



THE STATE HOSPITALS BOARD FOR SCOTLAND

THEFT, FRAUD AND OTHER FINANCIAL IRREGULARITIES POLICY AND RESPONSE PLAN

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Staff are advised to always check that they are using the correct version of any policy/ procedure/ guidance rather than referring to locally held copies.

The most up to date version of all State Hospital policies/ procedures/ guidance can be found on the intranet: <http://intranet.tsh.scot.nhs.uk/Policies/Policy%20Docs/Forms/Category%20View.aspx>

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1 INTRODUCTION

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 and means of enforcing the rules against theft, dishonesty, fraud and similar illegal acts, e.g. damage to Board property.

NHS Scotland's policy on countering fraud and other irregularities has been laid out in the Health Board Partnership Agreement 2019-22. The Partnership Agreement forms a key element of the Scottish Government's determination to reduce fraud against NHSScotland. In January 2008, the Scottish Government published its "Strategy to Counter NHS Fraud in Scotland" and this policy follows the principles and guidance set out in that document. In June 2015, the Scottish Government also published its strategy "Protecting Public Resources in Scotland – A Strategic Approach to Fighting Fraud and Error" which complements and supports the 2008 NHS strategy document.

Counter Fraud Services have developed an on line learning tool through LearnPro for employees to use. With effect from 1 April 2013 all hospital employees have access to LearnPro.

The NHS Scotland Counter Fraud Services (CFS) has been created specifically to assist all Boards in their efforts to reduce losses through theft, fraud, bribery, corruption and embezzlement and this document sets out the Board's policy and action plan to achieve such a reduction. The Board recognises that every £ of fraud prevented or recovered means increased funding for patient care. The Board has procedures in place that reduce the likelihood of fraud occurring. These include Standing Orders, Standing Financial Instructions (SFI), operational procedures, a system of internal control and risk assessment. In addition, the Board will work with CFS to promote a fraud awareness culture.

The Board has signed the Partnership Agreement 2019-22 with CFS, which outlines what must happen in the event of a fraud or other irregularity being discovered, and what the Board and CFS will do to actively counter the threat of fraud and corruption. This can be found on the SHOW or CFS websites or directly using the link below

[https://www.sehd.scot.nhs.uk/dl/DL\(2019\)04.pdf](https://www.sehd.scot.nhs.uk/dl/DL(2019)04.pdf)

This document is intended to provide detailed direction and help to those staff who find themselves dealing with cases of suspected theft, fraud or bribery. It sets out a response framework, which centres on immediate discussions and agreement with CFS in respect of how each case will be taken forward. On behalf of the Board, CFS will take forward any relevant case (see Appendix 1 - List of Specified Offences) which has the potential for criminal prosecution and staff need to be aware of this, and of their responsibilities in the event that a criminal prosecution is not the chosen route.

2 PUBLIC SERVICE VALUES

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 Code of Conduct published by the Scottish Government Health Department (SGHSCD) in April 1994 (revised 2004) set out the following public service values:

- Accountability:** Everything done by those who work in the organisation must be able to stand the tests of parliamentary scrutiny, public judgments 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.

All those who work in the organisation should be aware of, and act in accordance with, these values.

3 THE BOARD'S POLICY

The Board is committed to the NHS Scotland policy on countering fraud and corruption and to the public service values outlined above.

The Board will maintain an honest and open culture and wishes to encourage anyone having suspicions of theft, fraud, bribery or embezzlement to report them without delay. It is also the Board's policy, which will be rigorously enforced, that all members of staff can be confident that they will not suffer in any way as a result of reporting suspicions held in good faith i.e., suspicions other than those that are raised maliciously.

4 ROLES AND RESPONSIBILITIES

4.1 Chief Executive

As Accountable Officer, the Chief Executive has the responsibility for countering fraud in its broadest terms. Accountable Officers are required to have adequate arrangements in place for the deterrence, prevention and detection of fraud. In line with central guidance, these arrangements should encompass robust systems of preventative and detective controls to reduce the risk of fraud and contribute to the promotion of an anti-fraud culture. The Accountable Officer should also use CFS to assist in the investigation of actual, and alleged, losses involving patients' funds where evidence exists of systematic fraud.

In October 2008 the SGHSCD issued circular CEL 44 (2008) (see Appendix 3) noting that all frauds must be reported to CFS regardless of who the suspect or victim is, whether it is prosecuted criminally, civil action or by discipline, or whether the fraud was actual or attempted. The Accountable Officer must ensure that systems are put in place to notify CFS of all reports of fraud, so that complete records of fraud against NHSScotland are available (see Appendix 3 – Reporting).

4.2 Finance Director and Fraud Liaison Officer

The Chief Executive may delegate the day-to-day responsibility for the management of individual cases to the Board's Finance Director and Chief Internal Auditor. In the case of theft, the Finance Director will report the suspected crime directly to the police who will carry out the appropriate investigations.

Health Boards have nominated a senior officer as Fraud Liaison Officer (FLO). The FLO will liaise with CFS on all matters relating to NHSScotland fraud and will cooperate with proactive

enquiries. The FLO will have a duty to report/receive, on the Health Board's behalf, all allegations of fraud to/from CFS and to decide with them whether the allegation will be taken forward for potential criminal prosecution, and/or as a disciplinary or civil case. (See SGHSCD circular CEL 03 (2008) for roles and responsibilities of Counter Fraud Champions and Fraud Liaison Officers). The Fraud Liaison Officer (FLO) is the Acting Head of Financial Accounts.

Where CFS is undertaking a case on behalf of the Board no further action shall be taken by the Finance Director, the Fraud Liaison Officer, the Human Resources Director, or any other Board officer without consultation with CFS. This is necessary to maintain the integrity of the investigation.

4.3 Fraud Champion

The Scottish Government's Strategy asks the Board to appoint an executive or nonexecutive director to be the Counter Fraud Champion to help with the process of changing attitudes to fraud within the organisation. The role of the Counter Fraud Champions is vital in promoting and promulgating the communication of the counter fraud message to staff, and delivering the impetus to create an anti-fraud culture within the Board. In this respect, the Counter Fraud Champions Network has been set up to share local ideas and initiatives to meet the challenge of beating fraud. The Fraud Champion is a Non-Executive Director. (See intranet site for current Fraud Champion).

4.4 Counter Fraud Services

CFS, in partnership with the Board, will work actively to promote an anti-fraud culture, the aim being that NHS staff, patients, FHS practitioners, contractors or suppliers and the wider public will come to regard fraud against NHSScotland as unacceptable. CFS carry out both prevention work (raising awareness; delivering and/or facilitating training; building relationships and developing networks; proactive exercises/investigations) and investigations (against perceived, alleged, or actual fraud) and will provide support and facilitation for the counter Fraud Champions in their work.

