

NHS Waltham Forest Clinical Commissioning Group Anti-Fraud and Bribery Policy

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1. INTRODUCTION

- 1.1. This document sets out the NHS Waltham Forest CCG policy and advice to employees in dealing with fraud or suspected fraud. This policy details the arrangements made in NHS Waltham Forest CCG for such concerns to be raised by employees or members of the public.
- 1.2. NHS Waltham Forest CCG 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.
- 1.3. NHS Waltham Forest CCG is committed to taking all necessary steps to counter fraud and bribery. To meet its objectives,

It has adopted the four-stage approach developed by NHS Protect:

- 1) Strategic Governance
- 2) Inform and Involve
- 3) Prevent and Deter
- 4) Hold to Account

- 1.4. NHS Waltham Forest CCG will take all necessary steps to counter fraud and bribery in accordance with this policy, the NHS Counter Fraud and Bribery Manual, the policy statement 'Applying Appropriate Sanctions Consistently' published by NHS Protect and any other relevant guidance or advice issued by NHS Protect.

2. SCOPE

- 2.1 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 Waltham Forest CCG, 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 NHS Waltham Forest CCG's responsibilities in terms of the deterrence, prevention, detection and investigation of fraud and bribery
 - 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 This policy applies to all employees of NHS Waltham Forest CCG, regardless of position held, as well as consultants, vendors, contractors, and/or any other parties who have a business relationship with NHS Waltham Forest CCG. 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.
- 2.3 In implementing this policy, managers must ensure that all staff are treated fairly and within the provisions and spirit of NHS Waltham Forest CCG'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.

3. PROTOCOL WITH HEALTH PROFESSIONAL COUNCIL POLICY

- 3.1 All employees have a personal responsibility to protect the assets of NHS Waltham Forest CCG, including all buildings, equipment and monies from fraud, theft, or bribery.
- 3.2 NHS Waltham Forest CCG is absolutely committed to maintaining an honest, open and well-intentioned atmosphere within Waltham Forest CCG, so as to best fulfil the objectives of Waltham Forest CCG and of the NHS. It is, therefore, also committed to the elimination of fraud within Waltham Forest CCG, 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.
- 3.3 NHS Waltham Forest CCG wishes to encourage anyone having reasonable suspicions of fraud to report them. Waltham Forest CCG'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 bribery, which they believe to be happening within Waltham Forest CCG employing them. Within this context, 'reasonably held' means suspicions other than those which are raised maliciously and are subsequently found to be groundless.
- 3.4 Any unfounded or malicious allegations will be subject to a full investigation and appropriate disciplinary action.
- 3.5 NHS Waltham Forest CCG 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.
- 3.6 Bribing anybody is absolutely prohibited. Waltham Forest CCG employees will not pay a bribe to anybody. This means that you will not offer, promise, reward in any way or give a financial or other advantage to any person in order to induce that person to perform his/her function or activities improperly. 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).
- 3.7 Off-the-book accounts and false or deceptive accounting entries are strictly prohibited. All gifts, payments or any other contribution made under the Anti-Fraud and Bribery Policy and these guidelines, whether in cash or in kind, shall be documented, regularly reviewed, and properly accounted for on the books of NHS Waltham Forest CCG. Record retention and archival policy must be consistent with NHS Waltham Forest CCG's accounting standards, tax and other applicable laws and regulations.
- 3.8 NHS Waltham Forest CCG procures goods and services ethically and transparently with the quality, price and value for money determining the successful supplier/contractor, not by receiving (or offering) improper benefits. Waltham Forest CCG will not engage in any form of bribery, neither in the UK nor abroad. NHS Waltham Forest CCG and all employees, independent of their grade and position, shall at all times comply with the Bribery Act 2010 and with this policy.
- 3.9 NHS Waltham Forest CCG may, in certain circumstances, be held responsible for acts of bribery committed by intermediaries acting on its behalf such as subsidiaries, clients, business partners, contractors, suppliers, agents, advisors, consultants or other third parties. The use of intermediaries for the purpose of committing acts of bribery is prohibited.
- 3.10 All intermediaries shall be selected with care, and all agreements with intermediaries shall be concluded under terms that are in line with this policy. NHS Waltham Forest CCG will contractually require its agents and other intermediaries to comply with the Anti-Fraud and Bribery Policy and to keep proper books and records available for inspection by NHS Waltham Forest CCG, auditors or investigating authorities. Agreements with agents and other intermediaries shall at all times provide

for the necessary contractual mechanisms to enforce compliance with the anti-bribery regime. NHS Waltham Forest CCG will monitor performance and, in case of non-compliance, require the correction of deficiencies, apply sanctions, or eventually terminate the agreement even if this may result in a loss of business

