

POLICY IN RELATION TO FRAUD AND FRAUD RESPONSE PLAN

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DOCUMENT CONTROL AND AMENDMENT RECORD

Policy in Relation to Fraud & Fraud Response Plan

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This policy applies to all Wandsworth CCG members, employees, members of the Governing Body, members of the Governing Body's committees and sub-committees and persons working on behalf of the CCG, as set out in the CCG's constitution.

This document is a policy and a response plan for dealing with suspected fraud and other illegal acts involving dishonesty. It also includes guidance to be issued to all employees setting out Wandsworth Clinical Commissioning Group's position on dealing with fraud and what employees should do if they suspect fraud; and has been prepared in accordance with the NHS Counter Fraud and Corruption Manual. This policy should be read in conjunction with Wandsworth Clinical Commissioning Group's Anti-Bribery policy.

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Wandsworth Clinical Commissioning Group

1. Summary

- 1.1 Wandsworth Clinical Commissioning Group 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 Head of Counter Fraud (LCFS), and is intended as a guide for all employees on anti fraud work within the NHS. All genuine suspicions of fraud and corruption can be reported to the LCFSs or via the NHS Fraud and Corruption Reporting Line (FCRL) on freephone 0800 028 4060 or at www.reportnhsfraud.nhs.uk.

See Appendix 1 for Wandsworth CCG's LCFS contact details

2. Introduction

- 2.1 One of the basic principles of public sector organisations is the proper use of public funds. It is therefore important that all those who work in the public sector are aware of the risk of and means of enforcing the rules against fraud and other illegal acts involving dishonestly or damage to property. For simplicity, all such offences are hereafter referred to as "fraud" except where the context indicates otherwise.
- 2.2 This document sets out Wandsworth Clinical Commissioning Group's policy for dealing with suspected or detected fraud and corruption, incorporated in the Secretary of State for Health's Directions to NHS Bodies on Counter Fraud Measures issued in November 2004; and provides advice to employees in dealing with fraud or suspected fraud. This policy details the arrangements made by Wandsworth Clinical Commissioning Group for such concerns to be raised by employees or members of the public.
- 2.3 Wandsworth Clinical Commissioning Group already has procedures in place that reduce the likelihood of fraud occurring. These include a nominated and accredited Local Counter Fraud Specialist (LCFS), Prime Financial Policies, documented procedures and systems of internal control and risk assessment. In addition Wandsworth Clinical Commissioning Group, via the Chief Financial Officer will ensure that a risk and fraud awareness culture exists across the organisation.
- 2.4 Wandsworth Clinical Commissioning Group does not tolerate fraud and bribery within the NHS. The intention is to eliminate all NHS fraud and bribery 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.
- 2.5 Wandsworth Clinical Commissioning Group is committed to taking all necessary steps to counter fraud and bribery. To meet its objectives, it has adopted the seven-stage approach developed by NHS Protect:

- the creation of an **anti-fraud culture**
- maximum **deterrence** of fraud
- successful **prevention** of fraud which cannot be deterred
- prompt **detection** of fraud which cannot be prevented
- professional **investigation** of detected fraud
- effective **sanctions**, including appropriate legal action against people committing fraud and corruption, and
- effective methods of seeking **redress** in respect of money defrauded

2.6 Wandsworth Clinical Commissioning Group will take all necessary and required steps to counter fraud and bribery in accordance with this policy, the NHS Counter Fraud and Corruption Manual, “Applying Appropriate Sanctions Consistently” published by NHS Protect and any other relevant guidance or advice issued by NHS Protect.

3. Public Service Values

3.1 **The Code of Conduct; Code of Accountability for NHS Boards published by the NHS Executive in April 1994 sets out the following public service values. It says 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.**

Accountability: Everything done by those who work in the NHS must be able to stand the tests of parliamentary scrutiny, public judgements on propriety and professional codes of conduct.

Probity: There should be an absolute standard of honesty in dealing with the assets of the NHS; integrity should be the hallmark of all personal conduct in decisions affecting patients, staff and suppliers, and in the use of information acquired in the course of NHS duties.

Openness: There should be sufficient transparency about NHS activities to promote confidence between Wandsworth Clinical Commissioning Group and its staff, patients and the public.

All those who work for Wandsworth Clinical Commissioning Group should be aware of, and act in accordance with these values.

