



Sanctions and Redress Policy

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Version	Description of changes	Reason for changes	Author	Date
1.0	New Policy		Carol Brown	February 2016
2.0	Policy Review	Amalgamation so policy is fit for purpose for all 3 CCGs. Move of NHS Protect to NHS Counter Fraud Authority. Change in Anti-Fraud Specialist.□	Fiona Dwyer	April 2018
3.0	Policy now applies to all staff employed by Herefordshire and Worcestershire CCGs. Change of title from antifraud to counter fraud	Merger of the four separate bodies	Fiona Dwyer	July 2019

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1. Introduction

The Herefordshire and Worcestershire CCG (CCG) is committed to safeguarding their funds, and the wider NHS resources, and will fully investigate any allegations of fraud, bribery or corruption, or wrong doing committed against the CCG as set out in the CCG's Fraud, Bribery and Corruption Policy.

The CCG has a zero tolerance to fraud, bribery and corruption and will ensure that the appropriate sanctions and redress are considered and applied in response to financial crime or similar wrong doing committed against the CCG.

2. Purpose

This document sets out the CCG's policy for applying sanctions against individuals who have been identified as committing a financial crime or other wrong doing against the CCG.

To ensure that any criminal investigation is conducted in such a way that it enables the widest range of sanctions to be available.

The range of available sanctions which may be pursued by the CCG, following approval of the Chief Finance Officer, 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 the employing body
- Regulatory action by a relevant professional / regulatory body.

Each matter will be considered individually on its own facts and merits. However, applying a consistent and thorough approach in all cases will ensure that;

- Investigations are undertaken in the most effective manner, including the gathering and assessment of all relevant material which may form evidence of fraud, bribery, corruption, or related misconduct
- The most appropriate sanction or combination of sanctions is sought where fraud, bribery, corruption, or related misconduct is identified.

The ultimate aim of the policy is to protect the property and finances of the CCG, to ensure that the appropriate sanctions are applied, and any monies lost are recovered. The CCG will not tolerate any form of fraud, whether direct or indirect by, or of, its staff, agents, consultants, contractors, or any persons acting for it or on its behalf. The Governing Body and Senior Management are committed to implementing and enforcing effective systems throughout the organisation to prevent, monitor and eliminate fraud.

3. Definitions

Fraud - as defined in the Fraud Act 2006.

A person is guilty of fraud if they are in breach of any of the sections listed in subsection (2) which provide for different ways of committing the offence.

(2) The sections are:

- (a) Section 2 (fraud by false representation,
- (b) Section 3 (fraud by failing to disclose information), and
- (c) Section 4 (fraud by abuse of position.

Wrong Doing – Anything that is considered to be unprofessional or is a breach of the CCG's Policy and Procedure.

Subject – The person who is under investigation.

FIRST – NHS Counter Fraud Authority (NHSCFA) current case management system.

3. Scope

This policy applies to all employees of the CCG and should also be used by interim, agency staff, contractors, or suppliers to report any concerns they may have.

The CCG will adhere to the NHSCFA strategic direction of counter fraud work within the NHS, and their guidance to individual health bodies on the prevention, detection, and investigation of possible fraud.

5. Responsibilities and Duties

5.1 Chief Finance Officer (CFO)

The CCG's Chief Finance Officer has responsibility for overseeing the work of the nominated Counter Fraud Specialist for the CCG, and will ensure that all appropriate steps are taken to prevent and detect possible fraud, bribery and corruption and that all appropriate sanctions are applied when offences are identified.

The CCG's CFO will authorise the sanction and financial recovery to be applied, following advice from the appropriate supporting function (Counter Fraud Specialist, Human Resources or CCG's Solicitor).

5.2 Counter Fraud Specialist (CFS)

The CCG's Counter Fraud Specialist will investigate any allegations of fraud, bribery or corruption committed against the CCG, as per the CCG's Fraud, Bribery and Corruption Policy.

Matters may be transferred to the NHS Counter Fraud Authority's National Investigations Team, the police or other investigatory body as appropriate.

5.3 Human Resources

The CCG's Human Resources Team will investigate any allegations of misconduct by CCG employees, as per the CCG's Disciplinary Policy.

