

Anti-Fraud Policy

Key Points

- This policy relates to all forms of fraud and is intended to provide direction and help to employees who may identify suspected fraud.
- It provides a framework for responding to suspicions of fraud, advice and information on various aspects of fraud and implications of an investigation. It is not intended to provide a comprehensive approach to preventing and detecting fraud.
- Frimley Health NHS Foundation Trust does not tolerate fraud within the NHS. The aim of the policy and procedure is to protect the property and finances of the NHS and of patients in our care.
- The Trust wishes to encourage anyone having reasonable suspicions of fraud to report them. The Trust's policy, which will be rigorously enforced, is that no individual will suffer any detrimental treatment as a result of reporting reasonably held suspicions within the statutory protection provided under the Public Interest Disclosure Act 1998.

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Document Type	Document Name
Trust Policy	Raising Concerns at Work Policy
Trust Policy	Standards of Business Conduct Policy
Trust Policy	Disciplinary Policy and Procedure
Trust Policy	Gifts and Hospitality Policy
Trust Policy	Forensic Computing Policy
Trust Policy	Financial Redress Policy

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1. INTRODUCTION

- 1.1 This document sets out Frimley Health NHS Foundation Trust's policy to employees in dealing with fraud or suspected fraud. This policy details the arrangements made in the Trust for such concerns to be raised by employees or members of the public.
- 1.2 Frimley Health NHS Foundation Trust does not tolerate fraud within the NHS. The intention is to eliminate all NHS fraud as far as possible. The aim of the policy and procedure is to protect the property and finances of the NHS and of patients in our care.
- 1.3 Frimley Health NHS Foundation Trust is committed to taking all necessary steps to counter fraud. To meet its objectives, it has adopted the seven-stage approach developed by NHS Protect:
- 1) the creation of an anti-fraud culture;
 - 2) maximum deterrence of fraud;
 - 3) successful prevention of fraud which cannot be deterred;
 - 4) prompt detection of fraud which cannot be prevented;
 - 5) professional investigation of detected fraud;
 - 6) effective sanctions, including appropriate legal action against people committing fraud; and
 - 7) effective methods of seeking redress in respect of money defrauded.
- 1.4 Frimley Health NHS Foundation Trust will take all necessary steps to counter fraud in accordance with this policy, the NHS Counter Fraud and Corruption Manual, the policy statement 'Applying Appropriate Sanctions Consistently' published by NHS Protect and any other relevant guidance or advice issued by NHS Protect.
- 1.5 The Bribery Act 2010 has replaced the disjointed and complex offences of criminal law and those in the *Prevention of Corruption Acts 1889-1916* and provides a more effective legal framework to combat fraud and bribery in the public and private sectors. Frimley Health NHS Foundation Trust has an Anti-Bribery Policy which staff should read in conjunction with the Anti-Fraud Policy.
- 1.6 This document sets out the Trust's policy for dealing with detected or suspected fraud, in accordance with NHS Protect standards for Providers.
- 1.7 Frimley Health NHS Foundation Trust is committed to the provision of a service that is fair, accessible and meets the needs of all individuals.

2. SCOPE OF THE POLICY

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

comprehensive approach to preventing and detecting fraud. The overall aims of this policy are to:

- improve the knowledge and understanding of everyone in the Trust, irrespective of their position, about the risk of fraud within the organisation and its unacceptability;
- assist in promoting a climate of openness and a culture and environment where staff feel able to raise concerns sensibly and responsibly;
- set out the Trust's responsibilities in terms of the deterrence, prevention, detection and investigation of fraud;
- ensure the appropriate sanctions are considered following an investigation, which may include any or all of the following:
 - Criminal prosecution
 - Civil prosecution
 - Internal/external disciplinary action (including professional/regulatory bodies).

2.2 For the purposes of this policy, 'Employees' includes the Trust staff, Board, Executive and Non-Executive Members (including co-opted members) and honorary members to the Board. Trust staff also include any persons employed on an interim, agency or other contractual basis to act as a Trust officer.

