



ANTI-FRAUD POLICY

1	POLICY DRAFTED BY:	INTEGRATED GOVERNANCE MANAGER
2	ACCOUNTABLE DIRECTOR:	DIRECTOR OF FINANCE
3	APPLIES TO:	ALL STAFF
4	COMMITTEE & DATE APPROVED:	AUDIT COMMITTEE, 31 JANUARY 2014
5	VERSION:	1.1
6	RELATED DOCUMENTS:	BRIBERY POLICY WHISTLEBLOWING POLICY CONDUCT AND CAPABILITY POLICY
7	DATE OF IMPLEMENTATION:	1 FEBRUARY 2014
8	DATE OF NEXT REVIEW:	31 JANUARY 2017

DOCUMENT CONTROL

Date	Version	Action	Amendments
23 01 14	1.1	Review by Director – Quality and integrated Governance	

1. Introduction

Islington CCG does not tolerate fraud.

The aim of the policy and procedure is to protect the property and finances of the NHS and of the stakeholders we work with.

Any person who dishonestly makes a false representation to make a gain for himself or another; or who dishonestly fails to disclose to another person, information which he is under a legal duty to disclose; or commits an abuse of their position; or acts contrary to the Fraud Act 2006, may be considered to have committed fraud.

2. Policies statement

Islington CCG's policies set out the organisation's standards and intentions, and are written with the aim of being as clear and comprehensive as possible. However, we operate in a dynamic and evolving work environment and attention should be paid to the spirit of the policy as well as the letter. Policies by themselves cannot guarantee effective behaviour or the delivery of key objectives. While they are designed to support the CCG, and the people working within it, our success depends on continuous, high quality effort by everyone the policy covers. Therefore thought must be given to good practice when applying or interpreting any of the CCG's policies, and you should read any guidance or supporting documentation that relates to this policy to help you do this. In addition, this policy should work in accordance with national and local guidance on child and adult safeguarding as applicable.

3. Purpose and Scope of the Policy

Islington CCG is committed to taking all necessary steps to counter fraud. To meet its objectives, it has adopted the seven-stage approach developed by NHS Protect:

- 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
- Effective methods of seeking redress in respect of money defrauded.

This policy sets out how the CCG will deal with detected or suspected fraud. Any detected or suspected instances of bribery should be reported as outlined in the Anti-Bribery Policy.

This policy relates to all forms of fraud and is intended to provide direction and help to staff identify suspected fraud. It is not intended to provide a comprehensive approach to preventing and detecting fraud. The overall aims of this policy are to:

- improve the knowledge and understanding about the risk of fraud within the organisation and its unacceptability;

BEFORE USING THIS POLICY ALWAYS ENSURE YOU ARE USING THE MOST UP TO DATE VERSION

- assist in promoting a climate of openness and a culture and environment where staff feel able to raise concerns sensibly and responsibly;
- set out responsibilities for the deterrence, prevention, detection and investigation of fraud;
- ensure appropriate sanctions are considered following an investigation of alleged fraud.

4. Who this policy applies to

The policy applies to all staff working at work with Islington CCG including (but not limited to) staff, joint appointments, members of the Governing Body, agency staff, contractors, and staff/staff of commissioning support organisations.

This policy applies to all areas of Islington CCG's work including its work with stakeholders. This includes work with organisations such as NHS England, local HealthWatch, the Local Authority, member practices etc.

It does not apply to employment related matters. How staff are treated at work, terms and conditions of employment, relationships with colleagues etc. These are covered by HR policies, such as the Grievance Policy, Work Life Balance Policy and the Induction, Development and Appraisal Policy.

5. Anti-fraud Policy

Absolute honesty and integrity should be exercised in dealing with NHS patients, assets, staff, suppliers other stakeholders.

The CCG will have procedures in place that reduce the likelihood of fraud/bribery occurring. These include Standing Orders, Prime Financial Policies, documented procedures, a system of internal control (including internal and external audit) and a system of risk assessment. In addition, the CCG seeks to ensure that a comprehensive anti-fraud and anti-bribery culture exists throughout the Trust via the appointment of a dedicated LCFS, in accordance with the NHS Secretary of State's Directions to NHS Bodies on Counter Fraud Measures that were re-issued in November 2004.

