8.4.8 The appropriate senior manager, in conjunction with the Workforce department, will be responsible for initiating any necessary disciplinary action. Arrangements may be made to recover losses via payroll if the subject is still employed by Mersey Care NHS Foundation Trust. In all cases, current legislation must be complied with.

8.5 TIMESCALES

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

8.6 RECORDING

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

9 TRAINING AND SUPPORT

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

10 MONITORING AND REVIEWING

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

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

A desktop guide for Mersey Care NHS Foundation Trust

FRAUD is the dishonest intent to obtain a financial gain from, or cause a financial loss to, a person or party through false representation, failing to disclose information or abuse of position.

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

DO

- **note your concerns**

Record details such as your concerns, names, dates, times, details of conversations and possible witnesses. Time, date, and sign your notes.

- **retain evidence**

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

- **report your suspicion**

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

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

DO NOT

- **confront the suspect or convey concerns to anyone other than those authorised, as listed below**

Never attempt to question a suspect yourself; this could alert a fraudster or accuse an innocent person.

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

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

- **be afraid of raising your concerns**

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

- **Do nothing!**

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

- directly contacting the **Anti-Fraud Specialist**, or
- telephoning the **freephone** NHS Fraud and Corruption Reporting Line, or
- online via the fraud reporting form www.reportnhsfraud.nhs.uk or
- contacting the **Director of Finance**

Any information can be passed to
— the —

NHS Fraud and Corruption Reporting Line: **0800 028 40 60**

All calls will be treated in confidence

Your nominated Anti-Fraud Specialist can be contacted by telephoning 0151 285 4500

If you would like further information about NHS Counter Fraud Authority, please visit www.cfa.nhs.uk/reportfraud

Protecting your NHS

FORM 2

NHS FRAUD, CORRUPTION AND BRIBERY REFERRAL FORM

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

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

1. Date

2. Anonymous application <Delete as appropriate>

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

3. Your name

4. Your organisation/profession

5. Your contact details

6. Suspicion

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

8. Possible useful contacts

9. Please attach any available additional information.

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