3.11 Recovery of any losses will always be sought – see section 10.

4. FACILITATION PAYMENTS

4.1 Facilitation payments are small payments made to secure or expedite the performance of a routine action, typically by a government official or agency (e.g. issuing licenses or permits, installation of a telephone line, processing goods through customs, etc.) to which the payer (or the company) has legal or other entitlement.

4.2 Facilitation payments are prohibited under the Bribery Act like any other form of bribe. They shall not be given by NHS Waltham Forest CCG or by Waltham Forest CCG's employees in the UK or any other country.

5. GIFTS AND HOSPITALITY

5.1 Courtesy gifts and hospitality must not be given or received in return for services provided or to obtain or retain business but shall be handled openly and unconditionally as a gesture of esteem and goodwill only. Gifts and hospitality shall always be of symbolic value, appropriate and proportionate in the circumstances, and consistent with local customs and practices. They shall not be made in cash. Please refer to NHS Waltham Forest CCG's Gifts, Hospitality and Sponsorship Policy for more guidance.

6. POLITICAL AND CHARITABLE CONTRIBUTIONS

6.1 NHS Waltham Forest CCG does not make any contributions to politicians, political parties or election campaigns.

6.2 Any donations and contributions must be ethical and transparent. The recipient's identity and planned use of the donation must be clear, and the reason and purpose for the donation must be justifiable and documented. All charitable donations will be publicly disclosed.

6.3 Donations to individuals and for-profit organisations and donations paid to private accounts are incompatible with NHS Waltham Forest CCG's ethical standards and are prohibited.

7. SPONSORING

7.1 Sponsoring means any contribution in money or in kind by NHS Waltham Forest CCG towards an event organised by a third party in return for the opportunity to raise NHS Waltham Forest CCG's profile. All sponsoring contributions must be transparent, pursuant to a written agreement, for legitimate business purposes, and proportionate to the consideration offered by the event host. They may not be made towards events organised by individuals or organisations that have goals incompatible with NHS Waltham Forest CCG's ethical standards or that would damage NHS Waltham Forest CCG's reputation. All sponsorships will be publicly disclosed.

7.2 Where commercial sponsorship is used to fund NHS Waltham Forest CCG training events, training materials and general meetings, the sponsorship must be transparent, pursuant to a written agreement, for legitimate business purposes, and proportionate to the occasion. Where meetings are sponsored by external sources, that fact must be disclosed in the papers relating to the meeting and in any published minutes/proceedings.

7.3 Where sponsorship links to the development of guidelines and advice, this should be carried out in consultation with the Senior Compliance Officer (See paragraph 10.6) in conjunction with the appropriate NHS Waltham Forest CCG working group independent of the sponsors. While it is recognised that consultation with the industry may be necessary when developing a guideline, the overall decision on what is included should lie with NHS Waltham Forest CCG.

8. DEFINITIONS

8.1 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.

8.2 Bribery - Giving or receiving a financial or other advantage in connection with the "improper performance" of a position of trust, or a function that is expected to be performed impartially or in good faith. Bribery does not have to involve cash or an actual payment exchanging hands and can take many forms such as a gift, lavish treatment during a business trip or tickets to an event.

8.3 Bribery 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.

It is a common law offence of bribery to bribe the holder of a public office and it is similarly an offence for the office holder to accept a bribe.

Bribery prosecutions tend to be most commonly brought using specific pieces of legislation dealing with bribery, i.e. under the following:

- Bribery Act 2010
- the Anti-Terrorism, Crime and Security Act 2001.

NHS Protect – NHS Protect has responsibility for all policy and operational matters relating to the prevention, detection and investigation of fraud, bribery and corruption in the NHS. All investigations will be handled in accordance with NHS Protect guidance.

