



Section D

Counter Fraud Policy and Action Plan

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 One of the basic principles of public sector organisations is the proper use of public funds. It is therefore important that all those who work in the public sector are aware of the risk of and the means of enforcing the rules and procedures against fraud/theft and other illegal acts involving corruption, dishonesty or damage to property.
- 1.2 The purpose of this document is to provide guidance to employees on the action, which should be taken when fraud, theft or corruption is suspected. Such occurrences may involve employees of NHS Ayrshire & Arran, suppliers/contractors or any third party. This document sets out the Board's policy and response plan for detected or suspected fraud. It is not the purpose of this document to provide direction on the prevention of fraud.
- 1.3 Whilst the exact definition of theft, fraud or corruption is a statutory matter the following working definition is given for guidance:
 - Theft is removing property belonging to NHS Ayrshire & Arran, its staff or patients with the intention of permanently depriving the owner of its use, without their consent.
 - Fraud or corruption broadly covers deliberate material misstatement, falsifying records, making or accepting improper payments or acting in a manner not in the best interest of the Board for the purposes of personal gain.
 - For simplicity this document will refer to all such offences as "fraud", except where the context indicates otherwise
- 1.4 The Board has procedures in place, which reduce the likelihood of fraud/theft occurring. These include standing orders, standing financial instructions, accounting procedures, financial and procurement operating procedures, a system of internal control, a system of risk assessment and an annual fraud prevention plan. The Board has a post payment verification system on Family Health Service expenditure involving review in conjunction with Practitioner Services Division.
- 1.5 It is the responsibility of the Board and its management to maintain adequate and effective internal controls, which deter and facilitate detection of any fraud. The role of Internal Audit is to evaluate these systems of control. It is not the responsibility of Internal Audit to detect fraud, but rather to identify weaknesses in systems that may give rise to error or fraud.
- 1.6 The contents of the Policy have been set out as follows:
- 1.7 Section 2 sets out the Public Service Values that must underpin the activities and culture of the Board.
- 1.8 Section 3 sets out the Board's policy on dealing with fraud.
- 1.9 Section 4 sets out the roles and responsibilities of Board's officers.

- 1.10 Section 5 is the response plan that officers will follow where a fraud is reported.
- 1.11 Finally, Section 6 advises on the pursuit of legal remedies including options for recovery of any sums.
- 1.12 Appendix 1 gives sources of further guidance on fraud.

2. Public Service Values

2.1 Corporate Governance is the term used to describe the Board's overall control system. It details how we direct and control our functions. The system should reflect the principles of good governance summarised below:

- focus on purpose and outcome
- clear functions and roles for the organisation and board members
- values of integrity, trust, openness, equality and diversity
- informed, transparent decision making and managing risk
- developing the capacity and capability of the organization
- engaging stakeholders and making accountability real.

2.2 All those who work in the organisation should be aware of, and act in accordance with, the above principles. In addition, the Board will expect and encourage a culture of openness between NHS bodies and the sharing of information in relation to any fraud.

3. Board Policy and Public Interest Disclosure Act

- 3.1 The Board is committed to maintaining an honest, open and well intentioned atmosphere within the service. It is committed to the deterring, detection and investigation of any fraud within NHS Ayrshire & Arran.
- 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.
- 3.3 In addition, the Public Interest Disclosure Act protects staff who legitimately report suspected fraud by employers or colleagues. 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. The 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 as described in 5.2.1 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.

4. Roles and Responsibilities

- 4.1 Responsibility for receiving information relating to suspected frauds has been delegated to the Fraud Liaison Officer. They shall also be responsible for informing third parties such as NHS Counter Fraud Services, Internal and External Audit. The Director of Finance shall 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.
- 4.2 Where a fraud is suspected within the service, including the Family Health Services i.e. independent contractors providing Medical, Dental, Ophthalmic or Pharmaceutical Services, the Fraud Liaison Officer will make an initial assessment and, where appropriate, advise Counter Fraud Services (CFS) at NHS National Services Scotland.
- 4.3 The Human Resource Director shall advise those involved in the investigation in matters of employment law and in other procedural matters, such as disciplinary and complaints procedures.
- 4.4 Where the incident is thought to be subject to either local or national controversy and publicity then the Board and the Scottish Government Health and Social Care Directorates should be notified before the information is subjected to publicity.
- 4.5 It is the responsibility of the Board's senior officers to ensure that their staff are aware of the above requirements and that appropriate reporting arrangements are implemented.
- 4.6 It is the responsibility of all staff to protect the assets of the Board. Assets include information and goodwill as well as property.
- 4.7 It shall be necessary to categorise the irregularity prior to determining the appropriate course of action. Two main categories exist:
- Theft, burglary and isolated opportunist offences; following discussion with the Fraud Liaison Officer, the relevant operational manager should report this to the local police. Any losses occasioned as a result of these should be included on a Losses and Compensation Form submitted to the Finance Department. Where theft or loss of drugs are involved additional procedures are in place as indicated by the Board's policy on misappropriation of medicine which is included as part of Appendix 1 to this document.
 - Fraud, corruption and other financial irregularities.
- 4.8 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.