The CCG seeks to ensure that a comprehensive anti-bribery culture exists throughout the Trust through the Trust's standalone Anti-Bribery Policy which details the methods for reporting suspected bribery and the avoidance of bribery. This is reinforced through the appointment of a dedicated Senior Compliance Officer and LCFS.

It is expected that staff at all levels will lead by example in acting with the utmost integrity and ensuring adherence to all relevant regulations, policies and procedures.

It is the policy of the CCG to seek redress for any losses as a result of fraud.

6. Roles and Responsibilities

BEFORE USING THIS POLICY ALWAYS ENSURE YOU ARE USING THE MOST UP TO DATE VERSION

All staff have a personal responsibility to protect the assets of the Trust, including all buildings, equipment and monies from fraud, theft, bribery or corruption. Staff at all levels will lead by example in acting with the utmost integrity and ensuring adherence to all relevant regulations, policies and procedures.

Responsibility for the operation and maintenance of controls falls directly to line managers and requires the involvement of all staff. The CCG has a duty to ensure staff who are involved in or who are managing internal control systems receive adequate training and support in order to carry out their responsibilities

The Chief Officer

The Chief Officer is liable for failures in the CCG's system of internal controls.

Managers

Managers have a responsibility to ensure that an adequate system of internal control exists within their areas of responsibility and that controls operate effectively.

- 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
- Identify financially sensitive posts
- Ensure that controls are being complied with
- Contribute to the assessment of the risks and controls within their business area, which feed into the CCG's systems of internal control.

Director of Finance

The Director of Finance monitors and ensures compliance with the anti-fraud policy.

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

The Director of Finance will seek advice from any other appropriate person or stakeholder e.g. HR on the management of any investigation, in particular any investigation that many involve applying conduct and capability procedures.

The Director of Finance is responsible for reporting to the Audit Committee any actual or suspected cases of fraud, including the outcome of any investigations.

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

Staff

Staff must act in accordance with the CCG's Gifts, Sponsorship and Declaration of Interest policy.

All staff 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 staff 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 staff deal fairly and impartially with official matters
- be alert to the possibility that others might be attempting to deceive.

All staff 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.

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

Internal and External audit and the Local Counter Fraud Specialist

Any incident or suspicion that comes to Internal or External Audit's attention will be passed immediately to the Local Counter Fraud Specialist (LCFS).

Investigation of the majority cases of alleged fraud will usually be the responsibility of the LCFS. The LCFS will request the assistance of NHS Protect with high profile or complex cases.

The LCFS will:

- Ensure that the Director of Finance is kept apprised of all referrals/cases.
- In consultation with the Director of Finance and NHS Protect, will report any case to the Police as agreed.
- Report any case and the outcome of the investigation to NHS Protect and Director of Finance, and provide required reports to NHS Protect.
- Follow any incident or loss reporting requirements
- Ensure that other relevant parties are informed where necessary e.g. Human Resources
- Ensure that any system weaknesses identified as part of the investigation are followed up with management or Internal Audit.

The LCFS in consultation with the Director of Finance will review the strategic objectives contained within the assurance framework to determine any potential

fraud risks. Where risks are identified these will be included on the CCG's risk register so the risk can be proactively addressed.

7. Breaches of Policy

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

All instances of actual or suspected fraud must be reported immediately, in line with the provisions of the Whistleblowing Policy. 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.

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.

Recovery of any losses will always be sought by any reasonable and lawful means including civil proceeding and an application for a Confiscation Order under the Proceeds of Crime Act 2002.

8. Summary of the Fraud Act

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

BEFORE USING THIS POLICY ALWAYS ENSURE YOU ARE USING THE MOST UP TO DATE VERSION

means any representation as to fact or law, including a representation as to a person's state of mind.

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

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

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

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

Section 3: Fraud by Failing to Disclose Information

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

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

Section 4: Fraud by Abuse of Position

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

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

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

An employee of a software company who uses his position to clone software products with the intention of selling the products on would commit an offence under this section.¹

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.

Section 5: This section of the Act is 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

¹ 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.

used in fraud are: a computer program can generate credit card numbers; computer templates can be used for producing blank utility bills; computer files can contain lists of other peoples' credit card details or draft letters in connection with 'advance fee' frauds.

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

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

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

Section 10: This section of the Act is 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.