4. Scope of the Policy

4.1 This policy relates to all forms of fraud and bribery, 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 and bribery. The overall aims of this policy are to:

- improve the knowledge and understanding of everyone in Wandsworth Clinical Commissioning Group, irrespective of their position, about the risk of fraud and bribery within the organisation and its unacceptability
- assist in promoting a climate of openness and a culture and environment where staff feel able to raise concerns sensibly and responsibly

- set out Wandsworth Clinical Commissioning Group's responsibilities in terms of the deterrence, prevention, detection and investigation of fraud and bribery
 - ensure that 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)
- 4.2 This policy applies to all employees of Wandsworth Clinical Commissioning Group, regardless of position held, as well as consultants, vendors, contractors and/or any other parties who have a business relationship with Wandsworth Clinical Commissioning Group. 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 and bribery.
- 4.3 This policy covers all business activities of employees or others acting on behalf of Wandsworth Clinical Commissioning Group.
- 4.4 This policy is applicable to all employees, contracted staff and staff on honorary contracts whose payroll costs are partially or fully funded by a third party under a formal arrangement. It is also applicable for trainee professionals and students hosted for the provision of work or vocational experience, including temporary staff, volunteers and other people engaged to work on Wandsworth Clinical Commissioning Group business.
- 4.5 This policy also applies to CCG members, members of the Governing Body, members of the Governing Body's committees and sub-committees.
- 4.6 In implementing this policy, managers must ensure that all staff are treated fairly and within the provisions and spirit of Wandsworth Clinical Commissioning Group's Equal Opportunities Policy. Special attention should be paid to ensure 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.
- 4.7 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
- General Dental Council
- General Optical Council
- Royal Pharmaceutical Society of Great Britain
- Protocol with Health Professional Council

5. Definitions

5.1 Fraud

The Fraud Act 2006 represents an entirely new way of investigating fraud. It is no longer necessary to prove that a person has been deceived. The focus is now on the dishonest behaviour of the suspect and their intent to make a gain or cause a loss.

The new offence of fraud can be committed in three ways:

- 1) Fraud by false representation (s.2) – lying about something using any means, e.g. by words or actions
- 2) Fraud by failing to disclose (s.3) – not saying something when you have a legal duty to do so
- 3) Fraud by abuse of a position of trust (s.4) – abusing a position where there is an expectation to safeguard the financial interests of another person or organisation.

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.

The organisation utilises the Fraud Act 2006 as its definition of fraud.

5.2 Bribery and Corruption

The Bribery Act 2010 came into force from 1st July 2011 and repeals previous corruption legislation. The Act has introduced the offences of offering and or receiving a bribe. It also places specific responsibility on organisations to have in place sufficient and adequate procedures to prevent bribery and corruption taking place. Under the Act, Bribery is defined as “Inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of gifts, loans, fees, rewards or other privileges”. No actual gain or loss has to be made.

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

- 5.3 Wandsworth Clinical Commissioning Group seeks to ensure that a comprehensive anti-bribery culture exists and has a separate Anti-Bribery policy which details the methods for reporting suspected bribery and corruption, and the avoidance of bribery and corruption. This policy should be read in conjunction with Wandsworth Clinical Commissioning Group’s Anti-Bribery policy.

5.4 Policies and Procedures

Any referenced policy in this document will either mean the existing or revised Wandsworth Clinical Commissioning Group policy. Employee compliance should be to which ever policy is in existence.

6. Wandsworth Clinical Commissioning Group's Policy

- 6.1 Wandsworth Clinical Commissioning Group is committed to maintain an open, honest and well-intentioned atmosphere within the organisation, so as to best fulfil the objectives of the organisation and of the NHS. It is therefore also committed to the elimination of fraud and prevention of bribery within Wandsworth Clinical Commissioning Group, 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.
- 6.2 All employees have a personal responsibility to protect the assets of Wandsworth Clinical Commissioning Group; including all buildings, equipment and monies from fraud, theft, or bribery and corruption.
- 6.3 Wandsworth Clinical Commissioning Group wishes to encourage anyone having reasonable suspicions of fraud to report them. Wandsworth Clinical Commissioning Group'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 who make disclosures about a range of subjects, including fraud and corruption; which they believe to be happening within the Trust employing them. Within this context, "reasonably held suspicion" means any suspicions, other than those which are raised maliciously and are subsequently found to be groundless.
- 6.4 Any unfounded or malicious allegations will be subject to a full investigation and where appropriate, disciplinary action.
- 6.5 Wandsworth Clinical Commissioning Group 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 Local Counter Fraud Specialist who will then ensure that procedures are followed.
- 6.6 Employees should also makes themselves familiar with the Whistle Blowing Policy, which provides guidance for staff wanting to raise concerns about workplace issues, including potential unlawful conduct, financial malpractice or dangers to patients, the public or environment.

