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COUNTER FRAUD BRIBERY AND CORRUPTION POLICY AND RESPONSE PLAN

Policy Statement

This policy is designed to promote an anti-fraud and corruption culture and to ensure that there are appropriate measures in place to deter, detect, prevent and investigate fraud. It aims to eliminate fraud and corruption within Public Health Wales as far as possible. The policy also provides a framework for responding to suspicions of fraud, together with advice and information on fraud, and the implications and outcome of counter fraud investigations.

This policy is based upon the model policy produced for the NHS by the Local Counter Fraud Specialist and is intended as a guide for all staff on counter fraud work within the NHS. All genuine suspicions of fraud and corruption can be reported to the Local Counter Fraud Service or through the NHS Fraud and Corruption Reporting Line.

Policy Commitment

One of the basic principles of public sector organisations is the proper use of public funds. The majority of people who work in the NHS are honest and professional. They find fraud committed by a minority wholly unacceptable as it ultimately leads to a reduction in the resources available for the provision of services.

All members of staff have a duty to ensure that public funds are safeguarded and a duty to protect Public Health Wales from fraud, corruption or any irregularity. Public Health Wales encourages anyone having reasonable suspicions of fraud to report them. If a member of staff has any concerns regarding fraud or corruption, or has seen any suspicious acts or events, they must report the matter to the nominated Local Counter Fraud Specialist, or the National Fraud Reporting Line or the Executive Director of Operations & Finance.

Public Health Wales is committed to the rigorous investigation of any fraud allegations and to taking appropriate action against the wrong doers. This includes disciplinary action and criminal prosecution when it is necessary.

Supporting Procedures and Written Control Documents

[All corporate policies and procedures are available on the Public Health Wales website](#)

Scope

This policy relates to all forms of fraud and corruption and is intended to provide direction and help to members of staff who may identify suspected fraud.

It is intended to provide a framework for responding to suspicions of fraud, advice and information on various aspects of fraud and implications of an investigation. It is not intended to provide a comprehensive approach to preventing and detecting fraud and corruption.

This policy applies to all Public Health Wales staff, including secondees, those with honorary contracts, Non Executive Directors, those working in bodies hosted by Public Health Wales and other parties who may have a business relationship with Public Health Wales e.g. consultants, vendors or contractors.

Impact Assessments	An Equality and Health Impact Assessment has been completed and can be viewed on the policy webpages.
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Accountable Executive Director/Director	Executive Director for Operations and Finance
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Disclaimer

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Summary of reviews/amendments

Version number	Date of Review	Date of Approval	Date published	Summary of Amendments
2	2015	05/2015		Original Procedure
3	2018	14/03/19	27/03/19	Previously combined policy and procedure so have disaggregated to create a policy and procedure. A small number of minor changes made to wording of document
4	2022	16/03/23	16/03/23	Minor amendments to include reference to Bribery in title and reference to Local Counter Fraud Specialists.
5	2025	23/03/26	16/04/26	Updated to reflect changes in Counter Fraud Team Staffing and updates to; include new offence, clarify roles and responsibilities, cover government functional standards, and other minor adjustments to ensure accuracy.

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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 means of enforcing the rules against fraud and other illegal acts involving dishonesty or damage to property. For simplicity all such offences are hereafter referred to as “fraud”, except where the context indicates otherwise. This document sets out the Public Health Wales NHS Trust (PHW) policy and response plan for detected or suspected fraud.
- 1.2.** It is essential that all staff are aware of, and are able to access up-to-date, accurate PHW policies to ensure they are aware of current approved practices to help reduce risk.
- 1.3.** PHW already has procedures in place that reduces the likelihood of fraud occurring. These include Standing Orders, Standing Financial Instructions, documented procedures and a system of internal control and a system of risk assessment. In addition, PHW tries to ensure that a risk (and fraud) awareness culture exists throughout the organisation.

- 1.4. This document is intended to provide direction and help to those officers and directors who find they have to deal with suspected cases of theft, fraud or corruption. It gives a framework for response, advice, and information on various aspects and implications of an investigation.
- 1.5. The three crucial public service values which must underpin the work of the health service: accountability, probity, and openness. PHW is absolutely committed to maintaining an honest, open, and well-intentioned atmosphere within the organisation. It is therefore committed to the reduction of any fraud occurring within PHW, and to the rigorous investigation of any such cases that do occur.
- 1.6. PHW wishes to encourage anyone having reasonable concern that a fraud has or may be occurring to contact the Counter Fraud service. It is PHW policy that no employee will suffer in any way as a result of reporting reasonably their concerns.
- 1.7. The flowcharts in section 8.2 describe PHW response when a referral is made to the Counter Fraud service. The flowcharts are intended to provide procedures that allow for evidence gathering and collation in a manner that will facilitate informed initial decisions, while ensuring that evidence gathered will be admissible in any future criminal or civil actions.
- 1.8. The Counter Fraud Manager will report directly to the Director of Finance and will produce an agreed work plan to follow, to fulfil the requirements of the role.
- 1.9. PHW has a Service Level Agreement with Cardiff and Vale University Health Board for the provision of the Local Counter Fraud service. The Counter Fraud manager will report directly to the PHW Director of Finance and will produce an agreed work plan to follow in order to fulfil the requirements of the role.

2. What is Fraud?

2.1. Fraud:

The Fraud Act 2006 was introduced on the 15th of January 2007 and

is focused upon the dishonest behaviour of a suspect and the intent to make a gain or cause a loss. It includes the following offences that could be committed against the NHS:

- Fraud by false representation (s.2) – dishonestly misrepresenting something using any means, e.g. by words or actions.
- Fraud by failing to disclose information (s.3) – not saying something where there is a legal duty to do so.