8.4 NHS Waltham Forest CCG has procedures in place that reduce the likelihood of fraud 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, NHS Waltham Forest CCG seeks to ensure that a comprehensive anti-fraud and bribery culture exists throughout NHS Waltham Forest CCG via the appointment of a dedicated Local Counter Fraud Specialist, in accordance with the NHS Secretary of State's Directions to NHS Bodies on Counter Fraud Measures that were re-issued in November 2004.

8.5 It is expected that Lay Members 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.

9. PUBLIC SERVICE VALUES

9.1 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:

Accountability	Everything done by those who work in NHS Waltham Forest CCG must be able to stand the tests of parliamentary scrutiny, public judgements on property and professional codes of conduct.
Probity	Absolute honesty and integrity should be exercised in dealing with NHS patients, assets, employees, suppliers and customers.
Openness	NHS Waltham Forest CCG's actions should be sufficiently public and transparent to promote confidence between Waltham Forest CCG and its patients, our employees and the public.

In addition, all those who work for or are in contract with NHS Waltham Forest CCG 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

9.2 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.

10. ROLES AND RESPONSIBILITIES

10.1. ROLES

NHS PROTECT

NHS Protect has responsibility for all policy and operational matters relating to the prevention, detection and investigation of fraud, bribery and corruption in the NHS and that any investigations will be handled in accordance with NHS Protect guidance.

10.1.1 NHS Waltham Forest CCG 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 members have concerns about any procedures or processes that they are asked to be involved in, Waltham Forest CCG has a duty to ensure that those concerns are listened to and addressed.

10.1.2 NHS Waltham Forest CCG's Chief Officer is liable to be called to account for specific failures in Waltham Forest CCG'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 NHS Waltham Forest CCG employees. NHS Waltham Forest CCG 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 Accountable Officer and Director of Financial Strategy will monitor and ensure compliance with this policy.

10.2. EMPLOYEES

For the purposes of this policy, 'Employees' includes Waltham Forest CCG staff, Governing Body, Executive and Non-Executive Members (including Co-Opted Members) and Honorary Members to the Governing Body and GP Members.

- 10.2.1 All employees should be aware that fraud and bribery (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.
- 10.2.2 NHS Waltham Forest CCG's 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.
- 10.2.3 Employees must act in accordance with NHS Waltham Forest CCG's Standards of Business Conduct and Managing Conflicts of Interest Policy and the, Gifts and Hospitality and Sponsorship policies which include guidance on the receipt of gifts or hospitality.
- 10.2.4 Employees also have a duty to protect the assets of NHS Waltham Forest CCG including information, goodwill and reputation, as well as property.
- 10.2.5 Employees are expected to act in accordance with the standards laid down by their Professional Institute(s), where applicable.
- 10.2.6 NHS Waltham Forest CCG's Standing Orders and Standing Financial Instructions place an obligation on all staff and Lay Members to act in accordance with best practice. In addition, all NHS Waltham Forest CCG staff and Lay Members must declare and register any interests that might potentially conflict with those of NHS Waltham Forest CCG or the wider NHS.
- 10.2.7 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 NHS Waltham Forest CCG 's employees deal fairly and impartially with official matters
 - be alert to the possibility that others might be attempting to deceive.

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

- 10.2.8 When an employee suspects that there has been fraud or bribery, they must report the matter to the nominated Local Counter Fraud Specialist. See Section 11 below.

10.3. MANAGERS

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

- 10.3.1 As part of that responsibility, line managers need to:
- Inform staff of NHS Waltham Forest CCG 's code of business conduct, gifts and hospitality, declaration of interest and counter fraud and 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 NHS Waltham Forest CCG's Anti-Fraud and Bribery Policy and the rules and guidance covering the control of specific items of expenditure and receipts
- identify financially sensitive posts
- ensure that controls are being complied with
- contribute to their director's assessment of the risks and controls within their business area, which feeds into Waltham Forest CCG's and the Department of Health Accounting Officer's overall statements of accountability and internal control.

10.3.2 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 Local Counter Fraud Specialist as soon as possible. See Section 11 below.

10.4. LOCAL COUNTER FRAUD SPECIALIST (LCFS)

The Directions to NHS Bodies on Counter Fraud Measures 2004 require NHS Waltham Forest CCG to appoint and nominate an LCFS. The LCFS's role is to ensure that all cases of actual or suspected fraud and bribery are notified to the Director of Financial Strategy (DFS) and reported accordingly.

