Section D

Counter Fraud Policy

This section deals with how staff must deal with suspected fraud and NHS Ayrshire & Arran's intended response to a reported suspicion of fraud.

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Item 1: Counter Fraud Policy

1. Introduction

1.1 The Economic Crime and Corporate Transparency Act 2023 (ECCTA) requires NHS Ayrshire and Arran to have "reasonable fraud prevention procedures" in place. The Board works closely with other organisations including National Services Scotland Counter Fraud Services (CFS) to combat fraud.

1.2 The policy supports the Counter Fraud Services - NHS Ayrshire & Arran Partnership Agreement. It reflects NHS Scotland's Counter Fraud Strategy 2023-26 including the adoption of NHS Scotland Counter Fraud Standards and provides guidance on the action to be taken where there is suspicion of fraud, theft or corruption.This may relate to employees, suppliers, contractors or other third party.

1.3 The Board has in place Standing Orders and Standing Financial Instructions (SFIs) including procurement operating procedures, internal controls and risk assessment systems to reduce the likelihood of fraud or theft.

1.4 The exact definition of theft, fraud or corruption is a statutory matter. For simplicity this policy will use the term fraud to refer to any act of deception with the intention of obtaining an advantage, avoiding an obliation or causing loss to another party. This includes bribery and theft where deception is involved.

1.5 The proper use of public funds is a basic principle of public services. All employees should be aware of governance procedures to protect against fraud, theft and other illegal acts involving corruption, dishonesty or damage to property

2. Public Service Values

2.1 High standards of corporate and personal conduct are required throughout the NHS. Scottish Government's Standards of Conduct, Accountability and Openness of NHSScotland sets out the following values:

Accountability: Actions by those who work for the organisation must be able to stand parliamentary scrutiny, public judgements on propriety and professional codes of conduct.

Probity: Absolute honesty and integrity should be exercised in dealing with NHS patients, staff, assets, suppliers and customers.

Openness: The organisation's activities should be sufficiently public and transparent to promote confidence between the organisation and its patients, staff and the public.

2.2 All individuals who work in the organisation should be aware of and act in accordance with these principles. In addition the Board expects and encourages a culture of openness between NHS bodies and the sharing of information in relation to fraud.

3. Board Policy and Legislation

3.1 NHS Ayrshire and Arran is committed to maintaining an honest, open and well intentioned atmosphere within the service and is committed to the deterence, detection and investigation of any fraud within the organisation.

3.2 The Board encourages anyone having reasonable suspicion of fraud to report the incident. It is the Board's policy that no staff member will suffer in any way as a result of reporting any reasonably held suspicions. For these purposes "reasonably held suspicions" shall mean any suspicions other than those which are groundless and/or raised maliciously.

Public Interest Disclosure Act (1998)

3.3 In addition, the Public Interest Disclosure Act (PIDA)protects staff who legitimately report suspected fraud. The disclosure must be made in good faith and staff must have reasonable grounds to believe that criminal offences such as fraud or theft have occurred or are likely to occur. Disclosure must not be made for personal gain.

3.4 Staff who suspect improper practices or criminal offences are occurring must report these to their Head of Department in writing. If the suspected improper practice involves that Head of Department the report should be made to a more senior officer or the nominated officer described below. Managers receiving notice of such offences must report them to the Fraud Liaison Officer.

3.5 Confidentiality must be maintained relating to the source of such reports.

Bribery Act (2010)

3.6 The Bribery Act created specific new offences including active bribery (offering) and passive bribery (receiving). All employees and individuals acting on or behalf of The Board are actively encouraged to report any suspected bribery. This policy should be read in conjunction with Corporate Governance Section C - Standards of Business Conduct for NHS Staff

3.7 **The Economic Crime and Corporate Transparency Act (2023)**

Economic Crime and Corporate Transparency Act (ECCTA) requires NHS Ayrshire and Arran to have "reasonable fraud prevention procedures" in place. The Board will work closely with other organisations including National Services Scotland Counter Fraud Services (CFS) to combat fraud.

4. Roles and Responsibilities

4.1 The Chief Executive as Accountable Officer is responsibility for ensuring adequate controls in place to deter, prevent and detect fraud, bribery and corruption. Further that fraud awareness is promoted within The Board. Responsibility for the routine delivery of such activities is delegated to the Fraud Liaison Officer.

4.2 The Fraud Liaison Officer (FLO) acts as first point of contact for staff or members of the public reporting suspicions of fraud. They are the primary contact between the Board and Counter Fraud Services (CFS) with responsibility for reporting suspicions of fraud, coordinating investigations and promoting an anti-fraud culture.