2.3 This policy applies to all employees, Governors and Non-Executive Directors of Frimley Health NHS Foundation Trust, regardless of position held, as well as consultants, vendors, contractors, service users, committee members of organisations funded by the Trust, employees and principals of partner Trust's and organisations, and/or any other parties who have a business relationship with the Trust. It will be brought to the attention of all employees and form part of the induction process for new staff. It is incumbent on all of the above to report any concerns they may have concerning fraud.

2.4 In implementing this policy, managers must ensure that all staff are treated fairly and within the provisions and spirit of the Trust's Equal Opportunities Policy. Special attention should be paid to ensuring the policy is understood where there may be barriers to understanding caused by the individual's circumstances, where the individual's literacy or use of English is weak, or where the individual has little experience of working life.

2.5 Counter Fraud Charters are in place between NHS Protect and key stakeholders such as professional associations and patient groups, setting out their commitment to work together to tackle fraud. Counter Fraud Charters have been agreed with:

- Professional Associations
 - Association of Optometrists
 - British Medical Association
 - Federation of Ophthalmic and Dispensing Opticians
 - Pharmaceutical Services Negotiating Committee
- Patient Groups
 - Long Term Medical Conditions Alliance
 - Royal National Institute for the Blind
- The Royal College of Nursing
- The Association of British Dispensing Opticians
- Unison

- Regulatory Bodies
 - General Medical Council
 - Dental Council
 - General Optical Council
 - Royal Pharmaceutical Society of Great Britain
- Protocol with Health Professional Council.

3. DEFINITIONS

- 3.1 **Fraud** – any person who dishonestly makes a false representation to make a gain for himself or another or dishonestly fails to disclose to another person, information which he is under a legal duty to disclose, or commits fraud by abuse of position, including any offence as defined in the Fraud Act 2006. Appendix B is a summary of the Fraud Act 2006.
- 3.2 **Bribery** – a bribe is offering, promising, or giving a financial, or otherwise, advantage to another person with the intention of bringing about improper performance or reward. The Bribery Act also states that a person is guilty of an offence if they request, agree to receive, or accept a financial or other advantage intending that a relevant function or activity should be performed improperly by them or another. It further states that offering or agreeing to accept a bribe is an offence even if no money or goods have been exchanged.
- 3.3 **Corruption** – Corruption is defined as “where someone is influenced by bribery, payment or benefit in kind to unreasonably use their position to give some advantage to themselves or another.” On the 1st July 2011, the Bribery Act 2010 became law and introduced new offences in relation to bribery and corruption. The generic term “corruption” is accommodated into this act
- 3.4 **Whistleblowing** – The term “whistleblowing” can be defined as raising a concern about a wrong doing within an organisation. The concern must be a genuine concern about a crime, criminal offence, miscarriage of justice, dangers to health and safety and of the environment – and the cover up of any of these. Whistleblower is a person who raises a concern about a wrongdoing in their workplace or within the NHS or social care setting. Whistleblowing is not the same as a complaint. Complaints from service users, relatives or representatives would not be classed as whistleblowing. These would need to be raised using the Trust’s complaints procedure. Whistleblowing can only refer to situations that have arisen within a current or former workplace.

4. THE POLICY

- 4.1 All employees have a personal responsibility to protect the assets of the Trust, including all buildings, equipment and monies from fraud, theft, bribery or corruption.
- 4.2 The Trust is absolutely committed to maintaining an honest, open and well-intentioned atmosphere within the Trust, so as to best fulfil the objectives of the Trust and of the NHS. It is, therefore, also committed to the elimination of fraud within the Trust, to the rigorous investigation of any such allegations and to taking appropriate action against wrong doers, including possible criminal prosecution, as well as undertaking steps to recover any assets lost as a result of fraud.