10.4.1 Investigation of the majority of cases of alleged fraud within Waltham Forest CCG will be the responsibility of NHS Waltham Forest CCG's Local Counter Fraud Specialist (LCFS). NHS Protect will only investigate cases which should not be dealt with by NHS Waltham Forest CCG. Following receipt of all referrals, NHS Protect will add any known information or intelligence and based on 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.

10.4.2 The LCFS will regularly report to the DFS on the progress of the investigation and when/if referral to the police is required.

10.4.3 The LCFS and the DFS, in conjunction with NHS Protect, will decide who will conduct the investigation and when/if referral to the police is required. Cases, for instance, where more than

£100,000 or where possible bribery is involved may be investigated by NHS Protect (though the LCFS may assist); otherwise the investigation will normally be undertaken by NHS Waltham Forest CCG's own LCFS directly.

- 10.4.4 The LCFS in consultation with the DFS will review the strategic objectives contained within the assurance framework to determine any potential fraud or bribery risks. Where risks are identified these will be included on NHS Waltham Forest CCG's risk register so the risk can be proactively addressed.

10.5. DIRECTOR OF FINANCIAL STRATEGY (DFS)

The DFS, in conjunction with the Chief Officer, monitors and ensures compliance with Secretary of State Directions regarding fraud and bribery.

- 10.5.1 The DFS, 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.
- 10.5.2 The DFS or the LCFS will consult and take advice from the Head of HR if a member of staff is to be interviewed or disciplined. The DFS or LCFS will not conduct a disciplinary investigation, but the employee may be the subject of a separate investigation by HR.
- 10.5.3 The DFS 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 NHS Waltham Forest CCG and the Chair of the Audit Committee of cases, as may be deemed appropriate or necessary.
- 10.5.4 The DFS is also responsible for informing the Audit Committee of all categories of loss.

10.6. SENIOR COMPLIANCE OFFICER

- 10.6.1 Waltham Forest CCG has appointed a DSF who will be responsible for ensuring NHS Waltham Forest CCG is compliant with the requirements of the Bribery Act 2010, implementing anti-bribery guidelines and monitoring compliance. The DSF will review annually the suitability, adequacy and effectiveness of NHS Waltham Forest CCG's anti-bribery arrangements and implement improvements as and when appropriate.
- 10.6.2 The DSF directly reports to the Chief Officer. Once a year, the DSF reports the results of the reviews to the Audit Committee.
- 10.6.3 Any incident or suspicion that comes to attention of the DFS will be passed immediately to the LCFS.

AREA ANTI-FRAUD SPECIALIST (AAFS)

The Area Anti-Fraud Specialists (AAFSs) are the frontline face of NHS Protect for all health bodies within their region.

The AAFS allocates, supervises and monitors fraud referrals and notifications to the LCFS. The AAFS ensures that all information and intelligence gained from local investigative work is reported and escalated as appropriate at both local and national level in order to ensure that fraud trends are mapped and used to fraud-proof future policies and procedures.

The AAFS is responsible for the management and vetting of all local investigation case papers and evidence and witness statements submitted for the consideration of prosecutions. The AAFS will ensure that local investigations are conducted within operational and legislative guidelines to the highest standards for all allegations of fraud in the NHS. The AAFS provides support as to the direction of ensuing investigations as required and oversees the LCFS's performance.

The AAFS will provide help, support, advice and guidance to DFS, LCFSs, Audit Committee and other key stakeholders as necessary.

10.7. INTERNAL AND EXTERNAL AUDIT

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

10.8. HUMAN RESOURCES

- 10.8.1 Human Resources 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. Human Resources are responsible for ensuring the appropriate use of NHS Waltham Forest CCG's Disciplinary Procedure. The Human Resources 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.
- 10.8.2 Human Resources 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.

10.9. INFORMATION MANAGEMENT & TECHNOLOGY

- 10.9.1 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, telephone and PDA use. Human Resources will be informed if there is a suspicion that an employee is involved.

10.10. EXTERNAL COMMUNICATIONS

- 10.10.1 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 DFS or the Chief Officer.

10.11. TRAINING

- 10.11.1 NHS Waltham Forest CCG will provide anti-bribery training to all relevant employees on a regular basis to make them aware of our Anti-Fraud and Bribery Policy and guidelines, including possible types of bribery, the risks of engaging in bribery activity, and how employees may report suspicion of bribery.