6. Applying Sanctions

The outcome of any investigation undertaken by the CCG's Counter Fraud Specialist may result in either criminal, disciplinary or professional / regulatory body sanction (or a combination) being applied. Please refer to Appendix A. Deciding on which sanction(s) are applied will be dependent on the findings of the investigation undertaken and the extent of any losses to the CCG.

Having investigated a referral, the possible outcomes may result:

- Reasonably held suspicion/information/evidence of suspected fraud received requiring **criminal** investigation and other sanctions
- **Civil:** The actions of the individual have resulted in a financial loss to the CCG
- No evidence of fraud found but wrong doing identified and the matter needs to be referred for potential **disciplinary** action to be considered;
- No evidence of fraud found but wrong doing identified which relates to a **breach of professional conduct**
- No evidence of fraud found but system **controls need to be strengthened;**
- **No case** to answer or evidence of fraud found

Please refer to Appendix A – Referral Sanctions Flow Chart.

6.1 Criminal

All criminal investigations will be conducted in line with the relevant criminal legislation, and advice from the Crown Prosecution Service (CPS). Where there is evidence of a criminal offence having been committed, the CCG's CFS will, in conjunction with the CCG's CFO, make an assessment of the evidence available and the seriousness of the offence(s), and decide whether to submit the case via the NHS Counter Fraud Authority to the CPS for a decision on whether a prosecution should take place.

The CPS will make charging decisions in respect of all cases referred to it in accordance with the Code for Crown Prosecutors. The CPS will prosecute any matters on behalf of the CCG, and seek the most appropriate sanction from the Courts.

During the course of an investigation, the CFS will keep in regular contact with NHS Counter Fraud Authority who will be aware of the ongoing progress of the cases through their review of FIRST and their advice will be requested in relation to the level of evidence and potential sanctions. The decision regarding the application of criminal sanctions will rest with the CFO but will be decided following advice from the CFS and the CPS.

6.2 Civil Recovery

Is the process where the actions of the Individual have resulted in a financial loss to the CCG. For employees, recovery can be affected through payroll until the debt is met. The employee should be written to confirming the debt and a reasonable proposal should be made for recovery. An agreement will be sought with the employee to ensure that recovery is made in the shortest possible time.

Where an employee is in the process of leaving, they should be advised that the recovery can be actioned through the final salary payment. Where the available funds are insufficient, they should be written to advising them of the debt and inviting a proposal to pay. Should the individual not respond, or the proposal is deemed to be unacceptable, they should be written to making a formal demand for the money. This letter should be sent by "Recorded Delivery". Should this demand be ignored, the individual should be sent a third and final letter again by "Recorded Delivery" advising them that the CCG will be considering legal action through the Civil Court process in order to secure the recovery. Costs associated with the recovery should be included in the claim submitted to the Court.

In circumstances where the employee is being dismissed either on criminal conviction or dismissed as a consequence of a fraudulent act, where they are a member of the NHS Pension Scheme and the monies owing to the CCG are greater than any recovered from a payroll final payment, an application can be made to recover the amount from the individual's Scheme Account under Regulation T5 of the National Health Service Pension Scheme Regulations 1995.

For external bodies or NHS contractor, recovery should be affected by formal contact. They should be written to advising them of the debt and inviting a proposal to pay. Should they not respond, or the proposal is deemed to be unacceptable, they should be written to making a formal demand for the money.

This letter should be sent by "Recorded Delivery". Should this demand be ignored, the external body or contractor should be sent a third and final letter again by "Recorded Delivery" advising them that the CCG will be considering legal action through the Civil Court process in order to secure the recovery. In this instance the CFO should seek the advice from the Solicitors concerning recovery. Costs associated with the recovery should be included in the claim submitted to the Court. Where the matter relates to an NHS contractor, it may be appropriate to contact NHS England.

For employees, ex-employees, external bodies or NHS contractors, if following a conviction, the Court awards compensation and/or costs the amount will be collected from the individual by the Court. The CFS will notify the CFO of the award and the expected periodical payment. Where the payment from the Court does not materialise after a period three months, the CFS should be notified by the Finance Department. The CFS will be responsible for following the matter up with the relevant Court.

If during the course of an investigation it is identified that the CCG has suffered a significant financial loss, the CFS will promptly notify the CFO. This may result in recovery action commencing whilst the investigation continues.

6.3 Disciplinary

No evidence of fraud found but wrong doing identified and the matter needs to be referred for potential **disciplinary** action to be considered.