The role of CFS, in partnership with The Board, is to:

- reduce fraud through proficient education and awareness initiatives, deter fraud through effective interventions and prevent fraud through targeted proactive projects;
- proactively detect fraud;
- investigate alleged cases of fraud by staff, patients, primary care practitioners, contractors or suppliers, third parties and to pursue vigorously all cases to an appropriate conclusion;
- where necessary, undertake directed surveillance and CHIS management in relation to fraud in accordance with RIP(S)A;
- provide specialist advice to assist in the formulation of national and UK wide counter fraud policy, regulations and guidance; and
- assist in the recovery of resources fraudulently or corruptly obtained from NHS Scotland.

Where CFS investigates a case of fraud, a final report outlining the case will be issued to the Board. Where appropriate, a range of recommended civil or disciplinary actions and an estimate of potential civil recoveries will be included in the report. On occasions, CFS will also include counter fraud recommendations in reports. The Board has a responsibility to make a management response to any recommendations made in the reports. In the case of criminal prosecution, a Standard Prosecution Report will be sent directly to the Procurator Fiscal by CFS on behalf of the Board.

In any case where there is disagreement between the Board and CFS over the application of the full range of sanctions that may be recommended in the CFS report, then:

- the Health Board's Accountable Officer must submit his/her concerns to the SGHSCD Finance Director, copying the letter to the CFS Head of Service
- CFS must submit its concerns to the Health Board's Accountable Officer, copying the letter to the SGHSCD Finance Director

The CFS Head of Service has a professional responsibility to the Accountable Officer of the Board for the conduct of investigations on their behalf and the provision of subsequent advice. Information concerning work carried out on behalf of a client body may only be disclosed outwith the confines of CFS with the express permission of the Board, except for disclosure to the SGHSCD, other UK health counter fraud bodies where relevant, the appointed auditor, or the Crown Office and Procurator Fiscal Service or Police. The CFS Head of Service also has the right of access, in exceptional cases (those involving allegations against the most senior staff in the Board), to the SGHSCD Finance Director.

4.5 Internal Audit working with Counter Fraud Services

The role and responsibilities of the Board's internal audit function and CFS are shown in the Memorandum of Understanding with Internal Audit. See link to document below:

[http://adsp02/Departments/Finance/Documents/IA Memorandum of Understanding.pdf](http://adsp02/Departments/Finance/Documents/IA%20Memorandum%20of%20Understanding.pdf)

4.6 Human Resources working with Counter Fraud Services

The roles and responsibilities of the Board's Human Resources function and CFS are shown in the Human Resources/CFS Memorandum of Understanding. The Human Resources Director shall ensure that those involved in the investigation are advised in matters of employment law and in other procedural matters, such as disciplinary and complaints procedures, as required. See link to document below:

[http://adsp02/Departments/Finance/Documents/HR Memorandum of Understanding Feb2013.pdf](http://adsp02/Departments/Finance/Documents/HR%20Memorandum%20of%20Understanding%20Feb2013.pdf)

4.7 Employees Responsibility

All staff have a duty to protect the assets of the Board, which include: information, physical property and cash. The Board will maintain an honest and open culture and wishes to encourage anyone having suspicions of theft, fraud, bribery, corruption or embezzlement to report them without delay.

4.8 National Fraud Initiative (NFI)

The National Fraud Initiative (NFI) in Scotland is a counter-fraud exercise led by Audit Scotland, assisted by the Cabinet Office. It uses computerised techniques to compare information about individuals held by different public bodies, and on different financial systems and databases, to identify circumstances (matches) that might suggest the existence of fraud or error.

The NFI allows:

- public bodies to investigate these matches and, if fraud or error has taken place, to stop payments and attempt to recover the amounts involved
- auditors to assess the arrangements that the bodies have put in place to prevent and detect fraud, including how they approach the NFI exercise itself

The Board participates in this exercise which is carried out every 2 years. The Acting Head of Financial Accounts and Human Resources Manager are the named contacts for the NFI exercise.

5 PUBLIC INTEREST DISCLOSURE ACT 1998

As noted in the policy statement, the Board will maintain an honest and open culture and wishes to encourage anyone having suspicions of theft, fraud, corruption or embezzlement to report them without delay. The Board is required to provide a secure environment for staff, practitioners and patients to be able to report suspected frauds and the Board's [Whistleblowing Policy](#) is outlined for staff within the Board's Fraud Action Plan, intranet and staff leaflets. The Human Resources Director is the responsible officer in relation to whistle blowing within the State Hospital.

A useful reference point is the Partnership Information Network (PIN) Guideline on Dealing with Employee Concerns. Further information is also available on the Public Concern at Work website www.pcaw.co.uk.

Guidance has been issued by Audit Scotland to organisations recommending actions to be taken when staff suspect that fraudulent activity is being perpetrated. This guidance takes the form of booklets for managers and staff entitled 'Don't turn a blind eye'. Further information is also available on www.whistleblowing.org.uk. The Fraud Liaison Officer is authorised to receive enquiries from staff "in confidence" and anonymously. The FLO is responsible for the decision as to whether the matter raised, should be reported to the Finance Director and/or the Chair of the Audit Committee. The Board's (external) Appointed Auditor is also so authorised.

A free, confidential phone line, 0800 008 6112, for NHS staff who wish to raise any concerns about practices in NHSScotland became effective from 2 April 2013. The National Confidential Alert Line for NHS employees will provide an additional level of support for staff.

The line will be delivered by Public Concern at Work, an independent organisation, to ensure confidentiality and impartiality. Any concerns that employees raise will be then passed on to the employer or the relevant regulatory organisation for investigation.

6 REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000

The use of covert surveillance or covert human intelligence sources by public authorities in Scotland is strictly controlled by the provisions of RIP(S)A. The Common Services Agency (the official name for National Services Scotland) is a named authority under RIP(S)A. The Director of P & CFS and the Head of CFS, may authorise directed surveillance and the use of covert human intelligence sources (CHIS) in respect of activities affecting NHSScotland. (See HDL (2003) 30 Regulation of Investigatory Powers (Scotland) Act 2000), CEL 40 (2010) Regulation of Investigatory Powers (Scotland) Act 2000 and SSI 2014/339 the Regulation of Investigatory Powers (Authorisation of CHIS) (Scotland) Order 2014).. Under this HDL, all cases of potential criminal NHS fraud (as listed in Appendix 1 – Fraud Related Offences) must be referred to the CFS. Where appropriate CFS will authorise and conduct directed surveillance and the use of CHIS on behalf of the Board.