- 4.3 The Trust has procedures in place that reduce the likelihood of fraud/bribery occurring. These include Standing Orders, Standing Financial Instructions, documented procedures, a system of internal control (including Internal and External Audit) and a system of risk assessment. In addition, the Trust seeks to ensure that a comprehensive anti-fraud and anti-bribery culture exists throughout the Trust via the appointment of a dedicated Local Counter Fraud Specialist (LCFS), in accordance with NHS Protect standards for Providers.
- 4.4 The Trust seeks to ensure that a comprehensive anti-bribery culture exists throughout the Trust through the Trust's standalone Anti-Bribery Policy which details the methods for reporting suspected bribery and the avoidance of bribery. This is reinforced through the appointment of a dedicated Senior Compliance Officer and the LCFS.
- 4.5 It is expected that Non-Executive Directors and staff at all levels will lead by example in acting with the utmost integrity and ensuring adherence to all relevant regulations, policies and procedures
- 4.6 The Trust wishes to encourage anyone having reasonable suspicions of fraud to report them. The Trust's policy, which will be rigorously enforced, is that no individual will suffer any detrimental treatment as a result of reporting reasonably held suspicions. The Public Interest Disclosure Act 1998 came into force in July 1999 and gives statutory protection, within defined parameters, to staff that make disclosures about a range of subjects, including fraud, which they believe to be happening within the Trust employing them. Within this context, 'reasonably held' means suspicions other than those which are raised maliciously and are subsequently found to be groundless.
- 4.7 Any unfounded or malicious allegations will be subject to a full investigation and appropriate disciplinary action.
- 4.8 The Trust expects anyone having reasonable suspicions of fraud to report them. It recognises that, while cases of theft are usually obvious, there may initially only be a suspicion regarding potential fraud and, thus, employees should report the matter to their LCFS who will then ensure that procedures are followed.
- 4.9 Recovery of any losses will always be sought – see section 10.

5. PUBLIC SERVICE VALUES

- 5.1 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. The three fundamental public service values are:

<i>Accountability</i>	Everything done by those who work in the Trust must be able to stand the tests of parliamentary scrutiny, public judgements on property and professional codes of conduct.
<i>Probity</i>	Absolute honesty and integrity should be exercised in dealing with NHS patients, assets, employees, suppliers and customers.

<i>Openness</i>	The Trust's actions should be sufficiently public and transparent to promote confidence between the Trust and its patients, our employees and the public.
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5.2 In addition, all those who work for or are in contract with the Trust should exercise the following when undertaking their duties:

<i>Selflessness</i>	...should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends
<i>Integrity</i>	...should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties
<i>Objectivity</i>	... should, in carrying out public business, (including making public appointments, awarding contracts, or recommending individuals for rewards and benefits), make choices on merit
<i>Accountability</i>	...are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office
<i>Openness</i>	...should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest demands
<i>Honesty</i>	...have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest
<i>Leadership</i>	...should promote and support these principles by leadership and example

5.3 These standards are national benchmarks that inform our local policies and procedures. The arrangements made in this policy have been designed to ensure compliance with the national standards.

6. DUTIES / ORGANISATIONAL STRUCTURE

6.1 Roles

6.1.1 Frimley Health NHS Foundation Trust 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, the Trust has a duty to ensure that those concerns are listened to and addressed.

6.12 The Trust's Chief Executive is liable to be called to account for specific failures in the 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 Trust employees. Frimley Health 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.

6.2 Employees

6.21 Employees must act in accordance with the Trust's Standards of Business Conduct, Gifts and Hospitality and Declaration of Interest policies which include guidance on the receipt of gifts or hospitality.

6.22 Employees also have a duty to protect the assets of the Trust including information, goodwill and reputation, as well as property.

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

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

6.25 The Trust's Standing Orders and Standing Financial Instructions place an obligation on all staff and Non-Executive Directors to act in accordance with best practice. In addition, all Trust staff and Non-Executive Directors must declare and register any interests that might potentially conflict with those of the Trust or the wider NHS.