7. Roles and Responsibilities

- 7.1 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 exists, whether because of poor procedures or oversight, you should report it to the LCFS or the NHS Fraud and Corruption Reporting Line.
- 7.2 **Role of Wandsworth Clinical Commissioning Group**

Wandsworth Clinical Commissioning Group 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 organisation has a duty to ensure that those concerns are listened to and addressed.

7.2.1 Wandsworth Clinical Commissioning Group's Chief Officer is liable to be called to account for specific failures in the organisation'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 employees within Wandsworth Clinical Commissioning Group. Wandsworth Clinical Commissioning Group 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 Officer and Chief Financial Officer will monitor and ensure compliance with this policy.

7.3 **Employees**

For the purpose of this policy, "Employees" includes staff employed by Wandsworth Clinical Commissioning Group, and persons working on behalf of the CCG.

7.3.1 Wandsworth Clinical Commissioning Group's Prime Financial Policies place an obligation on all employees to act in accordance with best practice. In addition, all employees must act in accordance with Gifts and Hospitality and Declaration of Interest policies and declare and register any interests which might potentially conflict with those of Wandsworth Clinical Commissioning Group; or the wider NHS and follow guidance on the receipt of gifts or hospitality.

7.3.2 Employees are expected to act in accordance with the standards laid down by their Professional Institute(s), where applicable and have a personal responsibility to ensure that they are familiar with them.

7.3.3 Employees also have a duty to protect the assets of Wandsworth Clinical Commissioning Group including information, goodwill, reputation and property.

7.3.4 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:

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

- 7.3.5 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.
- 7.3.6 If an employee suspects that there has been fraud, corruption or bribery, they must report the matter to the nominated Local Counter Fraud Specialist. See points 6.5 and 6.6.
- 7.3.7 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 have taken place. Such actions may be in addition to the possibility of criminal prosecution.

7.4 **Managers**

- 7.4.1 Managers must be vigilant and ensure that procedures to guard against fraud and bribery are followed. They should be alert to the possibility that unusual events or transactions could be symptoms of fraud and corruption. If they have any doubts, they must seek advice from the nominated LCFS.
- 7.4.2 Managers must instil and encourage an anti-fraud and bribery culture within their team and ensure that information on procedures is made available to all employees. The LCFS will proactively assist the encouragement of an anti-fraud culture by undertaking work that will raise fraud awareness.
- 7.4.3 Managers at all levels have a responsibility to ensure that an adequate system of internal control exists within their area of responsibility and that controls operate effectively. The responsibility for the prevention and detection of fraud and corruption therefore primarily rests with managers but requires the co-operation of all employees.

As part of that responsibility, line managers need to:

- Inform staff of Wandsworth Clinical Commissioning Group's code of business conduct, gifts and hospitality, declaration of interest and anti-fraud and anti-bribery policies as part of their induction process, paying particular attention to the need for accurate completion of personal records and forms
- ensure that all 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 Wandsworth Clinical Commissioning Group'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 department's assessment of the risks and controls within their business area, which feeds into Wandsworth Clinical Commissioning Group's and the Department of Health Accounting Officer's overall statements of accountability and internal control
- report any identified system weaknesses which could allow for fraud to occur, to the LCFS

7.4.4 All instances of actual or suspected fraud or bribery, which come to the attention of a manager, must be reported immediately. It is appreciated that some 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 nominated LCFS as soon as possible.

7.5 Local Counter Fraud Specialist (LCFS)

7.5.1 The Directions to NHS Bodies on Countering Fraud Measures 2004 currently require Wandsworth Clinical Commissioning Group to appoint a nominated LCFS. The LCFS's role is to ensure that all cases of actual or suspected fraud, corruption and bribery are notified to the Chief Financial Officer and reported accordingly.

7.5.2 Investigation of the majority of cases of alleged fraud within Wandsworth Clinical Commissioning Group will be the responsibility of the nominated LCFS. NHS Protect will only investigate cases which should not be dealt with by Wandsworth Clinical Commissioning Group. Following receipt of all referrals, NHS Protect will add any known information or intelligence and based on the following case acceptance criteria (not exhaustive), determine if a case should be investigated by NHS Protect or returned for local investigation:

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.