4.3 The Fraud Champion is a senior strategic role that will support, promote and strengthen the counter fraud agenda at executive level to ensure an anti-fraud culture is embedded throughout the Board. CEL 2013 (11) provides formal direction on this Non Executive or Executive Director role.

4.4 The Audit Committee will take a proactive stance led by the Fraud Champion. Members will routinely consider fraud, ensure appropriate measures are in place, note all referrals submitted to CFS and diligently monitor progress and action.

4.5 The Director of Finance will inform and consult with the Chief Executive, the Board Chair and the Chair of the Audit and Risk Committee in cases where the loss may be above the delegated limit or where the incident may lead to adverse publicity.

4.6 The Human Resource Director shall advise those involved in an investigation on matters of employment law and in other procedural matters, such as disciplinary and complaints procedures.

4.7 The Scottish Government Health and Social Care Directorate will be informed where any incident could be subject to either local or national controversy and publicity before the information is subjected to publicity.

4.8 National Services Scotland (NSS) will lead the post payment verification program review and validation of payments to Family Health Service contractors in partnership with the Board.

4.9 All Senior Officers within the Board are responsible for ensuring staff are aware of fraud reporting arrangements and that these are implemented at any time that there is a suspicion of potential fraud. All NHS Ayrshire and Arran staff have a responsibility to protect the Board's assets. This includes information, goodwill and property.

1.6 Internal Audit has a duty to evaluate the systems of control operating across the Board. This function is to identify potentional weaknesses in systems that may give rise to error or fraud. It does not include the detection of fraud.

Item 2: Response Plan

1. Introduction

1.1. This section describes the Board's procedures when responding to a reported suspicion of fraud. It is intended to provide guidance to allow for evidence gathering and collation in a manner that will facilitate informed initial decision, while ensuring that evidence gathered will be admissible in any future criminal or civil action. Each situation is different; therefore the guidance will need to be considered carefully in relation to the actual circumstances of each case before action is taken.

1.2. It is necessary to categorise the irregularity prior to determining an appropriate course of action. Two main categories exist:

- Theft, burglary and isolated opportunist offences
- Fraud, corruption and other financial irregularities

1.3. The former will be dealt with directly by the Police whilst the latter will be reported to NHS Counter Fraud Services by the Fraud Liaison Officer.

1.4. Under no circumstances should a member of staff speak or write to representatives of the press, TV, radio or to another third party about a suspected fraud without the express authority of the Chief Executive. Care must be taken that nothing is done which could give rise to an action for slander or libel.

2. Reporting Fraud

2.1 The Fraud Liaison Officer is the main point of contact for the reporting of any suspicion of fraud, theft or corruption. In their absence, the Deputy Fraud Liaison Officer will act as nominated officer. Contact details are provided in Annex A. For incidents involving any Executive Directors the nominated officer shall be the NHS Board Chair.

2.2 The nominated officers shall be trained in the handling of concerns raised by staff. Any requests for anonymity shall be accepted and should not prejudice the investigation of any allegations. Confidentiality should be observed at all times.

2.3 All reported suspicions must be investigated as a matter of priority to prevent any further potential loss to the Board.

2.4 The nominated officer shall maintain a log of any reported suspicions. The log will detail the review process, any actions taken and conclusions reached. Regular updates are scheduled to The Audit and Risk Committee.

2.5 The nominated officer (FLO) should consider the need to inform the Counter Fraud Champion, Board Members, Chief Internal Auditor, External Audit, the Police or Counter Fraud Services. They should take cognisance of the following guidance:

- Director of Finance and Chief Executive to be informed at the first opportunity where the loss may exceed the delegated limit or the incident may lead to adverse publicity.

- Counter Fraud Services (CFS) to be informed immediately of all suspected fraud

- CFS are the specialist reporting agency for fraud within NHS Scotland. They assess each referral and advise on how to proceed. Where they consider a criminal offence may have occurred a meeting will be convened of CFS, FLO, Organisational & Human Resources and a senior departmental manager.

- The meeting will identify a named CFS investigator and establish the Board's team to oversee the investigation. On completion CFS may report their findings to the Procurator Fiscal's office who assess and carry out criminal prosecutions.

  Within NHS Scotland bodies only Counter Fraud Services and its senior managers can authorise covert surveillance under the Regulation of Investigatory Powers (Scotland) Act 2000.