11. REPORTING FRAUD, BRIBERY OR OTHER ILLEGAL ACTS

- 11.1 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 other matters relating to suspected criminal activity, including theft, the LCFS can be used as a point of contact in the event that you are unsure where to report your concerns
- 11.2 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 DFS. Employees can also call the NHS Fraud Reporting Line on Freephone 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.

Contact information for the above is listed in Appendix A.

- 11.3 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.

- 11.4 Managers are encouraged to copy this to staff and to place it on staff notice boards in their department.
- 11.5 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.
- 11.6 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.
- 11.7 NHS Waltham Forest CCG 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, NHS Waltham Forest CCG has produced a Whistleblowing Policy. This procedure is intended to complement NHS Waltham Forest CCG's Anti-Fraud and Bribery Policy and code of business conduct and ensures there is full provision for staff to raise any concerns with others if they do not feel able to raise them with their line manager/management chain.

12. DISCIPLINARY ACTION

- 12.1 The disciplinary procedures of NHS Waltham Forest CCG must be followed where an employee is suspected of being involved in a fraudulent or other illegal act.
- 12.2 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.

13. POLICE INVOLVEMENT

- 13.1 In accordance with the NHS Counter Fraud Manual, the DFS, in conjunction with the LCFS and NHS Protect, will decide whether a case should be referred to the police. Human Resources and line managers will be involved as necessary. Any referral to the police will not prohibit action being taken under NHS Waltham Forest CCG disciplinary procedures.

14. RECOVERY OF LOSSES INCURRED BY FRAUD OR BRIBERY

- 14.1 The seeking of financial redress or recovery of losses should always be considered in cases of fraud or bribery that are investigated by 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.
- 14.2 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.
- 14.3 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.
- 14.4 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.
- 14.5 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.

- 14.6 In some cases (taking into consideration all the facts of a case), it may be that NHS Waltham Forest CCG, under guidance from the LCFS and with the approval of the DFS decides that no further recovery action is taken.
- 14.7 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.
- 14.8 The civil recovery route is also available to NHS Waltham Forest CCG 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 DFS to determine the most appropriate action.
- 14.9 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 NHS Waltham Forest CCG. In all cases, current legislation must be complied with.
- 14.10 Action to recover losses should be commenced as soon as practicable after the loss has been identified. Given the various options open to NHS Waltham Forest CCG, it may be necessary for various departments to liaise about the most appropriate option.
- 14.11 In order to provide assurance that policies were adhered to, the DFS 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.

15. MONITORING EFFECTIVENESS

- 15.1 At the time of the ratification of this policy, there is no mandatory annual declaration in respect of Counter fraud activity or the effectiveness of the CCG's Counter Fraud provision required by NHS Protect. There is an expectation that there will be an assessment process introduced, and the CCG and LCFS will ensure adherence to this process. Currently there is a requirement for the LCFS to fulfil regular elements of reporting to NHS Protect, including mandatory reporting to the NHS Protect FIRST system. The LCFS provision is also monitored via the Chief Finance Officer and the Audit Committee.
- 15.2 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. NHS Waltham Forest CCG, together with the LCFS will track the recommendations to ensure that they have been implemented.

16. ADDITIONAL INFORMATION

Any abuse or non-compliance with this policy or procedures will be subject to a full investigation and appropriate disciplinary action.

This policy will be subject to regular review.

17. RELATED POLICIES

- Whistleblowing Policy
- Standards of Business Conduct and Conflicts of Interest Policy
- Disciplinary Policy
- Gifts, Hospitality and Sponsorship Policy

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"> Anything that induces or intends to induce improper performance. This covers offering, promising or giving a bribe, requesting, agreeing to receive or accepting a bribe, and failing to prevent bribery. Where someone is influenced by bribery, payment of benefit-in-kind to unreasonably use their position to give some advantage to another. 	<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"> Local Counter Fraud Specialist: Christopher Hooper Christopher.hooper@bakertilly.co.uk or christopher.hooper@nhs.net 07748 517 353 Director of Financial Strategy Les Borrett les.borrett@walthamforestccg.nhs.uk The NHS Fraud Reporting Line 0800 0284060 Or online www.reportnhsfraud.nhs.uk <p>Confidentiality will be maintained and all matters will be dealt with in accordance with the NHS Counter Fraud standards.</p> <p>You will not suffer any recriminations as a result of raising concerns – You have protection under The Public Interest Disclosure Act 1998.</p>	<p>✓ Tell someone!</p> <p><i>Confidentiality will be respected.</i></p> <p><i>Any delay might cause the organisation to suffer further financial loss.</i></p> <p>✓ Make a note of your concerns!</p> <p><i>Note all relevant details, what was said, the date time and names of all parties involved.</i></p> <p>✓ Keep a record or copy any documentation that arouses your suspicion.</p> <hr/> <p>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!