- Fraud by abuse of a position of trust (s.4) – abusing a position where there is an expectation to safeguard the financial interests of another person or organisation.

Areas where fraud may occur include but are not limited to:

- *Travel and expense claims*
- *Petty cash vouchers*
- *Items of Service claims from independent contractors*
- *Time sheets*
- *Fraudulent use of authorised leave*
- *Overpayment of salary/wages*
- *Fraudulent use of PHW resources*
- *Working whilst on the sick*
- *Handling of cash*
- *Misappropriation of equipment*

This is covered in more detail at section 9.3.

2.2. Bribery and Corruption:

“The offering, giving, soliciting of an inducement or reward that may influence the actions taken by a body, its members or officers.”

Source: The Code of Audit Practice – Audit Commission

Corruption does not always result in a loss. The corrupt person does not have to benefit directly from their deeds, they may unreasonably use their position to give some advantage to another.

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

Corruption prosecutions tend to be most commonly brought using specific pieces of legislation dealing with corruption, i.e. under the The Bribery Act 2010.

2.3. Bribery Act 2010

The Bribery Act 2010 received Royal Assent on 8th April 2010 and came into force on 1st July 2011. The Bribery Act 2010 will abolish all existing UK Anti-Bribery Laws and replace them with a suite of new offences markedly different to what has gone before. The Bribery Act 2010 makes it a criminal offence to “give, promise or offer a bribe and to request, agree to receive or accept a bribe either at home or abroad”. It will increase the maximum penalty for bribery to 10 years imprisonment, with an unlimited fine. In addition, the Act introduces a ‘corporate offence’ of failing to prevent bribery by the organisation not

having adequate preventative procedures in place. An organisation may avoid conviction if it can show that it had such procedures and protocols in place to prevent bribery. The 'corporate offence' is not a standalone offence, but always follows from a bribery and/or corruption offence committed by an individual associated with the company or organisation in question.

3. Public Service Values

Source: WHC (2006) 090 'The Codes of Conduct and Accountability for NHS Boards and the Code of Conduct for NHS Managers Directions 2006'.

- 3.1.** The codes reinforce the seven principles of public life (The Nolan Principles) and focuses on the three crucial public service values which must underpin the work of the health service: accountability, probity, and openness.
- **Accountability:** Everything done by those who work in the NHS in Wales must be able to stand the test of scrutiny by the Welsh Government, public judgments on propriety and professional codes of conduct.
 - **Probity:** There should be an absolute standard of honesty in dealing with the assets of the NHS in Wales: integrity should be the hallmark of all personal conduct in decisions affecting patients, staff and suppliers, and in the use of information acquired in the course of the NHS in Wales's duties.
 - **Openness:** There should be sufficient transparency about the NHS in Wales's activities to promote confidence between the NHS body and its staff patients and the public.

4. Economic Crime and Corporate Transparency Act 2023 – Failure to Prevent Fraud Offence

The Economic Crime and Corporate Transparency Act 2023 (ECCTA) introduces a new corporate criminal offence: Failure to Prevent Fraud. This offence applies to all organisations, including NHS bodies, and creates a legal obligation to implement reasonable procedures to prevent fraud.

Under this legislation, the organisation may be held criminally liable if an employee, agent, or associated person commits fraud intending to benefit the organisation. Liability arises even if senior management were unaware of the fraudulent act. The only defence is to demonstrate that the organisation had reasonable fraud prevention measures in place.

Our Commitment

- We recognise that fraud costs the NHS significant resources that should be directed to patient care. Preventing fraud is therefore a core organisational priority.
- The organisation will maintain robust anti-fraud processes, controls, and governance arrangements to comply with ECCTA requirements.

Reasonable Procedures

- To meet the statutory defence, the organisation will:
- Conduct regular fraud risk assessments and update controls accordingly.
- Implement proportionate, risk-based prevention procedures aligned with NHS Counter Fraud Standards.
- Ensure top-level commitment, with Board-level accountability for fraud prevention and a nominated Fraud Champion.
- Apply due diligence to staff, contractors, and suppliers to mitigate fraud risks.
- Maintain clear reporting routes for staff and third parties to raise concerns confidentially.
- Deliver mandatory counter fraud training to all staff to raise awareness of responsibilities under ECCTA.
- Keep accurate records and evidence of fraud prevention activities, policies, and decisions.

Staff Responsibilities

Fraud prevention is everyone's responsibility. All staff must:

- Follow organisational policies and procedures.
- Report suspected fraud promptly through the designated reporting channels.
- Complete required training and remain vigilant for fraud indicators.

Failure to comply with these requirements may expose the organisation to criminal liability and reputational damage.

5. PHW Policy Statement

- 5.1.** PHW is absolutely committed to maintaining an honest, open, and well-intentioned atmosphere within the organisation. It is also committed to the elimination of any fraud within PHW, and to the rigorous investigation of any such cases.
- 5.2.** PHW wishes to encourage anyone having reasonable suspicions of fraud to report them. Therefore, it is also PHW policy, which will be rigorously enforced, that no employee will suffer in any way as a result of reporting reasonably held suspicions.
- 5.3.** All members of staff can therefore be confident that they will not suffer in any way as a result of reporting reasonably held suspicions of fraud. For these purposes "reasonably held suspicions" shall mean any

suspicious other than those which are raised maliciously and found to be groundless.