On advice from the Surveillance Commissioner and on the grounds of the health and safety of its employees and its duty of care for any CHIS, should CFS use its powers under RIP(S)A, it will not normally inform the Board until after the directed surveillance or covert human intelligence source work has been completed. However, this would not be the case at The

State Hospital due to our security arrangements and where additional surveillance equipment requires to be installed to allow this to take place. The exception would be where CCTV is being utilised for the purpose of a specific investigation, in such a manner likely to result in the obtaining of private information about a person and otherwise than by way of an immediate response to events or circumstances, which would be done with the cooperation of the FLO.

Where the Board are considering the use of directed surveillance or the use of CHIS in cases which do not involve fraud which fall within the remit of CFS, in connection with public safety or the prevention of disorder, or for the purposes of protecting public health, they should contact the appropriate public body as outlined in HDL (2003) 30. This will normally be Police Scotland. However, CFS may be able to assist the Board in certain instances, for example where there has been a theft of property.

The CFS website (secure area) has further guidance for Boards on how to ensure directed surveillance is not undertaken by their staff inadvertently, leaving the Board potentially open to legal challenge or allegations in relation to the infringement of Article 8 of the Human Rights Act 1998 – The right to respect for private and family life and/or breach of the 1998 Act. Health Boards should also consult their Data Protection Officer to ensure that all surveillance (including CCTV and monitoring of employee emails/internet usage) and other activities is carried out in accordance with the 1998 Act and all relevant Codes of Practice.

All investigations undertaken by CFS investigators will be conducted in compliance with relevant extant legislation including to the extent applicable the Criminal Procedure (Scotland) Act 2016, the Criminal Justice and Licensing (Scotland) Act 2010, the Investigatory Powers Act 2016 (“IPA”), the Regulation of Investigatory Powers (Scotland) Act 2000 (“RIP(S)A”), the Data Protection Act 2018, the General Data Protection Regulation (Regulation (EU) 2016/679 and 2016/680) and all relevant Regulations and Codes of Practice, recognising the considerations of the Human Rights Act 1998.

7 SCOTTISH GOVERNMENT HEALTH AND SOCIAL CARE DEPARTMENT (SGHSCD) GUIDANCE

The SGHSCD guidance on financial control procedures when criminal offences are suspected is provided within the Partnership Agreement, specifically:

- in cases of theft, where there are reasonable grounds for thinking that an item of property, including cash, has been stolen, the Finance Director should report the details to the police
- in cases of suspected fraud, embezzlement, bribery and other financial irregularities, preliminary enquiries should be carried out with as much speed as possible. Restitution of funds or property is not a reason for withholding information or failing to report the facts. At the very early stages of a case of suspected fraud, which includes: fraud involving patient funds, the CFS must be contacted to discuss whether the case will be taken forward criminally and/or through discipline and/or civil recovery. Where a fraud may also affect other NHS bodies, the board should inform the Scottish Government so that this information may be disseminated appropriately
- **all cases** of unusual or significant incidents involving patients’ funds should be reported directly to the Scottish Government, irrespective of the investigation route
- where the nature of the alleged offence or the position of the person involved could give rise to national or local publicity, the SGHSCD should also be informed
- where preliminary investigations suggest that prima facie grounds exist for believing that a criminal offence has been committed, the Board and the CFS must decide if criminal prosecution would be an appropriate route. The norm is that all such cases should be considered for reporting to the procurator fiscal, however where both the Board and the CFS agree it is not in the public interest, generally on the grounds of low value, the case

- may be taken forward through discipline and/or civil recovery routes
- the Board and the CFS must be prepared to justify all such decisions to the appointed auditor. Breach of trust must be taken into account in these considerations, i.e. being of low value does not automatically preclude a case from being notified to the procurator fiscal. Where there is doubt as to whether a prima facie case for prosecution exists, the CFS will contact the appropriate Procurator Fiscal or Crown Office to obtain advice
- in any event, the CFS should be contacted before any overt action is taken which may alert the suspect and precipitate the destruction or removal of evidence or the dissipation of assets. This includes taking action to stop a loss or tighten controls
- where Boards and the CFS are undertaking pro-active exercises in areas of known fraud risk, officers and directors must provide assistance and such data as is required to ensure the success of these operations

8 THE REPORTING FRAMEWORK – CEL 18(2009)

CEL 44 (2008) sets the required reporting standards in SFR 18 (Scottish Financial Return). The format of the SFR 18 form was changed to accommodate this and to improve reporting of all relevant items. (SFRs form part of the Board's annual accounts). The purpose of enhanced recording and reporting will be to enable the Scottish Government and NHS bodies to better understand the scale and types of identified NHS frauds, the categories within which these fall, the amounts involved, where applicable (since not all frauds/attempted frauds reported will have an attributable cost), and recoveries made.

CFS will issue a quarterly report to the Board summarising any new and current cases and highlighting new types of frauds. CFS will produce, through its final quarterly report, an annual review of its activities, which will summarise the year's work. The review will serve to highlight and warn of different types of fraud and will be used, as far as possible, to promote the counter fraud message to a wide readership.

CFS will produce, via a balanced scorecard, a set of performance indicators on an annual basis including:

- number of cases referred to Procurators Fiscal
- number of cases referred to discipline/Tribunal/professional body
- number of cases referred for civil recovery
- average time to complete case
- value of recoveries
- value of identified losses
- value of potential annual savings
- number of patient exemption claims checks completed
- number of penalty charges issued
- number of surcharges issued
- number of counter fraud presentations delivered
- number of counter fraud publicity leaflets issued
- staff awareness questionnaire results
- satisfaction questionnaire results
- number of staff undertaking eLearning package

9 MONITORING AND REVIEW

A timetable of regular Performance Review Meetings will be established between CFS and the Board Finance Director, Fraud Liaison Officer and Counter Fraud Champion (either together or

singly, as agreed with the respective Health Board). These meetings will take place annually and all aspects of CFS performance will be reviewed.

An annual survey will be undertaken to assess the level of satisfaction with the service provided by CFS. The findings of the survey will be disseminated to Boards and other interested parties.

The policy will be formally reviewed every **5** years.

10 FORMAT

The State Hospitals Board recognises the need to ensure all stakeholders are supported to understand information about how services are delivered. Based on what is proportionate and reasonable, we can provide information / documents in alternative formats and are happy to discuss with you the most practical and cost effective format suitable for your needs. Some of the services we are able to access include interpretation, translation, large print, Braille, tape recorded material, sign language, use of plain English / images. If you require information in another format, please contact the Person Centred Improvement Lead on 01555 842072.