Appendix B

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 Waltham Forest CCG 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: (not 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: (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 15th 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 Waltham Forest CCG should be reported to the Local Counter Fraud Specialist

Alternatively you can telephone the NHS Fraud Reporting Line in confidence on

0800 028 40 60

Or online www.reportnhsfraud.nhs.uk

Appendix C

BRIBERY ACT 2010

The following business practices constitute criminal offences under the Bribery Act 2010 and are therefore prohibited:

Offences of bribing another person

Case 1 is where a Waltham Forest CCG employee offers, promises or gives a financial or other advantage to another person and intends the advantage (i) to induce that or another person to perform improperly a relevant function or activity, or (ii) to reward that or another person for the improper performance of such a function or activity.

Case 2 is where a Waltham Forest CCG employee offers, promises or gives a financial or other advantage to another person and knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity by that person.

The bribery must relate to (i) a function of a public nature, (ii) an activity connected with a business, (iii) an activity performed in the course of a person's employment, or (iv) an activity performed by or on behalf of a body of persons (whether corporate or unincorporate). The person performing the function or activity must be expected to perform it in good faith, impartially or in a position of trust. It does not matter whether the function or activity is performed inside or outside the UK, whether the other person(s) involved is/are in the public or private sector and whether the advantage is offered, promised or given directly by a Waltham Forest CCG employee or through a third party, e.g. an agent or other intermediary.

Offences relating to being bribed

Case 3 is where a Waltham Forest CCG employee requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by him-/herself or another person).

Case 4 is where a Waltham Forest CCG employee requests, agrees to receive or accepts a financial or other advantage, and the request, agreement or acceptance itself constitutes the improper performance by him-/herself of a relevant function or activity.

Case 5 is where a Waltham Forest CCG employee requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by him-/herself or another person) of a relevant function or activity.

Case 6 is where, in anticipation of or in consequence of a Waltham Forest CCG employee requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly (i) by that, or (ii) by another person at his/her request or with his/her assent or acquiescence.

Again, the bribery must relate to (i) a function of a public nature, (ii) an activity connected with a business, (iii) an activity performed in the course of a person's employment, or (iv) an activity performed by or on behalf of a body of persons (whether corporate or unincorporate). The person performing the function or activity must be expected to perform it in good faith, impartially or in a position of trust.

It does not matter whether the function or activity is performed inside or outside the UK, whether the other person(s) involved is/are in the public or private sector, whether a Waltham Forest CCG employee requests, agrees to receive or accepts the advantage directly or through a third party, e.g. an agent or other intermediary, and whether the advantage is for the benefit of a Waltham Forest CCG employee or another person.

In Cases 4 to 6, it does not matter whether a Waltham Forest CCG employee knows or believes that the performance of the function or activity is improper.

Bribery of foreign public officials

Case 7 is where a Waltham Forest CCG employee bribes a foreign public official and intends (i) to influence that official in his/her capacity as a foreign public official and (ii) to obtain or retain a business or an advantage in the conduct of business. A foreign public official is someone who holds a legislative, administrative or judicial position of any kind or exercises a public function of a country outside the UK, or is an official or agent of a public international organisation.

The following paragraph will apply if any part of the organisation is considered as a 'commercial' one.

Failure of commercial organisations to prevent bribery

A corporate or partnership is guilty of a corporate bribery offence if an employee, agent, subsidiary or any other person acting on its behalf bribes another person intending to obtain or retain business or an advantage in the conduct of business for the corporate or partnership. For a definition of bribery, please refer to Cases 1, 2 and 7 above.

It should be the policy of a corporate or partnership not to tolerate any bribery on its behalf, even if this might result in a loss of business for it. Criminal liability must be prevented at all times.