6. Provisions of Government Functional Standard GovS 013 Counter Fraud

From April 2021, all NHS funded services nationally, were required to provide assurance of compliance with the requirements of the Functional Standard. This included NHS bodies in Wales.

The purpose of the Functional Standard is to set the expectations for the management of fraud, bribery and corruption risk in government organisations and wider public services, while reinforcing the government's commitment to fighting fraud against the public sector.

Complying with the Government Functional Standard - 013: Counter Fraud requires a three-stage framework to Counter Fraud work as outlined below:

- Strategic governance – This sets out the standards in relation to the organisation's strategic governance arrangements. The aim is to ensure that counter fraud measures are embedded at all levels across the organisation.
- Proactive response – This sets out the requirements in relation to raising awareness of NHS fraud across the organisation and working with NHS staff, stakeholders and the public to highlight the risks and consequences of economic crime against the NHS. This response also sets out the requirement in relation to fraud risk assessment and proactive initiatives with the aim of providing remedy and fraud proofing by ensuring that opportunities for fraud to occur is minimised/mitigated/disrupted.
- Reactive response – This sets out the requirements in relation to detecting and investigating crime, prosecuting those who have committed such crimes and seeking financial redress where appropriate.

7. Roles and Responsibilities

7.1. Executive Director of Finance

The Director of Finance, in conjunction with the Chief Executive, monitors and ensures compliance with the Counter Fraud Directions for the organisation.

The Director of Finance will, depending on the outcome of investigations and/or the potential significance of suspicions that have been raised, inform appropriate senior management accordingly.

The Director of Finance and Local Counter Fraud Specialist (LCFS) will be responsible for informing third parties such as external audit or the police at the earliest opportunity, as circumstances dictate.

The Director of Finance will inform and consult the Chief Executive in cases where the loss may be above the agreed limit or where the incident may lead to adverse publicity.

If an investigation is deemed to be appropriate, the Director of Finance will delegate to the LCFS, who has responsibility for leading the investigation, whilst retaining overall responsibility themselves.

The Director of Finance or the LCFS will consult with the Executive Director of People and Organisational Development or delegated representative, if a member of staff is to be interviewed or disciplined.

The Director of Finance or LCFS will not conduct a disciplinary investigation, but the employee may be the subject of a separate investigation as part of a disciplinary process.

7.2. Local Counter Fraud Specialist

Local Counter Fraud Specialists (LCFS) are located in each NHS organisation. The Lead LCFS is appointed by the Executive Director of Finance and will be responsible for investigating cases of fraud up to a value of £15,000. All investigations involving more than £15,000 and/or Corruption must be referred to the NHS Counter Fraud Service (Wales) Regional Team. Only individuals who are accredited as Counter Fraud Specialists will be responsible for investigating cases of fraud. The LCFS will be responsible for notifying all cases of fraud to NHS Counter Fraud Service Wales (CFS Wales) in the appropriate manner and via the CLUE Case Management System. The LCFS shall:

- Report to Executive Director of Finance.
- Provide a written report at least annually to PHW on counter fraud work within the organisation.
- Be entitled to attend Audit Committee meetings and have a right of access to all Audit Committee members and the Chair and Chief Officer of PHW.
- Undertake, as agreed with PHW Executive Director of Finance, proactive work to detect cases of fraud and corruption, particularly where systems weaknesses have been identified. This work shall be carried out so as to complement the detection of potential fraud and/or corruption by auditors in the course of routine audits.

- Proactively seek and report to CFS (Wales) opportunities where details of counter fraud work (involving action on prevention, detection, investigation, sanctions or redress) can be used within presentation or publicity in order to deter fraud and corruption.
- Investigate cases of suspected fraud in accordance with the division of work specified in the Directions as amended and replaced from time to time. Refer to CFS (Wales) all cases appropriate to them.
- Inform CFS (Wales) of all cases of suspected fraud investigated by PHW.
- Investigate, report and effect remedy in relation to identified system weaknesses within the organisation that can allow the opportunity for fraud to occur.

7.3. NHS Counter Fraud Service (Wales)

The NHS Counter Fraud Service (CFS) (Wales) will investigate all cases that do not fall within the responsibility of the Local Counter Fraud Specialist.

NHS CFS (Wales) will be responsible for the investigation of cases above £15,000, all corruption cases, and any case at the request of the LCFS, where the CFS (Wales) specialist knowledge and resources could assist with the investigation.

Counter Fraud Service Wales will act as the point of contact for the LCFS in relation to liaison with the Crown Prosecution Service.

7.4. NHS Counter Fraud Authority

On the 1st November 2017, an independent special health authority was implemented in England entitled the NHS Counter Fraud Authority (NHSCFA). This was achieved under amendment from the UK Government Secretary of State for Health.

As a result of this, the previous arrangements which Welsh Ministers entered into with the predecessor organisation of the NHSCFA i.e. NHSBSA/NHS Protect, which was pursuant to section 83 of the Government of Wales Act 2006, which deals with the discharge of certain counter fraud functions in relation to the health service in Wales were reviewed and remained effective with the NHSCFA.

NHSCFA has responsibility for all policy, operational and training matters relating to the prevention, detection and investigation of fraud, bribery and corruption in the NHS.

NHSCFA also provides advice, guidance and risk measurement to NHS Bodies in Wales on all aspects of fraud, bribery and corruption. All instances where fraud is suspected are properly investigated, until their conclusion, by staff who are fully trained and accredited and who are duly nominated by NHSCFA.