Key Stakeholders	Consulted (Y/N)
Patients	N
Staff	Y
TSH Board	N
Carers	N
Volunteers	Y

11 THE ACTION PLAN

The “Fraud Action Plan” details Health Boards’ responsibilities in respect of cooperating with CFS’s proactive and counter fraud culture programmes. Health Boards must each adopt and implement their own Counter Fraud Action Plans.

The flowcharts in pages 14 to 15 describe the required actions with respect to a reported suspicion of fraud. The flowcharts provide procedures that allow for the gathering and collation of evidence, in a manner that will facilitate informed initial decisions, whilst ensuring that evidence gathered will be admissible in any possible future criminal or civil actions. Each situation is different, therefore the guidance in the flowcharts will need to be considered carefully in relation to the actual circumstances of each case before action is taken.

Under no circumstances should a member of staff speak or write to representatives of the press, TV or radio, about a suspected fraud without the express authority of the Chief Executive, (See the media protocol for further information). Guidance to members of the Board's staff who may have suspicions or concerns about possible irregularities including fraud is set out in Appendix 2 of this document. Care needs to be taken to ensure that no action is taken that could give rise to an action for defamation. In some cases, e.g. if a major diversion of funds is suspected, speed of response will be crucial to avoid financial loss.

In all cases, if any of the named officials in the flowchart, are the suspect or a witness, the duties described for them in the flowchart moves to the next highest official within the organisation e.g. if Fraud Liaison Officer is a witness, the Finance Director becomes FLO, or if Finance Director is the suspect, Chief Executive or another board member takes on their duties.

Chart 1 Potential Theft

Flowchart 1 - Theft – shows the steps to be taken when a theft is thought to have occurred. It would be normal practice for the Finance Director to inform the police of theft. If the theft is from patients' funds or patients property the Scottish Government Health and Social Care Department must also be informed. Once the police have concluded their findings, the disciplinary policy may be appropriate.

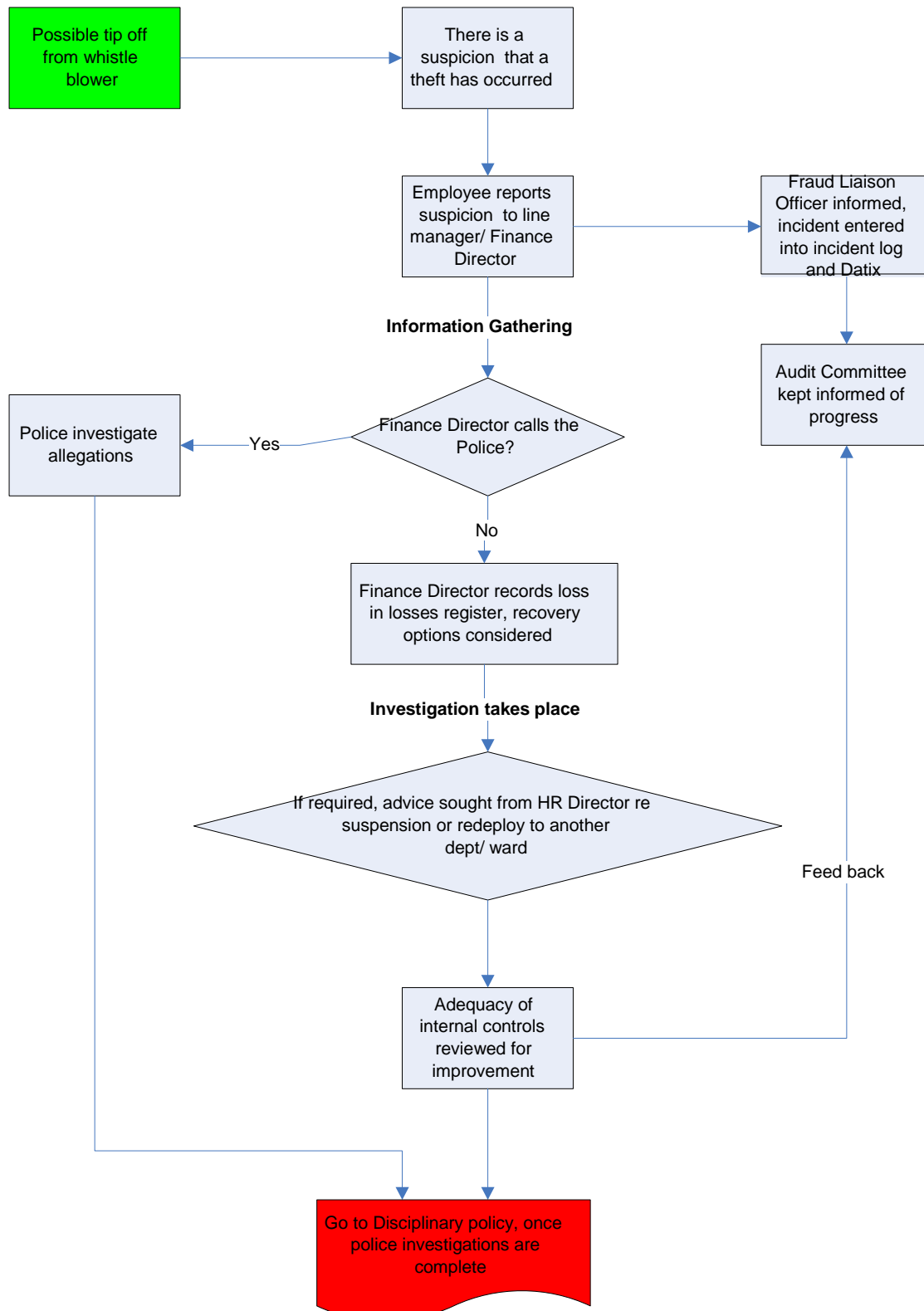
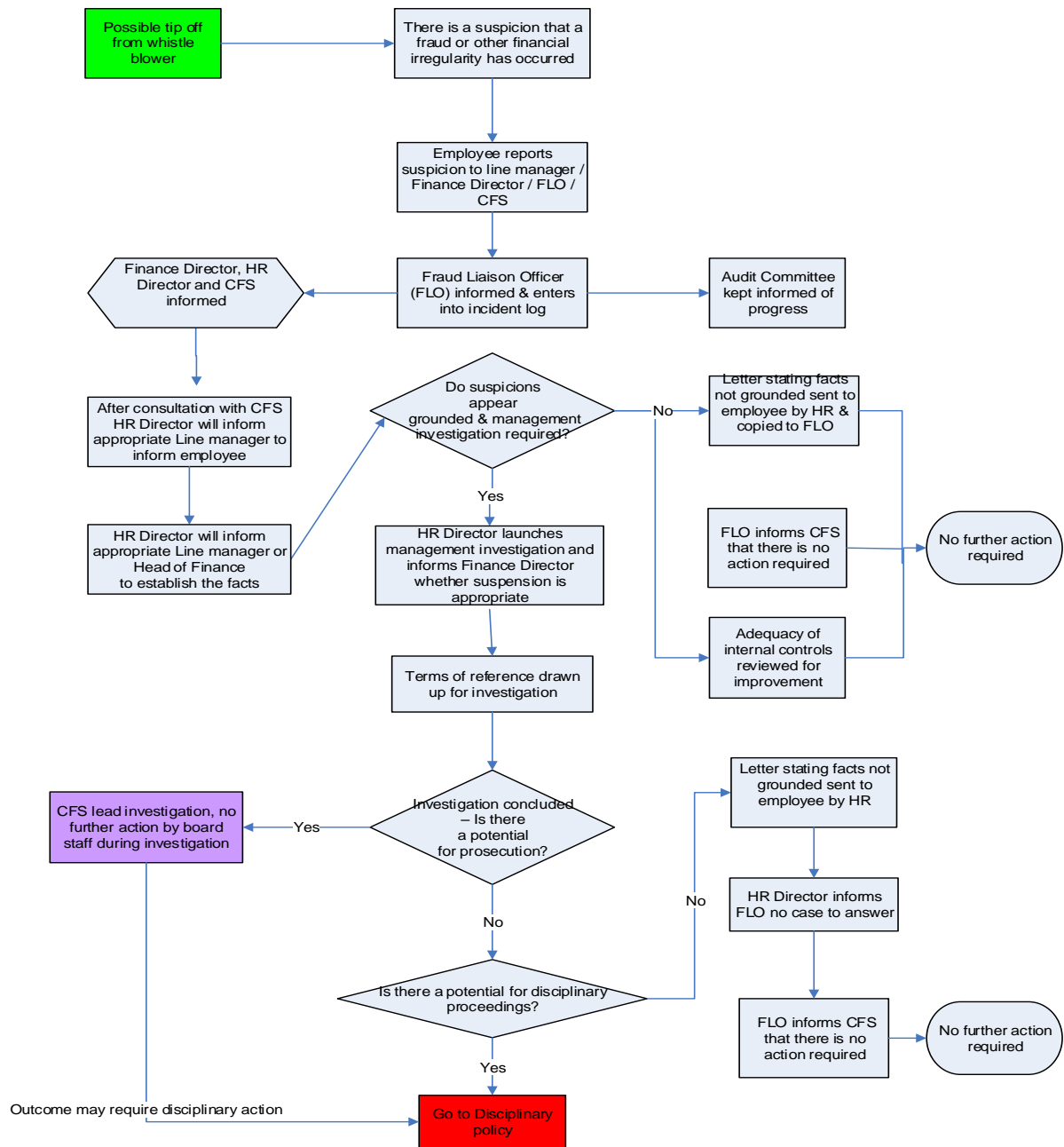