7.5.3 The LCFS will:

- Ensure that the Chief Financial Officer is kept apprised of all referrals and cases
- Investigate all cases of fraud, as per 7.5.1 above
- Be responsible for the day-to-day implementation of the 7 generic areas of anti-fraud and corruption activity
- In consultation with the Chief Financial Officer 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 Chief Financial Officer, and provide required reports to NHS Protect
- Ensure that other relevant parties are informed where necessary e.g. Human Resources will be informed where an employee is a suspect
- Ensure that the Group 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
- 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
- Not have responsibility for or be in any way engaged in the management of security for any NHS body

7.5.4 The LCFS in consultation with the Chief Financial Officer will review the strategic objectives within the assurance framework to determine any potential fraud risks. Where risks are identified, these will be included on Wandsworth Clinical Commissioning Group's Risk Register so the risk can be proactively reviewed and addressed.

7.6 Chief Financial Officer

7.6.1 The Chief Financial Officer, in conjunction with the Chief Officer, monitors and ensures compliance with Secretary of State Directions regarding fraud and bribery. The Chief Financial Officer 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 including Wandsworth CCG Governing Body members accordingly.

7.6.2 The LCFS shall be responsible, in discussion with and on behalf of the Chief Financial Officer, for informing third parties such as external audit or the police at the earliest opportunity, as circumstances dictate.

7.6.3 The Chief Financial Officer will inform and consult the Chief Officer in cases where the incident may lead to adverse publicity.

7.6.4 The Chief Financial Officer will inform the Head of Internal Audit at the first appropriate opportunity. If an investigation is deemed appropriate, the Chief

Financial Officer will delegate to the appropriate LCFS, who has responsibility for leading the investigation, whilst retaining overall responsibility themselves.

7.6.5 The Chief Financial Officer or the LCFS will consult and take advice from Human Resources (HR) if a member of staff is to be interviewed or disciplined. The Chief Financial Officer or LCFS will not conduct a disciplinary investigation, but the employee may be the subject of a separate investigation by HR.

7.6.6 The Chief Financial Officer is responsible for informing the Audit Committee of all categories of loss.

7.7 Internal and External Audit

Any incident or suspicion that comes to internal or external audit's attention will be passed immediately to the nominated LCFS. The outcome of the investigation may necessitate further work by internal or external audit to review systems.

7.8 Human Resources

7.8.1 Human Resources will liaise closely with the Clinical Commissioning Group 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 organisation's Disciplinary policy. 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, as requested. Close liaison between the LCFS and HR will be essential to ensure that any parallel sanctions (i.e. criminal, civil and disciplinary) are applied effectively and in a coordinated manner.

7.8.2 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.

7.9 Information Management and Technology

The Head of Information Management and Technology (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, telephone and PDA use. HR will also be informed if there is a suspicion that an employee is involved.

7.10 Governance & Risk

The Governance and Risk team will review risks, incidents and complaints information and alert the LCFS to any concerns they identify. The LCFS will advise the Governance and Risk Manager of any risks or incidents that they identify. Due to the confidential nature of LCFS work this will usually be at the end of an investigation or when allegations have been substantiated.

8. Response Plan

8.1 Reporting Fraud or Bribery

This section outlines the action to be taken if fraud or bribery is discovered or suspected. If any of the concerns mentioned in this document come to the attention of an employee, they must **inform their nominated LCFS or Wandsworth Clinical Commissioning Group's Chief Financial Officer immediately**; unless the Chief Financial Officer or LCFS are implicated. In this case, they should report it to Wandsworth Clinical Commissioning Group's Chair or Chief Officer, who will decide on the action to be taken.