2.6 Senior Board managers in conjunction with the HR Director remain responsible for decisions concerning the suspension of employee(s) suspected of fraud. Action must be taken on a case by case basis taking into account; the desire of CFS to obtain evidence of the suspected fraud and launch a successful criminal prosecution; the extent of any continuing loss to the Board and; any potential impact on patient care. Where the suspected fraudulent actions of an employee pose a risk to patients this consideration must be the paramount factor in any decision on leaving the employee in post.

3. Investigations

3.1 Where Counter Fraud Services advise that they do not consider the matter referred to them constitutes a criminal offence for which sufficient evidence could be obtained, the matter will revert to Board management for action. This action will be determined in accordance with the Board's Management of Employee Conduct Policy.

3.2 Where Counter Fraud Services take on a referral they will carry out an investigation using appropriate techniques and produce a report outlining their conclusions and recommendations for action. This will be passed to appropriate management to produce a management response and this will be included in the final report. Where the CFS investigation indicates a criminal offence has occurred this will be reported to the appropriate Procurator Fiscal for consideration of criminal prosecution.

3.3 Counter Fraud Services will keep the Board's nominated officer informed of the progress and outcome of any court cases based on referrals for fraud in the Board's area.

3.4 Even if the evidence of the suspected fraud is not sufficient for the Procurator Fiscal to commence or secure a criminal conviction which requires evidence "beyond all reasonable doubt" it may still be sufficient to justify an internal disciplinary hearing for gross misconduct or a civil recovery for losses sustained. If this is the case this is likely to be one of the recommendations in the CFS report and where this is recommended the evidence gathered by CFS will be made available to support the Board's case.

3.5 Where recovery of a loss to the Board, arising from any act (criminal or non-criminal) is likely to require a civil action, it will be necessary to seek legal advice through the Central Legal Office, which provides legal advice and services to NHS Scotland.

3.6 The conduct of internal disciplinary action will be assigned or delegated to the Director of People Organisational Development or her delegated senior officers who shall gather such evidence as necessary to present to a Disciplinary Hearing.

4. Disciplinary/Dismissal Procedures

4.1 The employee(s), who is/are the subject of any investigation, should be suspended pending the results of any investigation. This should be carried out in line with the Board's Employee Conduct Policy.

4.2 The disciplinary procedures of the Board have to be followed in any disciplinary action taken by the Board toward an employee (including dismissal).

4.3 Where the fraud involves a Family Health Services Practitioner the Board should consider reporting the matter to the relevant professional body for action.

5. Disclosure of Loss from Fraud

5.1 Guidance on the referring of losses and special payments is provided in CEL10 (2010). A copy of the Fraud report in an appropriate format must be submitted to the Scottish Government Health and Social Care Directorates. External Audit should be notified of any loss as part of their statutory duties. The Register of Losses and condemnations submitted annually to the Audit and Risk Committee will include any loss with appropriate description.

5.2 Management must take account of the permitted limits on writing off losses, as outlined in circular CEL10 (2010).

6. Police Involvement

6.1 It shall normally be the policy of the Board that wherever a criminal act is suspected the matter will be notified to the Police. For suspected thefts this will be done by operational managers following discussion with the Board's Fraud Liaison Officer. For suspected frauds or corruption reported to CFS it will be their responsibility to notify the police, if required, to progress their investigation e.g. to execute a search warrant or if it becomes apparent that the investigation require Police involvement.

7. The Law and its Remedies

7.1 Criminal Law

The Board shall refer all incidences of suspected fraud to the NHS Counter Fraud Services for consideration as to whether an investigation by their officers could gather sufficient evidence to allow the Procurator Fiscal to raise a criminal case through the courts.

7.2 Civil Law

The Board shall refer all incidences of loss through proven fraud/criminal act to the CLO for opinion, as to potential recovery of loss via Civil Law action

Annex 1 Key Contacts

Board Contacts

Title	Name	Designation	Contact
Fraud Liaison Officer (FLO)	Judith Aspinwall	Financial Controller	**aa.flo**@aapct.scot.nhs.uk tel: 07800 720277
Depute Fraud Liaison Officer	Sandra Murdoch	Financial Services Manager	sandra.murdoch2@aapct.scot.nhs.uk
Counter Fraud Champion	Mrs Jean Ford	Non-Executive Member	sandra.murdoch2@aapct.scot.nhs.uk
Whistleblowing Champion	Dr Sukhomoy Das	Non-Executive Member & Whistleblowing Champion	aa.speakup@aapct.scot.nhs.uk

External Contacts

Crimestopper hotline 08000 15 16 28 or using the online form.

Counter Fraud Services Report Fraud CFS Website