6.26 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:

- act with honesty, integrity and in an ethical manner;
- behave in a way that would not give cause for others to doubt that the Trust's employees deal fairly and impartially with official matters;
- be alert to the possibility that others might be attempting to deceive.

6.27 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.

6.28 When an employee suspects that there has been fraud, they must report the matter to the nominated LCFS (see Section 7 below).

6.3 Managers

6.3.1 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 therefore primarily rests with managers but requires the co-operation of all employees.

6.3.2 As part of that responsibility, line managers need to:

- inform staff of Frimley Health NHS Foundation Trust's code of business conduct, gifts and hospitality, declaration of interest, Anti-Fraud Policy and Anti-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;
- be aware of the Trust's Anti-Fraud 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 the Trust's and the Department of Health Accounting Officer's overall statements of accountability and internal control.

6.3.3 All instances of actual or suspected fraud, 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, and they have the clear responsibility to refer the concerns to the LCFS as soon as possible (see Section 7 below).

6.3.4 Where staff have access to the Internet, managers need to ensure that any use is linked to the performance of their duties and any private use specifically agreed beforehand. Any instance of deliberate viewing of offensive material (e.g., pornography or hate material) must be reported immediately (see Section 6.8 below).

6.4 Local Counter Fraud Specialist (LCFS)

6.4.1 The Directions to NHS Bodies on Counter Fraud Measures 2004 require the Trust to appoint and nominate an LCFS. The LCFS's role is to ensure that all cases of actual or suspected fraud are notified to the director of finance and reported accordingly.

6.4.2 Investigation of the majority of cases of alleged fraud within Frimley Health NHS Foundation Trust will be the responsibility of the Trust's Local Counter Fraud

Specialist (LCFS). NHS Protect will only investigate cases which should not be dealt with by the Trust. Following receipt of all referrals, NHS Protect will add any known information or intelligence and based on this case acceptance criteria determine if a case should be investigated by NHS Protect. This list is not exhaustive. Cases which:

- have a strategic or national significance or are deemed to be of suitable national public interest;
- from intelligence or information have been identified as being part of a suspected criminal trend or an area which is suspected of being targeted by organised crime and which requires a centrally coordinated investigation;
- form part of a series of linked cases already being investigated or about to be by NHS Protect;
- are known or likely to have a high degree of complexity either in the nature of the fraud or the investigation required;
- will require a significant investigation which could include the involvement of other agencies such as OFT, FSA, or Serious Fraud Office (not day to day involvement of agencies on lower level cases);
- have any factors which would determine that the case should be investigated outside of the NHS body, for example very senior management involvement, the need to use directed surveillance, obtain communications data or use powers provided to NHS Protect in the NHS Act 2006;
- extend beyond the geographical, financial or legal remit of the NHS body affected by the fraud; may be retained by NHS Protect.

64.3

The LCFS will:

- ensure that the Director of Finance is kept apprised of all referrals/cases. investigate all cases of fraud, as per 6.4.2 above;
- in consultation with the Director of Finance and NHS Protect, will report any case to the Police as agreed;
- report any case and the outcome of the investigation to NHS Protect and Director of Finance, and provide required reports to NHS Protect;
- ensure that other relevant parties are informed where necessary e.g. Human Resources (HR) will be informed where an employee is a suspect;
- ensure that the Trust incident and losses reporting systems are followed;
- ensure that any system weaknesses identified as part of the investigation are followed up with management or Internal Audit.

64.4

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

6.5

Director of Finance

65.1

The Director of Finance, in conjunction with the Chief Executive, monitors and ensures compliance with Secretary of State Directions regarding fraud.

65.2

The Director of Finance, in consultation with NHS Protect and the LCFS, will decide whether there is sufficient cause to conduct an investigation, and whether the Police and External Audit need to be informed.