Chart 2 Potential Fraud or other irregularity

Flowchart 2 - Fraud and other financial irregularities – shows the steps to be taken to establish the facts and then to decide if the case should be referred to the Counter Fraud Service or if an internal investigation is necessary.



Sources of fraud and other irregularities reports

The Board may receive reports of alleged fraud or other irregularities from the following sources:

Employees

An employee should normally discuss any suspicions with his/her line manager. The employee may also, or instead, discuss the matter in confidence, with the Finance Director or contact CFS direct. The Finance Director should inform the FLO who will enter the allegation in the Incident Log and inform CFS if not already informed. The line manager and the Finance Director will then agree on the next course of action. If, after consideration, the suspicion seems well founded the Finance Director will inform the Human Resources Director, the Internal Auditor and the reporting employee. The Finance Director/Fraud Liaison Officer should consult with CFS to ascertain whether the investigation will proceed on a criminal and/or civil/disciplinary basis. After consultation with CFS the line manager will inform the suspect of the allegation made about them.

If an employee suspects his/her line manager, the employee should report the suspicions to someone more senior or directly to the Finance Director or may discuss the matter with the Chief Internal Auditor. If this is not appropriate, e.g. the suspect is the Finance Director, then this should be reported directly to their line manager i.e. the Chief Executive and Internal Audit.

An employee may use the CFS Fraud Reporting Line 08000 15 16 28 (powered by Crimestoppers) or report their suspicions (anonymously if desired) through the CFS Website www.cfs.scot.nhs.uk . Alternatively the employee may choose instead to contact the charity "Public Concern at Work" on 0207404 6609 or via their website – www.pcaw.co.uk, or free, confidential phone line, 0800 008 6112 who would offer the employee advice on how to proceed.

If the suspicion involves an executive director the matter should be reported to the Chair of the Audit Committee or the Chairman of the Board, or to Internal/External Audit.

These reporting routes should be clearly defined in staff induction documentation and awareness raised for existing staff.

Patients/ Public/ Primary Care Contractors/ Suppliers/ Police/ CFS

The Board's policy, as stated in the Standing Financial Instructions, is that all allegations of fraud or other irregularities, reported by a Board employee, should be made in the first instance to the Finance Director or Chief Internal Auditor. If the suspicion involves an executive director the matter should be reported to the Chair of the Audit Committee or the Chairman of the Board.

The CFS, through its Fraud Reporting Hotline and website, is another conduit for reporting allegations of fraud and other irregularities. The Partnership Agreement states that any such allegations will be reported to the appropriate Board officer or director within 48 hours of notification to the CFS.

The Finance Director, Fraud Liaison Officer, or the Chair of the Audit Committee / Chairman of the Board will then consult with CFS to ascertain whether the investigation will proceed on a criminal and/or civil/disciplinary basis.

These reporting routes should be clearly defined in patient information leaflets, contract documentation, and CFS publicity material.

In all such internal and external documentation it should be noted that time may be of the utmost importance to prevent further loss to the Board.

Subject of Allegation

The allegation of fraud or other irregularity may be in respect of:

- an employee
- a Director of the Board
- an independent primary care contractor
- a patient
- a supplier
- a visitor

Criminal Prosecution

If the allegation is theft, this will be reported directly to the police for investigation and possible prosecution. In all cases where the allegation is fraud or other financial irregularity then CFS will lead the investigation, which potentially may lead to a criminal prosecution.