- 8.1.2 Employees can also contact the NHS Fraud & Corruption Reporting Line (FCRL) on freephone 0800 028 4060 or at www.reportnhsfraud.nhs.uk. 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, trained staff and any callers can remain anonymous should they wish to do so.
- 8.1.3 Appendix 1 provides a reminder of the key contacts and a checklist of the actions to follow if fraud, corruption or 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 Anonymous letters, telephone calls etc. are occasionally received from individuals who wish to raise matters of concern, but not through official channels. Whilst the suspicions may be erroneous or unsubstantiated, they may also reflect a genuine cause for concern and will always be taken seriously.
- 8.1.5 The LCFS will make sufficient enquiries to establish whether or not there is any foundation to the suspicion that has been raised. If allegations are found to be malicious, they will also be considered for further investigation to establish their source.
- 8.1.6 Employees should always be encouraged to report reasonably held suspicions to the LCFS. This can be done by completing the CFS1 referral form at Appendix 2 or by contacting the LCFS by telephone or email using the contact details supplied on Appendix 1.
- 8.1.7 Wandsworth Clinical Commissioning Group 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, Wandsworth Clinical Commissioning Group has a Whistle Blowing policy. This is intended to complement Wandsworth Clinical Commissioning Group's Policy in Relation to Fraud and Fraud Response Plan and ensures that there is full provision for staff to raise any concerns with others if they do not feel able to raise them with their line manager or management chain. The policy can be found at <http://www.wandsworthccg.nhs.uk/pages/Home.aspx>

8.2 **Disciplinary Action**

- 8.2.1 Wandsworth Clinical Commissioning Group's Disciplinary procedure must be followed if an employee is suspected of being involved in a fraudulent or otherwise illegal act.

8.2.2 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 will prevail.

8.3 Police Involvement

8.3.1 In accordance with the NHS Counter Fraud and Corruption Manual, the Chief Financial Officer in conjunction with the LCFS; will decide whether or not a case should be referred to the police. Any referral to the police will not prohibit action being taken under the local disciplinary procedures of Wandsworth Clinical Commissioning Group.

8.3.2 During police investigations, the nominated point of contact will be the LCFS. All requests from the police for additional evidence, statements etc. will be dealt with via the LCFS.

8.3.3 A Memorandum of Understanding is in place between NHS Protect and the Association of Chief Police Officers. This provides a framework for the exchange of information to achieve the prevention, detection, investigation and prosecution of matters of fraud and corruption within or affecting the NHS in England.

8.4 Managing the Investigation

8.4.1 The LCFS, in consultation with Wandsworth Clinical Commissioning Group's Chief Financial Officer will investigate an allegation in accordance with procedures documented in the NHS Counter Fraud and Corruption Manual issued by NHS Protect.

8.4.2 The LCFS must be aware that staff under an investigation that could lead to disciplinary action have the right to be represented at all stages. In certain circumstances, evidence may best be protected by the consideration of an employee's suspension from duty. Wandsworth Clinical Commissioning Group will make a decision based on HR advice on disciplinary options, which include suspension.

8.4.3 Wandsworth Clinical Commissioning Group will follow its disciplinary procedure if there is evidence that an employee has committed an act of fraud or bribery.

8.5 Gathering Evidence

8.5.1 The LCFS will take control of any physical evidence, and record this in accordance with the procedures outlined in the NHS Counter Fraud and Corruption Manual. If evidence consists of several items, such as many documents, the LCFS will record each one with a separate reference number corresponding to the written record. In criminal actions, evidence on or obtained from electronic media needs a document confirming its accuracy.

8.5.2 Interviews under Caution or to gather evidence will only be carried out by the LCFS if appropriate, or the investigating police officer in accordance with the Police and Criminal Evidence Act 1984 (PACE). The LCFS will obtain written statements where necessary.

8.5.3 All employees have a right to be represented at internal disciplinary interviews by a Trade Union representative or accompanied by a friend or colleague, not acting

in a legal capacity in connection with the case; in line with Wandsworth Clinical Commissioning Group's Disciplinary policy.

8.5.4 The application of Wandsworth Clinical Commissioning Group's Policy In Relation to Fraud and Fraud Response Plan will at all times be in tandem with all other appropriate Wandsworth Clinical Commissioning Group policies, e.g. Prime Financial Policies.

8.6 **Recovery of Losses incurred to Fraud and Bribery**

8.6.1 The seeking of financial redress or recovery of losses should always be considered in cases of fraud or bribery 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 decision must be taken in light of the particular circumstances of each case.

8.6.2 Redress allows resources that are lost to fraud and bribery to be returned to the NHS for use as intended; for provision of high-quality patient care and services. Where appropriate, Wandsworth Clinical Commissioning Group will utilise the joint-working partnership between NHS Protect and Capsticks for Civil Recovery consideration and action; which includes a free hotline service to discuss options available to the organisation.

8.6.3 Sections 10 and 11 of the NHS Counter Fraud and Corruption Manual provide in-depth details of how sanctions can be applied where fraud and/or 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 Wandsworth Clinical Commissioning Group or the civil law.