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

6.5.4 The Director of Finance will, depending on the outcome of investigations (whether on an interim/on-going or a concluding basis) and/or the potential significance of suspicions that have been raised, inform the Chair of the Trust and the Chair of the Audit Committee of cases, as may be deemed appropriate or necessary.

6.5.5 The Director of Finance is also responsible for informing the Audit Committee of all categories of loss.

6.6 Internal and External Audit

6.6.1 Any incident or suspicion that comes to Internal or External Audit's attention will be passed immediately to the LCFS.

6.7 Human Resources

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

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

6.8 Information Management & Technology

6.8.1 The Head of Information Security (or equivalent) will contact the LCFS immediately in all cases where there is suspicion that IT is being used for fraudulent purposes. This includes inappropriate internet/intranet, e-mail, telephones and Personal Digital Assistants (PDA's) use. HR will be informed if there is a suspicion that an employee is involved.

6.9 Audit Committee

6.9.1 The LCFS will provide updates to the Audit Committee of fraud investigations that are undertaken. The details of the case will be anonymised. The Audit Committee will raise concerns about specific areas of risk.

6.10 External Communications

6.10.1 Individuals (be they employees, agency staff, locums, contractors or suppliers) must not communicate with any member of the press, media or another third

party about a suspected fraud as this may seriously damage the investigation and any subsequent actions to be taken. Anyone who wishes to raise such issues should discuss the matter with either the Director of Finance or the Chief Executive.

7. REPORTING FRAUD, BRIBERY OR OTHER ILLEGAL ACTS

- 7.1 This section outlines the action to be taken where fraud, bribery or other illegal acts involving dishonesty, inappropriate Internet use, or damage to property are discovered or suspected. For completeness, it also deals with the action to be taken where theft is discovered or suspected.
- 7.2 If any of the concerns mentioned in this document come to the attention of an employee, they must **inform the Local Counter Fraud Specialist or the Director of Finance immediately**. Employees can also call the NHS Fraud Reporting Line on free phone 0800 028 40 60. This provides an easily accessible route for the reporting of genuine suspicions of fraud 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 caller handlers. Suspicions of fraud should only be reported to the LCFS, Director of Finance or via the NHS Fraud Reporting Line and not to another colleague or line manager. Contact information for the above is listed in Appendix A.
- 7.3 The attached Appendix A is designed to be a reminder of the key “what to do” steps - as well as contact details - to be taken where fraud or other illegal acts are discovered or suspected.
- 7.4 Managers are encouraged to copy this to staff and to place it on staff notice boards in their department.
- 7.5 Anonymous letters, telephone calls etc. are received from time to time from individuals who wish to raise matters of concern, but not through official channels. While the allegations may be erroneous or unsubstantiated, they may also reflect a genuine cause for concern and should always be taken seriously.
- 7.6 Sufficient enquiries will be made by the LCFS to establish whether or not there is any foundation to the allegations. If the allegations are found to be malicious, they will also be considered for further investigation as to their source.
- 7.7 Frimley Health 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, the Trust has produced a whistleblowing policy. This procedure is intended to complement the Trust’s anti-fraud 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. It can be found on the Trust’s intranet.

8. DISCIPLINARY ACTION

- 8.1 The disciplinary procedures of the Trust must be followed where an employee is suspected of being involved in a fraudulent or other illegal act.

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

9. POLICE INVOLVEMENT

9.1 In accordance with the NHS Counter Fraud & Corruption Manual, the Director of Finance, in conjunction with the LCFS and NHS Protect, will decide whether or not a case should be referred to the police. HR and line managers will be involved as necessary. Any referral to the police will not prohibit action being taken under the Trust disciplinary procedures.

10. RECOVERY OF LOSSES INCURRED TO FRAUD

10.1 The seeking of financial redress or recovery of losses should always be considered in cases of fraud that are investigated by either the LCFS or NHS Protect where a loss is identified. As a general rule, recovery of the loss caused by the perpetrator should always be sought. The decisions must be taken in the light of the particular circumstances of each case.