The CFS will inform the CFO either verbally or by email of the outcome of the investigation.

Where the CFS does not find evidence of fraud but a breach of policy/procedures may have occurred then the CFS will meet with the HR Representative to discuss the findings and pass on relevant information from the case file containing evidence gathered to date. The HR Representative should provide this evidence to the Investigating Officer if further consideration/action is required. Where criminal proceedings are in progress, information can only be supplied if it does not result in the criminal case being compromised otherwise disciplinary may need to be delayed until the appropriate time. Where witness statements have been obtained from third parties for the criminal investigation but they are relevant to the disciplinary investigation, permission to provide these witness statements to HR must be obtained from the witness.

The CFS will take no further part in gathering evidence for a HR investigation as the CFS is only charged with investigating fraud related matters. They may however be called as a witness in a disciplinary case due to their provision of evidence.

After the conclusion of any disciplinary investigation, the HR Representative will provide the CFS with documentary information confirming the outcome. It may

also be the case that the matter has identified an issue relating to professional misconduct and in this instance the HR Representative will be responsible for reporting the matter to the employee's professional body. A concluding report will be produced by the CFS and distributed to the relevant managers, the CFO, internal audit, the Audit Committee and NHS Counter Fraud Authority via the FIRST case management system. Regular case progress updates will be provided to the Audit Committee during the course of the investigation.

6.4 No evidence of fraud found but wrong doing identified which relates to a breach of professional conduct by an NHS contractor

Where the matter has affected the CCG's resources and the investigation identifies a professional misconduct issue which has been perpetrated by a professional (may also be an NHS contractor) the CFS will inform the CFO either verbally or by email as soon as it comes to light during the investigation. However, it will not be necessary to report the matter to the professional body until the investigation is concluded.

Once the investigation is concluded, where the individual is an employee, the CFO will discuss the matter with the employee's senior manager within the CCG to ensure that they take action to refer the matter to the relevant professional body. Once the investigation is concluded, where the individual is an NHS Contractor, permission will be obtained from the CFO for the CFS to report the matter to the Accountable Officer at NHSE. Under the Pharmacy Memorandum of Understanding, where the issue relates to a Pharmacy Contractor, the CFS will have already notified NHSE about the referral as soon as it was received so they will be aware of an investigation being in progress. The CFS will discuss with the Accountable Officer as to which body is most appropriate to refer the matter to and that they are in agreement that the referral should be made. Where the case relates to a pharmacy contract the referral should usually be made to the General Pharmaceutical Committee (GPhC) via the Head of Medicines Management at the CCG.

The CFS will take no further part in gathering evidence concerning this matter as the CFS is only charged with investigating fraud related matters. They may however provide evidence gathered as part of the criminal investigation or may be called as a witness in a case relating to professional misconduct. Where witness statements have been obtained from third parties for the criminal investigation but they are relevant to the professional misconduct investigation, permission to provide these witness statements to the professional body must be obtained from the witness.

Once the investigation is concluded by the professional body and an outcome is notified, a concluding report will be produced by the CFS and distributed to the relevant managers, the CFO, internal audit, the Audit Committee, the Accountable Officer at NHSE and NHS Counter Fraud Authority via the FIRST case management system. Regular case progress updates will be provided to the Audit Committee during the course of the investigation.

6.5 No evidence of fraud found but system controls need to be strengthened

The CFS will inform the CFO and where the investigation relates to staff, the Human Resources Manager informally either by email or verbally as soon as the outcome is known.

A draft concluding report containing recommendations to strengthen controls in identified areas of weakness will be issued to relevant officers who are responsible for implementing recommendations. The CFS will meet with the relevant managers to seek agreement on action required to strengthen system weaknesses.

Once actions are agreed, a final concluding report will be produced and distributed to the relevant managers, the CFO, internal audit and NHS Counter Fraud Authority via the FIRST case management system. Regular case progress updates will be provided to the Audit Committee during the course of the investigation.

The version of the report provided to internal audit will be in "Word" to enable the report to be uplifted onto their recommendation tracking process. Implementation of the recommendations will be monitored and reported to the Audit Committee in line with internal audit's standard progress reporting.