7.5. PHW Management

Managers must be vigilant and ensure that procedures to guard against fraud, bribery and corruption are followed.

They should be alert to the possibility that unusual events or transactions could be symptoms of fraud, bribery and corruption. If they have any doubts, they must seek advice from the nominated LCFS.

Managers must instil and encourage an anti-fraud, and anti-bribery and corruption culture within their team and ensure that information on procedures is made available to all employees. The LCFS will proactively assist the encouragement of an anti-fraud culture by undertaking work that will raise fraud awareness.

All instances of actual or suspected fraud, bribery or corruption which come to the attention of a manager must be reported immediately to the lead LCFS. If formal investigation is undertaken by the LCFS/CFS managers have a duty to produce any documents or evidence that is required by the investigation team in a timely manner.

Line managers at all levels have a responsibility to ensure that an adequate system of internal control exists within their areas of responsibility and that controls operate effectively.

The responsibility for the prevention and detection of fraud and corruption therefore primarily rests with managers but requires the co-operation of all employees.

7.6. Employees

PHW's Standing Orders, Standing Financial Instructions, policies and procedures place an obligation on all employees and Independent Members of the Board to act in accordance with best practice.

Employees are expected to act in accordance with the standards laid down by their professional bodies, where applicable, and have a personal responsibility to ensure that they are familiar with them.

Employees also have a duty to protect the assets of the organisation including information, goodwill and property.

In addition, all employees have a responsibility to comply with all applicable laws and regulations relating to ethical business behaviour, procurement, personal expenses, conflicts of interest, confidentiality and the acceptance of gifts and hospitality.

All employees have a duty to ensure that public funds are safeguarded, whether they are involved with cash or payment systems, receipts or dealing with contractors or suppliers. If an employee suspects that there has been fraud, bribery or corruption, or has seen any suspicious acts or events, they must report the matter to the nominated LCFS.

7.7. Internal and External Audit

Any incident or suspicion of fraud that is brought to the attention of internal or external audit will be passed immediately to the nominated LCFS. The outcome of the investigation may necessitate further work by internal or external audit to review systems or processes. Internal Audit will liaise with the LCFS in accordance with the agreed liaison protocol.

7.8. People and Organisational Development (P&OD)

P&OD will liaise closely with managers and the LCFS from the outset if an employee is suspected of being involved in fraud and/or bribery and/or corruption. P&OD staff are responsible for ensuring the appropriate use of PHW's disciplinary procedure. P&OD will advise those involved in the investigation on matters of employment law and other employment procedural matters, such as disciplinary and complaints procedures, as requested. Close liaison between the LCFS and P&OD will be essential to ensure that any parallel sanctions (i.e. criminal, civil and disciplinary sanctions) are applied effectively and in a co-ordinated manner, and to ensure the welfare of any employees involved in an investigation.

8. The Response Plan

8.1. Introduction

The flowcharts in section 8.2 describe PHW's intended response to reported suspicion of fraud. The flowcharts are intended to provide procedures that allow for evidence gathering and collation in a manner that will facilitate informed initial decisions, while ensuring that evidence gathered will be admissible in any 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.

Further details on the processes in the flowchart are provided in section 8.3 (Commentary on Flowchart Items).