If the allegation concerns an employee, the CFS will take account of the Board's Human Resources policies and will consult with the Human Resources Director in respect of relevant issues including suspension. Consultation in such circumstances is essential; no unilateral action will be taken by the Board, its employees and directors, or the CFS.

If the allegation concerns a director, the CFS will undertake all consultation with the Chair of the Audit Committee/Chairman of the Board and will involve the Human Resources Director and Chief Internal Auditor, where appropriate.

Where the allegation is in respect of an independent primary care contractor, a patient or a supplier, CFS will undertake all consultation with Finance Director/ Internal Auditor.

It is expected that CFS will undertake all investigations, in co-operation with the Board's internal auditors, in respect of contractors, patients and suppliers. The procedures that will be followed by the CFS in all investigations are detailed in the Partnership Agreement.

Discipline or Civil Recovery

Where, following consultation between the Board and the CFS, an investigation limited to disciplinary/civil recovery action appears appropriate; the following sections outline the actions to be followed.

Where the allegation is in respect of an employee, the Finance Director will seek advice from the Human Resources Director on whether to suspend a suspected employee or redeploy them temporarily.

Where the allegation is in respect of a director, the Chair of the Audit Committee / Chairman of the Board will involve the Human Resources Director, where appropriate, in making any decision regarding suspension. When taking action to suspend an employee or director it is important to communicate the reason for taking the action.

The employee should be advised that they will receive full pay whilst on suspension, and should not return to the workplace nor contact their colleagues about the allegations until such time as allowed to do so by their employer.

Where, however, due to the nature of the allegation, suspension is deemed inappropriate, e.g. it would alert the suspect and as such may lead to the destruction and removal of evidence, no action to inform the suspect that an investigation was taking place should be taken. (In compliance with DPA 2018 Part 3).

Involvement of the CFS in Disciplinary/Civil Recovery cases

The Board/CFS Partnership Agreement outlines where it may be possible to utilise some of the work carried out by the CFS in a criminal case for disciplinary or civil recovery proceedings. This will always be subject to approval from the relevant Procurator Fiscal and may require advice from the Central Legal Office.

Subject to those caveats, the work done by CFS, particularly with respect to witness and suspect interviews, could reduce the work required by the Board's investigation team.

Log of Fraud (Incident Log) or other Illegal Acts

The Fraud Liaison Officer will enter details of all reported suspicions, including those dismissed as minor or otherwise not investigated, into an Incident Log. It will also contain details of the alleged incident, any losses that may have occurred, all actions taken and conclusions reached. If the suspicion appears groundless a record of the incident will be retained in the Incident Log only. If a suspicion appears grounded and further action is required, the incident will also be recorded in the Fraud Log. The Audit Committee will review the incident and fraud logs at least once each year and will report any significant matters to the Board.

Internal Communications

The Finance Director / Fraud Liaison Officer shall inform and consult with the Chief Executive at the first opportunity in all cases of suspected fraud or where the incident may lead to adverse publicity. The Finance Director / Chief Internal Auditor shall notify the Audit Committee of all frauds discovered and also of all losses arising from any criminal or suspected offences.

Managing the Investigation

Investigation procedures to be followed are detailed below and information on Investigations is included in Annex B of the [Disciplinary Policy](#).

Human Resources Director to appoint an Investigation Manager

Under normal circumstances, the investigation manager would be the appropriate Line Manager. The circumstances of each case will dictate who will be involved and when. The following general guidance is intended to assist managers in deciding the best course of action.

Diary of Events

The manager overseeing the investigation (referred to hereafter as the Investigation Manager) should initiate a Diary of Events to record the progress of the investigation.

Has a criminal act taken place?

Although in preliminary discussions with the CFS, this question may appear to have been answered, in some cases this question may be asked more than once during an investigation. In practise it may not be obvious that a criminal act has taken place. However, if at any time during the investigation, a criminal act is believed to have occurred, the agreed procedure involving CFS must be invoked.

Internal Investigation

Employees - Internal investigations must be carried out as per the Employee Conduct Policy as well as determining what may need to be done to improve internal controls to prevent the event happening again.

Non Employee - The internal investigation must determine the facts; whether there is a case to answer; what can be done to recover any loss; and what may need to be done to improve internal control to prevent the event happening again.

Recovering a loss

Where recovering a loss is likely to require a civil action, it will be necessary to seek legal advice. Such action should only be progressed under the authority of the Finance Director.

Disciplinary/Dismissal Procedures

The Board's disciplinary procedures must be followed in any disciplinary action taken by the Board towards an employee (including dismissal). This may involve the investigation manager in formally reporting the results of the investigation and recommending a disciplinary hearing to consider the facts.

Physical evidence

Upon taking control of any physical evidence, it is very important that a record is made of the time and place it is taken. If evidence consists of several items, for example many documents, each one should be tagged with a reference number corresponding to the written record. Care with evidence gathering is important as that which may initially be treated as a discipline case, could become a criminal prosecution. This should be undertaken by CFS if there is a chance that there may be a criminal prosecution.

Computer Evidence

Where evidence is believed to be held on: individual computers; laptops; smartphones; tablets; camera systems; or on a business network, great care should be taken in securing copies of files, emails and logs. Strict criminal procedures must be followed to allow this type of evidence to be admissible in prosecution proceedings and accessing this information prior to securing a forensic image may be considered by a Court as tampering with the evidence. CFS will provide advice to the Board on developing a plan to secure digital evidence.

Witnesses

If a witness to the event is prepared to give a written statement, it is best practice for a trained investigator to take a chronological record using the witness's own words. The witness must agree to sign and date the document as a true record, but the involvement of an independent person usually helps to keep the statement to relevant facts. In circumstances where the witness is the Fraud Liaison Officer then the "role" of Fraud Liaison Officer moves to the next most senior member of staff.

Finance Director to consider if a meeting with the employee is required

The Finance Director will consider the preliminary report of the Investigation Manager and consider if a meeting is required with the employee. In this consideration the Finance Director should consult others e.g. the Human Resources Director and the Chief Executive.

If it is considered necessary for a meeting with the employee, the meeting should be carried out in accordance with Appendix 3 (Conducting an Investigatory Hearing) of the disciplinary policy.

Termination of the Investigation

The Board investigation should terminate when:

- there is sufficient evidence for a case to answer
- appropriate disciplinary action has been taken
- the Investigating Manager considers that reasonable steps have been taken to obtain information in regards to the allegation
- if sufficient evidence hasn't been obtained they may wish to seek a more wide ranging investigation

Dismissal of Staff

If this action is thought necessary, please refer to the Disciplinary Policy.

Losses and Compensations Register

Guidance on losses and special payments is provided in Circulars 1985(GEN)17 and HDL(2005)05.