Item 2: Response Plan

1. Introduction

- 1.1 The following sections describe the Board's procedures when responding to a reported suspicion of fraud/theft. It is intended to provide guidance, which 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 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/theft 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 A “nominated officer” will be appointed as the main point of contact for the reporting of any suspicion of fraud, theft or corruption. For NHS Ayrshire & Arran this officer shall be the Fraud Liaison Officer. In the absence of the Fraud Liaison Officer, the Deputy Fraud Liaison Officer would act as nominated officer, contact details for the above officers can be found on the Board’s Intranet “Athena” under Finance/Counter Fraud. 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 document with reasons the decision to take further action or to take no further action. The log will also detail any actions taken and conclusions reached. This log will be subject to review by Internal Audit.
- 2.5 The nominated officer should consider the need to inform the Board, Chief Internal Auditor, External Audit, the Police and/or Counter Fraud Services of the reported incident. In doing so, they should take cognisance of the following guidance:
- Inform and consult the Director of Finance and the Chief Executive at the first opportunity in all cases where the loss may exceed the delegated limit (or such lower limit as the Board may determine) or where the incident may lead to adverse publicity.
 - The nominated officer shall prepare a quarterly report to the Audit and Risk Committee broadly outlining the nature of new cases of fraud/suspected fraud and the progress in concluding previously reported cases.
 - Counter Fraud Services should be informed immediately of all suspected frauds by the nominated officer i.e., Fraud Liaison Officer or Deputy.
 - Counter Fraud Services will assess the nature of matters referred to them and advise Boards on how they propose to proceed. Where they consider a

criminal offence has occurred, they will ask the Board to convene a meeting of CFS, Fraud Liaison Officer, Organisational and Human Resources, department manager and a senior manager from the department concerned. This meeting will establish the Board's team to oversee the investigation and identify the investigator from Counter Fraud Services and his line manager. The investigation will be carried out by CFS personnel. It should be noted that NHS Counter Fraud Services are the specialist reporting agency for the reporting of all fraud within NHS Scotland to the Procurator Fiscal's office who carry out criminal prosecutions.

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

- 2.6 It remains the responsibility of Board senior managers, in conjunction with the relevant HR manager to decide on action concerning the suspension of any employee(s) suspected of fraud. Such decisions 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**Further Guidance on Fraud**

Further information relevant to forming a policy on the response to fraud can be found in the following:

Title	Publisher	Contents
Protecting the Public Purse	Audit Commission	Fraud and Corruption prevention, detection and responses
Fraud and Corruption Manual	Audit Commission	Prevention and Audit strategies
Opportunity Makes a Thief	Audit Commission	Computer abuse survey, including fraud, theft, sabotage, hacking etc.
Guidance on Losses and Special Payments	NHSS	Instructions on dealing with losses and special payments including delegation limits and when to inform NHSS, SGHSCD, External Auditors and Police.
Code of Conduct and Accountability Code of Practice on Openness	NHSS	Defines Public service values and the basis on which NHS bodies should fulfil the duties and responsibilities conferred on them.
The Investigation of Fraud in the Public Sector	CIPFA	Guidance for Internal Auditors on fraud investigation.
Procedures where Criminal Offences are Suspected	NHSS Circular HDL (2005)5	Procedures to follow in instances where criminal offences are suspected.
FHS (FHS) Suspected Frauds	NHSS Circular MEL (2000) 28	Procedure to follow in respect of Family Health Services. Annex A has been superceded by HDL (2005) 5.
Enhance Reporting of NHS Frauds and Attempted Fraud	CEL10 (2010)	Revised form SFR18 and delegated limits.
Strategy to combat financial crime in NHS Scotland bodies	CEL11 (2013)	Updates on expected Board actions to combat fraud