8.2. Flowcharts

Chart 1

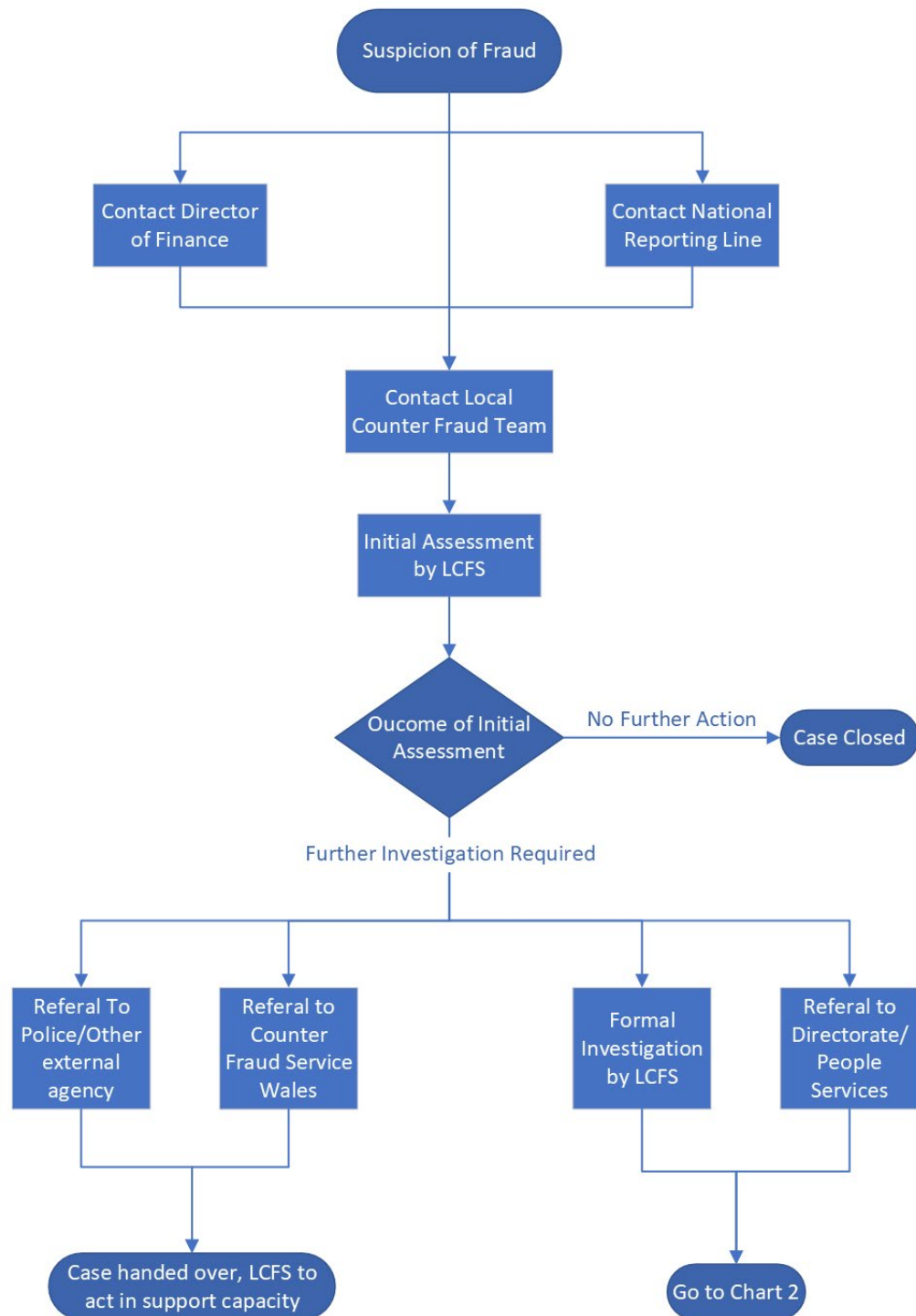


Chart 2 – Local Counter Fraud Investigation

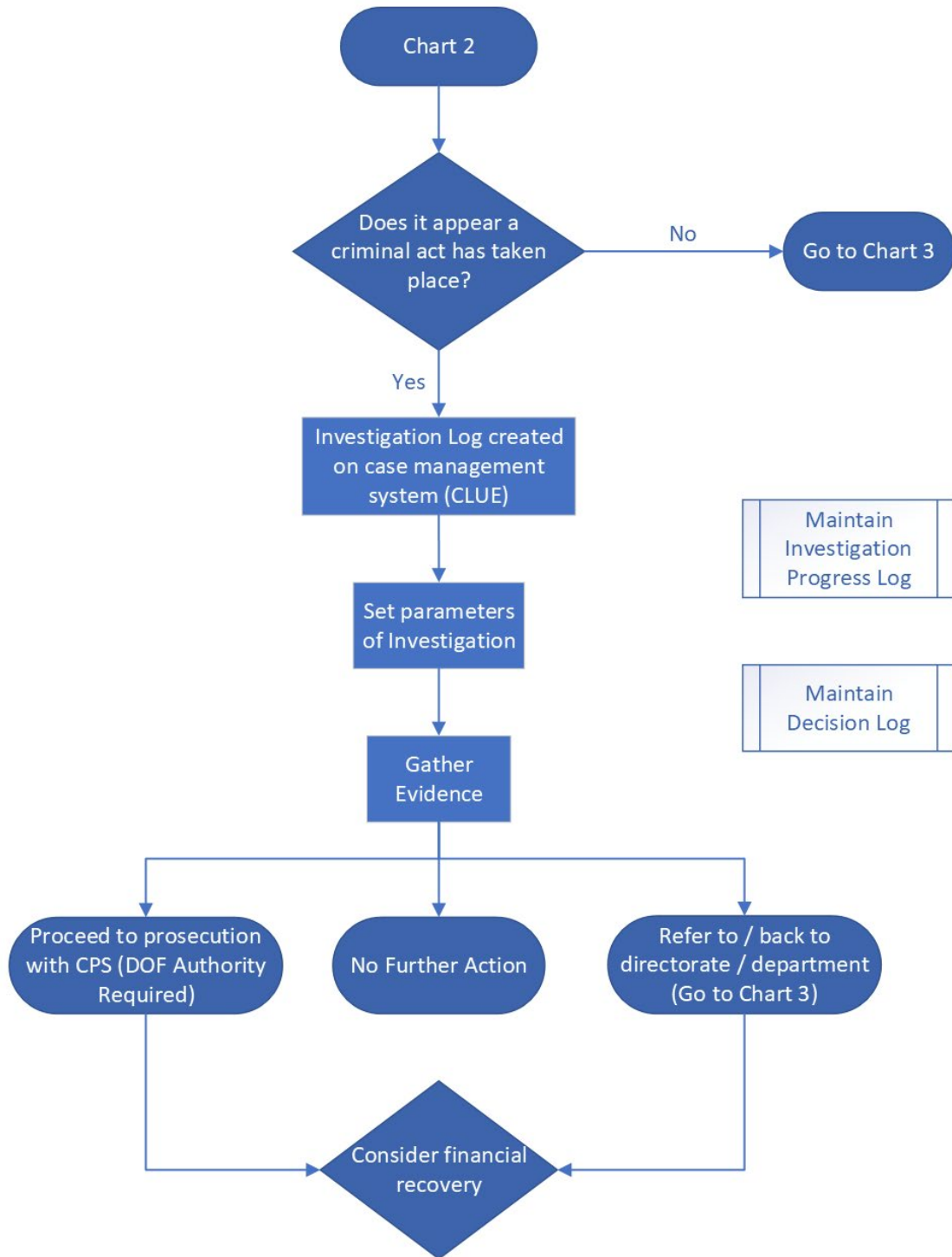
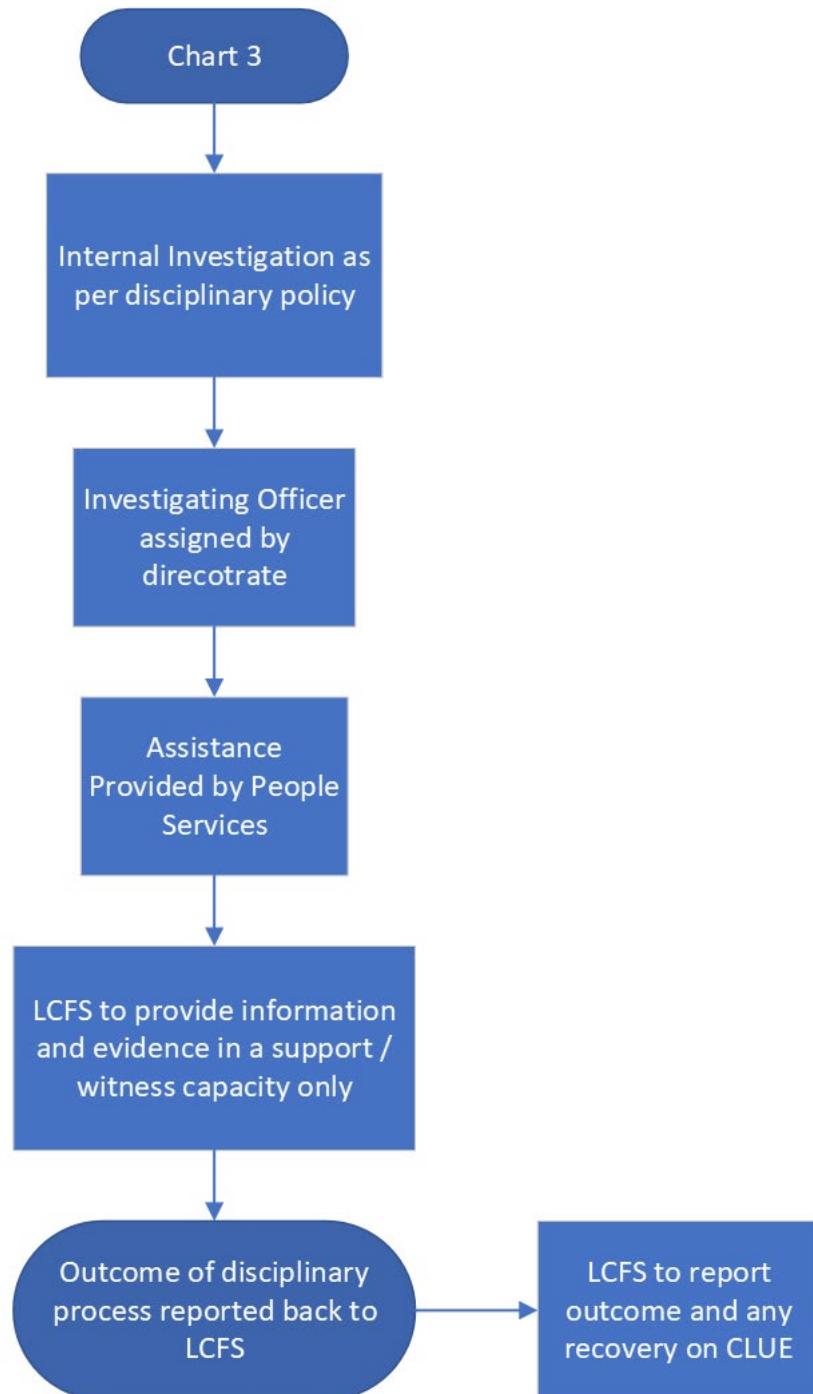