6.6 No case to answer or no evidence of fraud found

The CFS will inform the CFO and where the investigation relates to staff, the Human Resources Manager either verbally or by email that no fraudulent action has been identified. A concluding report will be produced by the CFS and issued to the relevant managers, the CFO, internal audit, the Audit Committee and NHS Counter Fraud Authority via the case management system (currently FIRST). Regular case progress updates will be provided to the Audit Committee during the course of the investigation.

7. Regulatory / Professional Body Sanctions

When the subject(s) of any investigation (criminal or disciplinary) is a member of a regulatory or professional body the CCG will consider if it is appropriate to also notify their regulatory / professional body of the matter.

When appropriate the CCG will provide the required information to support the regulatory / professional body so that they can conduct their own investigation. The CCG will adhere to data protection legislation when sharing information.

8. Seeking Redress

In addition to any criminal and disciplinary sanctions applied, the CCG are committed to fully recovering any losses identified as a result of criminal activity or wrong doing committed against it.

9. Criminal Redress

If, during an investigation, there is evidence that property is being accumulated as a result of fraud, bribery or corruption, or similar criminal activity, the CCG will also consider applying for a Restraint Order under the Proceeds of Crime Act 2002, to secure this property prior to a final decision on prosecution.

Where a prosecution is being undertaken, an order for the recovery of identified losses and any related investigation cost will always be sought as part of the criminal prosecution process. When necessary following any successful prosecution the CCG will seek to obtain a Confiscation Order under the Proceeds of Crime Act 2002, for any property identified to have been obtained via criminal activity affecting the CCG.

10. Civil Redress

If a criminal case is not being pursued for whatever reason, or an order for recovery of losses is not made by a court following a criminal conviction, or if the CCG is not fully compensated following a criminal conviction, the CCG will seek to recover any outstanding losses through civil action wherever possible and appropriate.

The CCG's Chief Finance Officer will make an assessment of the finding of the investigation, and decide whether to undertake civil recovery proceedings.

Consideration will first be given as to the appropriateness of seeking voluntary repayment to recover the loss prior to formal legal proceedings being undertaken.

Where a CCG employee is involved, The CCG will consider the following options;

- Recovery via salary deductions until the debt is met.
- For employees who have been dismissed or have resigned, recovery via a deduction from any final salary payment due, as per the Disciplinary Policy
- When the employee or ex-employee is a member of the NHS Pension Scheme consideration will be given to obtaining recovery of losses via National Health Service Pension Scheme regulations that relate to the recovery of losses caused by a scheme member's fraudulent acts.

Before undertaking any of the voluntary recovery options above, the CCG will obtain a written agreement from the individual agreeing the terms of the recovery method and the period for the repayment to be made.

For external bodies or contractors, recovery should be affected by formal written agreement.

An invoice will be issued and repayment plan agreed.

If formal recovery proceedings are deemed to be necessary, the following points will be considered before consulting the CCG's Solicitors:

- Value of provable loss.
- The known value of any assets of the individual(s) or organisations from which recovery would be sought, including any NHS pension scheme membership.
- The likelihood of successful recovery action.
- The likely costs of recovery action, especially if any claim is disputed by the subject(s), and a civil action is necessary to obtain a court judgement against the relevant subject(s).
- The deterrent effect of successful recovery actions.

The CCG will instruct its solicitors and seek to obtain recovery using the most appropriate route, as advised by its solicitors.

11. Monitoring Implementation

The Counter Fraud Specialist will ensure that the key processes set out in this document are audited in line with guidance issued by the NHS CFA. The results will be fed back to the CCG's CFO and the Audit Committee.

The CFS will provide regular progress reports to the CCG's Audit Committee, as per the committee's business cycle. Progress against investigations will be monitored by the Audit Committee.

12. Equality Impact Assessment

All CCG policies are required to have a preliminary Equality Impact assessment (EIA) performed on them in order to establish whether any group of people will be impacted on unfairly by the document. An EIA has been performed on this document and the outcome is that there is little chance of a Human Rights or Privacy breach, so there was no requirement to carry out a Stage 2 assessment.

13. References

Fraud Act 2006.

Bribery Act 2010

Proceeds of Crime Act 2002

NHS Counter Fraud Authority guidance on applying appropriate sanctions

Pharmacy Memorandum of Understanding

14. Associated Documentation

Fraud, Bribery and Corruption Policy

Disciplinary Policy

Appendix 1: Sanction Referral Flow Chart

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