10.2 Redress allows resources that are lost to fraud to be returned to the NHS for use as intended, for provision of high-quality patient care and services.

10.3 The *NHS Counter Fraud and Corruption Manual* provides in-depth details of how sanctions can be applied where fraud is proven and how redress can be sought. To summarize, local action can be taken to recover money by using the administrative procedures of the Trust or the civil law.

10.4 In cases of serious fraud, 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.

10.5 The NHS Protect 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.

10.6 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 on-going salary payments or pensions.

10.7 In some cases (taking into consideration all the facts of a case), it may be that Frimley Health NHS Foundation Trust, under guidance from the LCFS and with

the approval of the Director of Finance, decides that no further recovery action is taken.

- 10.8 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.
- 10.9 The civil recovery route is also available to the 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.
- 10.10 The appropriate senior manager, in conjunction with the HR 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 Frimley Health NHS Foundation Trust. In all cases, current legislation must be complied with.
- 10.11 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.
- 10.12 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 when the action taken. This will be reviewed and updated on a regular basis.

11. RAISING AWARENESS / IMPLEMENTATION / TRAINING

- 11.1 It is important that staff understand and are aware of the policy and therefore this procedural document is published on the Trust intranet. The policy will be distributed to all executive directors in addition to normal publishing protocol for cascade to relevant senior managers.
- 11.2 Implementation will be, as noted in other sections of this policy, directed in conjunction with the Local Counter Fraud Specialist. In particular as part of the fraud awareness responsibility of that role. In doing this, as noted elsewhere, Special attention should be paid to ensuring the policy is understood where there may be barriers to understanding caused by the individual's circumstances, where the individual's literacy or use of English is weak, or where the individual has little experience of working life.
- 11.3 Training on anti-fraud, corruption and bribery is part of the fraud awareness programme undertaken by RSM as the Trusts' nominated LCFS.

12. MONITORING COMPLIANCE OF POLICY

- 12.1 Qualitative Assessments (QA's) are a self-assessment tool developed by NHS Protect to measure the effectiveness of the Counter Fraud arrangements at the Trust. QA's require NHS organisations to make a declaration of the counter fraud work they have completed during the financial year. The declaration focuses on the importance of demonstrating effectiveness and the correlation between work plan tasks, output and impact and innovative action. A copy of the self-assessment will be included in the LCFS Annual Report.
- 12.2 As a result of reactive and proactive work completed throughout the financial year, closure reports are prepared and issued by the LCFS. System and procedural weaknesses are identified in each report and highlight suggested recommendations for improvement. The Trust, together with the LCFS will track the recommendations to ensure that they have been implemented.

13. ADDITIONAL INFORMATION

- 13.1 Any abuse or non-compliance with this policy or procedures will be subject to a full investigation and appropriate disciplinary action.
- 13.2 This policy will be subject to a review every three years or if legislation and / or guidance necessitates an earlier revision

Action to be Taken if you Discover or Suspect Any Fraudulent Activity!