Chart 3 – Disciplinary Process



8.3. Commentary on Flowchart Items

Further explanation of many items is also given elsewhere in this document.

8.3.1. Chart 1 – Suspicion of Fraud

The Local Counter Fraud Specialist (LCFS)

The Lead LCFS will be authorised to treat inquiries confidentially and anonymously if so requested by the individual making the referral.

The LCFS will receive appropriate skill-based training leading to professional accreditation and will be able to respond tactfully and appropriately to concerns raised by staff.

LCFS services are currently provided as part of a Service Level Agreement with Cardiff & Vale University Health Board.

Suspicion of Fraud or Any Irregularities/Anomalies

If any PHW employee has any concerns that a fraud has or is taking place, then he/she should discuss any suspicions in the first instance with the Nominated Lead LCFS on 02921 836265.

However, an employee may choose instead to contact the “NHS Fraud & Corruption Reporting Line” on 0800 028 4060.

This contact can be made anonymously.

Time may be of the utmost importance to prevent further loss to PHW

Upon receipt of a referral LCFS will carry out an initial assessment to understand and identify whether there are reasonable grounds to suspect whether criminal offences have been committed. If not, the case will be concluded with no further action taken. Should there be issues of managerial concern evident then LCFS will liaise with appropriate departmental management and P&OD department.

LCFS will consider and decide whether the case needs to be referred on to other agencies e.g. Police and Counter Fraud Service Wales. If this is appropriate then LCFS will make the appropriate arrangements. In some instances, a joint investigation may take place.

8.3.2. CHART 2 – Local Counter Fraud Investigation

8.3.2.1. Progress of investigation

All investigations carried out by the Counter Fraud Department, will be led by an accredited LCFS and will be overseen by the Head of Counter Fraud. All investigations into fraud will be compliant with the Criminal Procedures and Investigations Act 1990 and the Police and Criminal Evidence Act 1984.