The delegated limits for approving the writing off of losses and special payments are detailed in the Board's Standing Financial Instructions.

Post-investigation review

It will be important for the Finance Director, in conjunction with the Chief Internal Auditor, to consider actions to be taken to minimise the risk of a potential repeat of the incident. The actions will include a review of lessons learnt and completion of a risk assessment. Any lessons learned should be disseminated to the Service through the internal audit network or by using the CFS bulletins.

Involving the Counter Fraud Services

- Some managers may mistakenly be reluctant to involve the CFS in the belief that:
- they are only interested if the alleged criminal offence is greater than a specific £ value; the CFS are not interested because the potentially complex issues involved render little chance of a successful prosecution; or
- the Board prefers to deal with the incident themselves, in an attempt to minimise attention while implementing dismissal and pursuing recovery through civil action; or
- the CFS want hard evidence before they will pursue investigations, but when it is provided they advise that the rules of evidence have not been complied with; or
- the disciplinary process has to await a CFS investigation and/or prosecution

Where there is any suggestion that a fraud or other irregularity has been perpetrated, CFS must be involved in any decision regarding the action to be taken.

CFS may be able to advise on how to draft a statement to the staff or the press.

Counter Fraud Services - contact details

3 Bain Square, Livingston, EH54 7DQ

t - 01506 705200 (general enquiries); 08000 151628 (fraud hotline)

f - 01506 465182

w - www.cfs.scot.nhs.uk

Head of Service:

Gordon Young

e - gordon.young2@nhs.net

t - 01506 705 237

12 THE LAW AND ITS REMEDIES

Criminal law may impose sanctions on the suspect for causing loss, while civil law may assist the Board to recover its loss.

In Civil law the method of concealment (in the case of fraud) is unlikely to be a key factor in the value of compensation or the drafting of the statement of claim. Criminal law now allows for the restraint (i.e. freezing) and confiscation of the proceeds of crime, following conviction. CFS, in conjunction with the police and fiscal service, will always press to have the full effect of the Proceeds of Crime Act 2002 applied whenever it is appropriate.

Subject to CFS obtaining approval from the procurator fiscal concerned, there is no reason why the criminal prosecution and civil process cannot be taken at the same time if the evidence supports such action.

Civil Law Remedies

The following is a brief description of some of the commoner civil law remedies. It is not comprehensive and legal advice should be sought from the Central Legal Office before action is taken.

Monies had and received

The claim will refer to funds of the pursuer, which have been 'had and received' by the defender at the pursuer's expense - and will seek their recovery.

Interest

The pursuer may be entitled to interest on the amount lost, and there are claims for interest under court rules and statute.

Interdict, Arrestment or Inhibition

In some cases a court order can be used to freeze the assets of a person suspected of fraud or a person who has been convicted of a criminal offence in respect of their fraudulent activity. These procedures can be used to prevent the disposal of assets of the suspect or defender.

Damages for deceit

A defender may become liable to the pursuer for damages arising out of the act, and if the pursuer can establish this liability he is entitled to be put back into the position that he would have been in if the act had not been committed. If successful, this claim may result in the award of damages beyond mere recovery of assets stolen.

LIST OF SPECIFIED OFFENCES

Depending on the nature of business and the products or services provided, NHS employees may have the opportunity to commit fraud. There are numerous types of fraud that can be perpetrated by staff and some examples are given below. This list is not exhaustive.

- dishonest action by staff to obtain a benefit e.g. working whilst on sick leave, false expenses, false overtime, embezzlement of cash or goods and procurement fraud
- account fraud e.g. fraudulent account transfer to employee account, fraudulent account transfer to third party account and fraudulent account withdrawal
- employment application fraud e.g. false qualifications, false references or use of false identity
- unlawfully obtaining or disclosure of personal data e.g. fraudulent use of customer/payroll data, modification of customer payment instructions and contravention of IT security policy with intent to facilitate the commission of a criminal offence
- unlawfully obtaining or disclosure of commercial data e.g. contravention of IT security policy with intent to facilitate the commission of a criminal offence

The remit of CFS is focussed upon matters of theft, dishonesty, deception and/or manipulation of documents/records where there is a loss to NHSScotland property or funds. However, where a dishonest representation tends to prejudice any or all NHS Scotland organisations, an investigation may be considered. For example a misrepresentation may result in reputational damage to the service to the extent that criminal proceedings may be proportionate. The following is a list of offences which, following the consultation process between Health Board FLO and CFS, CFS may investigate:

- fraud
- embezzlement - is the felonious appropriation of property (i.e. a thing or things belonging to someone) that has been entrusted to the accused with certain powers of management or control
- forgery and uttering (is the making and publishing of a writing feloniously intended to represent and pass for the genuine writing of another person. Uttering means the tendering or presenting of a document)
- Bribery and Corruption - the Bribery Act 2010 makes it a criminal offence to take part in 'active' or 'passive' bribery or to fail to prevent bribery in an organisation. Active bribery (section 1 of the Act) makes it an offence for a person to offer, give or promise to give a financial or other advantage to another individual in exchange for improperly performing a relevant function or activity. Passive Bribery (section 2 of the Act) makes it an offence for a person to request, accept or agree to accept a financial or other advantage in exchange for improperly performing a relevant function or activity. Corporate offence (section 7 of the Act) states that an organisation may be liable if it fails to have adequate procedures in place to prevent bribery.
- Theft, attempted theft of NHSScotland property or funds - whilst it is accepted that instances of theft of NHS property or funds are generally reported and investigated by the police, Health Boards should recognise that in cases of a series of thefts, it may be appropriate for

CFS to be notified and provide additional assistance. Health Boards should seek the advice of CFS as appropriate.

In exceptional circumstances, or in the interest of NHS Scotland, but always as directed by the relevant Accountable Officer, CFS may investigate the alleged commission of any of the fraud offences where there is no direct loss to NHS Scotland funds or property but the loss is in connection with the delivery of services under the National Health Services (Scotland) Act 1978

Definition of each offence

Fraud – the intention to deceive and gain benefits or cause loss by these actions e.g. A member of staff who falsifies their timesheets or mileage claims and submits them to gain payment for which they know they are not entitled.

Embezzlement – a felonious partial or full possession of property (belonging to someone else) by someone with certain powers or management control, for the suspect own use e.g. someone with the power of attorney for a patient takes funds for their own use.

Bribery and Corruption The Bribery Act 2010 makes it a criminal offence to take part in ‘active’ or ‘passive’ bribery or to fail to prevent bribery in an organisation: **(Page 11 2019)**

Active bribery (section 1 of the Act) makes it an offence for a person to offer, give or promise to give a financial or other advantage to another individual in exchange for improperly performing a relevant function or activity.