8.6.4 In cases of serious fraud 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.

8.6.5 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 benefitted from the crime. It could also include restraining assets during the course of the investigation.

8.6.6 Actions which may be taken when considering seeking redress include:

- no further action
- criminal investigation
- civil recovery
- disciplinary action
- confiscation under POCA
- recovery sought from ongoing salary payments or pensions

8.6.7 In some cases (taking into consideration all the facts), it may be that Wandsworth Clinical Commissioning Group, under guidance from the LCFS and with the

approval of the Chief Financial Officer, decides that no further recovery action is taken.

8.6.8 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 as 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.

8.6.9 The civil recovery route is also available to Wandsworth Clinical Commissioning Group 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 Chief Financial Officer to determine the most appropriate action.

8.6.10 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 Wandsworth Clinical Commissioning Group. In all cases, current legislation must be complied with.

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

8.6.12 In order to provide assurance that policies were adhered to, the Chief Financial Officer will maintain a record highlighting when recovery action was required and issued; and when the action was taken. This will be reviewed and updated on a regular basis.

8.7 Reporting Outcomes of Investigations

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

8.7.2 If fraud or bribery is found to have occurred, the LCFS should prepare a report for the Chief Financial Officer and the next 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

8.7.3 As a result of both reactive and proactive work completed throughout the financial year, closure reports will be prepared and issued by the LCFS. Systems and procedural weaknesses will be identified in each report and recommendations for improvement will be suggested. Wandsworth Clinical Commissioning Group, together with the LCFS will track the recommendations to ensure that they have been implemented.

9. Monitoring Compliance and Effectiveness

- 9.1 This policy will be reviewed annually by the owner noted on the cover sheet and will be approved by Wandsworth Clinical Commissioning Group's Audit Committee. The content of this policy will be monitored against template policies provided by NHS Protect, and will be amended as required to demonstrate changes in Secretary of State Directions or the NHS Fraud and Corruption manual (as amended).
- 9.2 Any abuse or non compliance with this policy or procedures will be subject to a full investigation and appropriate disciplinary action.

Acknowledgements

NHS Protect Local Counter Fraud and Corruption policy
RSM Tenon Template Anti-Fraud policy
NHS SW London Policy in Relation to Fraud & Fraud Response Plan

*NHS Anti-fraud and corruption: dos and don'ts
A desktop guide for Wandsworth CCG employees*

FRAUD is the dishonest intent to make a gain for themselves or anyone else, or causing a loss (or risk of loss) on another i.e. the NHS.

BRIBERY is giving someone a financial or other advantage to encourage that person to perform functions or activities improperly or to reward that person for having already done so.

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 LCFS.

• **report your suspicion**

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

Complete the CFS 1 form and submit in a sealed envelope marked 'Restricted' and 'Confidential' for the personal attention of the LCFS.

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 LCFS 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.

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

- directly contacting the **Local Counter Fraud Specialist**, or
- telephoning the freephone NHS Fraud and Corruption Reporting Line (**0800 028 4060**) or online at www.reportnhsfraud.nhs.uk or
- contacting the **Chief Financial Officer**

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

If so, any information can be passed to the
NHS Fraud and Corruption Reporting Line: 0800 028 40 60
All calls will be treated in confidence and investigated
by professionally trained staff

If you would like further information about the NHS Counter Fraud Service, please visit www.nhsbsa.nhs.uk/fraud

Protecting your NHS

Nominated Local Counter Fraud Specialist Details

To report a concern of fraud, please contact the nominated Local Counter Fraud Specialist for Wandsworth CCG:

Rebecca Chappell – Head of Counter Fraud (LCFS)

Phone: (020) 8687 4693

Mobile: 07789 651722

Secure Email: Rebecca.chappell@nhs.net

Or

Mike Harling – Acc. Counter Fraud Specialist

Phone: (020) 8687 4628

Secure Email: Mike.Harling@nhs.net

REFERRAL FORM

NAME

ORGANISATION/PROFESSION

ADDRESS

TEL.NO

THIS ALLEGED FRAUD RELATES TO:

NAME

ADDRESS

DATE OF BIRTH

Referrals should only be made when you can substantiate your suspicions with one reliable piece of information

Suspicion

Please provide details

Possible useful contacts

Please attach any available additional information.

Signed:.....

Date:.....