The Local Counter Fraud Specialist in charge of the investigation (OIC) will keep a log of events to record the progress of the investigation. This will commence immediately following referral. If a criminal offence is suspected then the referral will be promoted to formal investigation and recorded upon the NHS CFA case management system (CLUE).

8.3.2.2. Does it appear a Criminal Act Has Taken Place?

In some cases, this question may be asked more than once during an investigation. The answer to the question determines if there is to be a criminal investigation. In practice it may not be obvious if a criminal act has taken place. If a criminal act is believed to have occurred, the matter will be dealt with by the LCFS/CFS (Wales) as appropriate. If other criminal offences are involved e.g. theft, criminal damage, consideration should be given to reporting the matter, after consultation with the LCFS, to the police

8.3.2.3. Evidence

For the purposes of criminal proceedings, the admissibility of evidence is governed by the Police and Criminal Evidence Act (PACE). For non-criminal (i.e. civil or disciplinary) proceedings, PACE does not apply, but should nevertheless be regarded as best practice.

It is imperative that the collection of evidence must be coordinated if several parties are involved in an investigation, e.g. LCFS and internal audit, police and solicitors. The LCFS will take the lead on this. Evidence gathering requires skill and experience and professional guidance should be sought where necessary. There is a considerable amount of case law concerning the admissibility of evidence and incorrect procedure can lead to a prosecution collapsing.

8.3.2.4. Witnesses

If a witness to the event is identified, then they will need to give a written statement. The LCFS will take a chronological record using the

witness's own words. (The witness should be prepared to sign the document as a true record) and advised that the statement may be used as evidence should the matter proceed to court. All witness statements will be completed in accordance with Section 9 Criminal Justice Act 1967 and on the witness statement document provided for this purpose. All witnesses will be provided with ongoing guidance and support throughout the process.

8.3.2.5. Physical Evidence

Upon taking control of any physical evidence, it is very important that a record is made of the time, date, and place it is taken from and by whom, continuity is essential. If evidence consists of several items, for example many documents, each one should be tagged with a reference number corresponding to the written record. It is the responsibility of the LCFS to manage the retrieval, documentation and storage of physical evidence collected during the course of an investigation.

Documentary evidence should be properly recorded, it will need to be numbered and include accurate descriptions of when and where it was obtained and who it was obtained by and from. In criminal actions evidence on or obtained from electronic media needs a document confirming its accuracy.

8.3.2.6. Interviews

Any interviews carried out with a suspect during the course of a fraud investigation will be carried out only by an accredited LCFS, and will be compliant with the relevant codes and sections of the Police and Criminal Evidence Act 1984.

The subject of the investigation will be written to and advised of the reason for the interview and that they are entitled to have a person present at the interview who can act in a legal capacity (i.e. solicitor), but they are not entitled to have a friend, work colleague and/or union representative present at the interview.

The person being interviewed is also to be informed that whilst their attendance at the interview is voluntary, should they not attend, then the matter may be referred to the police which could then result in their subsequent arrest.

Prior to the start of an interview, the interviewee will be assessed with regard to their wellbeing and a decision will be made whether or not it is appropriate to continue with it. If it is not appropriate, then an alternative date in the future will be sought.

The interview under caution will be tape recorded and once the interview has concluded the interviewee and their legal representative will be provided with a notice informing them of their entitlement to a copy of the recording made. All recordings must be made on a recording device authorised for the purpose.

8.3.2.7. Investigate Internally

If, after discussion with the LCFS, it appears a criminal act has not taken place, or that the act/s are of a minor nature and it would not be proportionate nor in the public interest to proceed criminally, the next step should be an internal review to determine the facts. The review may recommend various courses of action; instigate an investigation under PHW Disciplinary Policy and Procedure; establish what can be done to recover a loss and what may need to be done to improve internal control to prevent the event happening again. Internal disciplinary investigations are the responsibility of the Directorate/Departmental management in conjunction with the P&OD team.

8.3.2.8. Recovering a Loss

The seeking of financial redress or recovery of losses should always be considered in cases of fraud, bribery or corruption that are investigated by either the LCFS or NHS Counter Fraud Service (Wales) where a loss is identified. As a general rule, recovery of the loss caused by the perpetrator should always be sought. The decisions must be taken in the light of the particular circumstances of each case. Redress allows resources that are lost to fraud, bribery and corruption to be returned to the NHS for use as intended, for provision of high-quality patient care and services.

Where recovering a loss is likely to require a civil action, in the absence of established procedures for this recovery, e.g overpayments policy and debt collection agencies, it will be necessary to seek legal advice. Where external legal advisors are required, due to the possible high cost implications, the investigation manager must ensure that the Director of Finance is consulted. The decision of whether to proceed with any civil action will rest with the Director of Finance.

8.3.2.9. Court Action, Adverse Publicity and/or Police Involvement

Where the investigation reaches a stage where the case is likely to end up in a criminal prosecution via the criminal justice system, then the LCFS must liaise with the Finance Director. Should the

investigation or prosecution be likely to lead to adverse publicity then LCFS should also liaise with PHW Communications/Press relations Department. Where a fraud is suspected and the need to use the police to carry out an arrest and/or search, then lead LCFS will make the appropriate arrangements and liaise with the relevant organisation directly. The Director of Finance will be appraised accordingly.

No member of staff should contact members of the press without the authority of the Director of Finance and or the Communications/Press Relations team.