Passive Bribery (section 2 of the Act) makes it an offence for a person to request, accept or agree to accept a financial or other advantage in exchange for improperly performing a relevant function or activity.

Corporate offence (section 7 of the Act) states that an organisation may be liable if it fails to have adequate procedures in place to prevent bribery e.g. the IT manager accepts the gift of a holiday for recommending a certain software company’s product without going out to tender.

Other financial irregularities involving other timesheet irregularities, sick leave irregularities, failure to declare gifts, breaches of NHS Circulars or Standing Financial Instructions or other accounting irregularities.

In exceptional circumstances, or in the interest of NHSScotland, but always as directed by the relevant Accountable Officer, CFS may investigate the alleged commission of any of the fraud related offences where there is no direct loss to NHSScotland funds or property but the loss is in connection with the delivery of services under the National Health Services (Scotland) Act 1978 e.g. loss of patient funds. However, in the case of any allegation or suspicion of any criminal offence having been committed, the relevant Health Board must, in consultation with the affected patient (or their representative, if appropriate), agree whether (if anyone) they or the relevant patient should report the matter to the Procurator Fiscal in order to seek criminal proceedings.

Where an employee has been suspected of theft, which does not involve the type of offences listed above, the matter will be reported to the Police or Procurator Fiscal, and any investigation is to be left up to the Police, in accordance with current practice.

HUMAN RESOURCES PROTOCOL**APPLICATION OF SANCTIONS – HR / CFS COMPLEMENTARY POLICIES**

Disciplinary policies and procedures for NHSScotland employees (members of the medical and dental professions excepted) follow a common structure. In accordance with the PIN Guideline Management of Employee Conduct, where the actions of an employee are such that it is considered to be appropriate to invoke the disciplinary procedure, no disciplinary action will be considered until a thorough investigation has been carried out, and a manager will be identified to undertake the investigation.

Following consultation with the HR and Partnership Forums, it has been agreed that:

- where the actions of the employee are such that the employing NHS Board considers that the disciplinary procedure should be invoked; and
- there is a suspicion that the action of the employee may amount to the commission of a specified offence and criminal sanctions are to be sought CFS will conduct the investigation in line with the local NHS Board disciplinary procedures

The responsibility of CFS in discipline terms would be limited to the scope of the actions currently undertaken by the appointed “investigating manager” in interviewing witnesses and recording witness statements. However CFS will not interview the employee under investigation as part of that disciplinary procedure. This disciplinary interview would remain the responsibility of management and the Human Resources Department of the employing NHS Board.

None of the foregoing would affect the rights of CFS to conduct a criminal suspect interview with the employee at the conclusion of the criminal investigation.

The rationale behind this agreement is that where such allegations would in any event be referred to CFS for criminal investigation, there seems to be no reason for witnesses to be interviewed twice, i.e. by CFS and by the appointed manager conducting the disciplinary procedure. All statements recorded by CFS can be used in disciplinary, civil and criminal proceedings; and subject to agreement from the Crown Office and Procurator Fiscal Service will be released to the investigating manager for presentation to the disciplining manager at the appropriate hearing.

It is therefore agreed that where the PIN Guideline states that, “A manager will be identified to undertake the investigation...” NHS Boards should consider including within their local disciplinary procedures the following provision: “where a specified offence is suspected and criminal sanction is to be sought, CFS will undertake the investigation...”

CFS investigators will remain bound by the principles of the PIN Guidelines detailing the investigation of disciplinary allegations, including reference in particular to the prompt gathering of all relevant facts; witnesses being accompanied at interview by union/professional organisation representative, or a colleague not involved in the investigation; notification to witnesses that statements may be used as evidence in disciplinary hearings.

In addition it was agreed that NHS Boards should consider including provisions to the following effect in their local disciplinary procedures:

- reporting of the result of any disciplinary cases to the press should be limited to the result of the case without reference to the specific allegation, as this may affect the right of the individual to a fair (criminal) trial

- all statements to include the written declaration from the witness that they have made the statement in the knowledge that it could be used in disciplinary, civil or criminal cases
- the information exchange would be a one-way process. CFS would interview witnesses and would disclose statements to HR leads but would not be involved in the (discipline) interview of the individual nor would CFS have access to the transcript of that interview

DISCIPLINARY HEARINGS

In every case where it is proposed to proceed to a disciplinary hearing whilst there is a criminal case pending based on the same or related allegations, the advice of Central Legal Office/external equivalent is to be sought before proceeding. There is no requirement under the criminal law for staff to be retained on full pay pending the criminal case. However, it may be considered inappropriate to proceed with a disciplinary hearing if the individual concerned declines to attend. In every such case, CLO/external equivalent will advise on whether the evidence is in itself sufficiently strong and compelling to justify dismissal in absentia, if necessary. In practice, such action will be the exception rather than the rule.

SUSPENSION

This is not a disciplinary sanction and is a neutral act and would normally only be considered where the behaviour alleged would if proved, constitute an offence of a serious nature and time is needed to investigate the circumstances further. The employee must be informed of the reason for the suspension against which there is no appeal.

It is proposed that where there is to be an investigation by CFS, the Health Board should where practicable, consult CFS prior to suspending any member of staff. It must be stressed that CFS are not proposing that they take any part in the decision as to whether or not suspension is appropriate. Rather CFS would seek to be in a position to make recommendations about the timing of the suspension in the interest of securing the integrity of any potential evidence.

Where the suspension takes place outside of standard office hours, CFS should be notified as soon as possible thereafter.

For example, if the alleged offence concerned conduct within NHS premises, such as payroll fraud or improper application of tendering regulations, and the decision to suspend had been taken, CFS may recommend that the individual be escorted from the premises in order that evidence could not be tampered with.

If however the allegation concerned the theft of property, CFS may recommend that it was more appropriate to reasonably delay the suspension in order to enable the searching (under warrant) of the garage (for example) at the home of the individual concerned.

REPORT OF SUSPECTED FRAUD, THEFT OR OTHER FINANCIAL IRREGULARITY

CONFIDENTIAL

Part 1 to be completed by person referring suspicion or loss to Fraud Liaison Officer	
Name of alleged suspect	Location of suspected loss
Job title	Tel no:
Place of work within the hospital	Contact details
Theft or Fraud?	Tel no:
Details – what, when where, how often?	
Suspected loss:	Value:
Any other relevant background information	

For theft only				
Reported to police	Y/N	Date	Crime ref no	Officer

Name of person reporting fraud	Date	Designation
Location	Tel no	

This form can be found on the intranet