This includes:	What to do:	DO
<p>Fraud</p> <ul style="list-style-type: none"> Any deliberate intention to make a gain for themselves or anyone else, or inflicting a loss (or a risk of loss) on another i.e. the NHS. This could be through the falsification of any records or documents or obtaining any service(s) and/or failing to disclose information. <p>Bribery</p> <ul style="list-style-type: none"> Employees will not request or receive a bribe from anybody, nor imply that such an act might be considered. This means that you will not agree to receive or accept a financial or other advantage from a former, current or future client, business partner, contractor or supplier or any other person as an incentive or reward to perform improperly your function or activities. It does not matter whether the other person is a UK or foreign public official, political candidate, party official, private individual, private or public sector employee or any other person (including creating the appearance of an effort to improperly influence another person). Please refer to the Trust's Anti-Bribery Policy. 	<p>If any of these concerns come to light you must immediately report your suspicions and what you have discovered to one of the following:</p> <ul style="list-style-type: none"> The Local Counter Fraud Specialist: <p>Suki S Pooni (Consultant, Public Sector Assurance) for Grant Thornton UK LLP 30 Finsbury Square London EC2A 1AG T (direct) +44 (0)2078652106 T (office) +44 (0)2073835100 M +44 (0)7768 042591 E Suki.S.Pooni@uk.gt.com</p> <ul style="list-style-type: none"> Director of Finance Mr. Nigel Foster The NHS Fraud Reporting Line 0800 028 40 60 <p>Or online www.reportnhsfraud.nhs.uk</p> <p>Confidentiality will be maintained and all matters will be dealt with in accordance with the NHS Counter Fraud standards. You will not suffer any recriminations as a result of raising concerns – You have protection under The Public Interest Disclosure Act 1998.</p>	<p>DO</p> <ul style="list-style-type: none"> ✓ Tell someone! <ul style="list-style-type: none"> Confidentiality will be respected. Any delay might cause the organisation to suffer further financial loss. ✓ Make a note of your concerns! <ul style="list-style-type: none"> Note all relevant details, what was said, the date time and names of all parties involved. Keep a record or copy any documentation that arouses your suspicion. <p style="text-align: center;">DO NOT</p> <ul style="list-style-type: none"> ✗ Confront the individual(s) with your suspicions. ✗ Try to investigate the matter yourself. ✗ Contact the police directly. ✗ Convey your suspicions to anyone other than those with the proper authority as listed. ✗ Do nothing!

The Fraud Act 2006

SUMMARY

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

Section 2: Fraud by False Representation

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

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

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

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

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

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

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

Section 3: Fraud by Failing to Disclose Information

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

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

Section 4: Fraud by Abuse of Position

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

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

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

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

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

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

Section 5: (This section provides legal definitions for what is meant by gain and loss and so not considered relevant for the purposes of this document)

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

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

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

Section 7: Making or Supplying Articles for Use in Frauds

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

Section 8: "Article"

Section 8 extends the meaning of "article" for the purposes of sections 6 and 7 and certain other connected provisions so as to include any program or data held in electronic form. Examples of cases where electronic programs or data could be used in fraud are: a computer program can generate credit card numbers; computer templates can be used for producing blank utility bills; computer files can contain lists of other peoples' credit card details or draft letters in connection with 'advance fee' frauds.

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

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

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

Section 10: (This section is not deemed relevant to the practices likely to be encountered by the Trust so not relevant for the purposes of this document)

Section 11: Obtaining Services Dishonestly

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

It requires the actual obtaining of the service. For example, data or software may be made available on the Internet to a certain category of person who has paid for access rights to that service. A person dishonestly using false credit card details or other false personal information to obtain the service would be committing an offence under this section. The section would also cover a situation where a person climbs over a wall and watches a football match without paying

the entrance fee - such a person is not deceiving the provider of the service directly, but is obtaining a service which is provided on the basis that people will pay for it.

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

Section 12: Liability of Company Officers for Offences by Company

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

The Fraud Act 2006 repeals the following Theft Act offences:

Theft Act 1968

- Section 15 (obtaining property by deception).
- Section 15A (obtaining a money transfer by deception).
- Section 15B (Section 15A: supplementary).
- Section 16 (obtaining a pecuniary advantage by deception).
- Section 20(2) (procuring the execution of a valuable security by deception).

Theft Act 1978

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

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

Any suspicions of fraud against the Trust should be reported to Suki Pooni, Local Counter Fraud Specialist on **07768 042591** or by emailing: Suki.S.Pooni@uk.qt.com

Alternatively you can contact the NHS Fraud Reporting Line in confidence on **0800 028 40 60** or online www.reportnhsfraud.nhs.uk