8.3.2.10. Risk Management

At the conclusion/during the course of an investigation it may become clear that system or process weaknesses or failings have provided the opportunity for fraud or loss to occur. In these circumstances LCFS will conduct a risk assessment into the target area and report accordingly upon any weaknesses identified. The CLUE case management system will be used for this purpose. Any weaknesses and recommendation for remedial action will be reported to the relevant directorate or department. Any risks identified during the course of an investigation will be recorded on the local risk register by departmental management in conjunction with the LCFS. This may give rise to future proactive work such as Local Proactive Exercises that will be conducted by the LCFS to test that remedial actions have been undertaken. Where fraud risk assessment/fraud proofing work is required, departmental management must assist in providing all necessary information requested by the LCFS or Internal Audit in relation to the processes or systems under review.

8.3.3. CHART 3 – Disciplinary Process

8.3.3.1. Disciplinary Procedure

PHW Disciplinary Policy and Procedure has to be followed in any disciplinary action taken by PHW towards an employee (including dismissal). This may involve the investigation manager recommending a disciplinary hearing to consider the facts, the results of the investigation (a formal report) and take appropriate action against the employee.

In the event of a disciplinary investigation taking place where a suspicion of fraud exists, then the appointed investigating officer must liaise with the LCFS to agree a way forward. A decision will be made whether the investigations can run concurrently or whether the internal investigation will need to be put on hold until the completion of the criminal investigation or part of it.

In some cases where a fraud is suspected it may be deemed by the Lead LCFS that the matter is of a minor nature, or that it would not pass the relevant evidential or public interest threshold tests, and therefore a formal criminal investigation will not progress. In these instances' the LCFS will keep departmental management and P&OD apprised that no further action will be taken. A disciplinary investigation can still take place in these circumstances. If a disciplinary investigation only ensues following the report of a fraud or fraud related offence, the internal investigating officer and P&OD representative will ensure that the LCFS is kept apprised of the process and any resulting action that takes place. The LCFS will act in support of any disciplinary only investigation in the position of a witness only. Any evidence gathered by the LCFS will be shared with management if it assists with the case.

As per national requirements LCFS will report any outcome on the CLUE case management system.

9. The Law and its Remedies

9.1. Introduction

Section 6 of the NHS Counter Fraud Manual provides in-depth details of how sanctions can be applied where fraud and corruption is proven and how redress can be sought.

To summarise, local action can be taken to recover money by using the administrative procedures of the organisation or civil law. In cases of serious fraud, bribery and corruption, it is recommended that parallel sanctions are applied. For example: disciplinary action relating to the status of the employee in the NHS; use of civil law to recover lost funds; and use of criminal law to apply an appropriate criminal penalty upon the individual(s) and/or a possible referral of information and evidence to external bodies – for example, professional bodies – if appropriate. This is known as the triple track approach.

Actions which may be taken when considering seeking redress include:

- no further action
- criminal investigation
- civil recovery
- disciplinary action
- confiscation order under the Proceeds of Crime Act 2002 (POCA)
- recovery sought from ongoing salary payments

In some cases (taking into consideration all the facts of a case), it may be that PHW under guidance from the LCFS and with the approval of

the Director of Finance, decides that no further recovery action is taken.

Criminal investigations are primarily used for dealing with any criminal activity. The main purpose is to determine if activity was undertaken with criminal intent. Following such an investigation, it may be necessary to bring this activity to the attention of the criminal courts (Magistrates' Court and Crown Court). Depending on the extent of the loss and the proceedings in the case, it may be suitable for the recovery of losses to be considered under POCA.

9.2. Proceeds of Crime Act

The NHS Counter Fraud Service (Wales) can also apply to the courts to make a restraining order or confiscation order under the Proceeds of Crime Act 2002 (POCA). This means that a person's money is taken away from them if it is believed that the person benefited from the crime. It could also include restraining assets during the course of the investigation.

9.3. Fraud Act 2006

The Fraud Act 2006 was introduced on the 15th of January 2007 and is focused on the dishonest behaviour of the suspect and their intent to make a gain or cause a loss. It includes the following offences that could be committed against the NHS:

- Fraud by false representation (s.2) – dishonestly misrepresenting something using any means, e.g. by words or actions.
- Fraud by failing to disclose information (s.3) – not saying something where there is a legal duty to do so.
- Fraud by abuse of a position of trust (s.4) – abusing a position where there is an expectation to safeguard the financial interests of another person or organisation.
- Possession of articles for use in fraud (s.6) – Having possession or control over a document or item, intended for use in the commission of fraud.
- Making or supplying articles for use in fraud (s.7) – Making, adapting, or supplying a document or item in the knowledge it is to be used to commit fraud.

It should be noted that all offences under the Fraud Act 2006 occur where the act or omission is committed dishonestly and with intent to cause gain or loss. The gain or loss does not have to succeed, the mere exposure to the risk of loss is sufficient, so long as the intent is there.

9.4. Other Offences

Outside of the Fraud Act 2006, the following offences could be committed against the NHS: (this is not an exhaustive list)

- False accounting (s.17 Theft Act 1968) – Dishonestly altering a record kept for accounting purposes in order to make a gain or loss.
- Possession of false identity documents (s.25 – Identity Cards Act 2006) Having possession or control over an identity document that is false, has been improperly obtained or relates to someone else.
- Unauthorised access to computer material (s.1 – Computer Misuse Act 1990) to secure access to a program or data that is unauthorised.
- Unauthorised access with intent to commit or facilitate commission of further offences (s.2 – Computer Misuse Act 1990) to carry out s1 with intent to commit an offence or facilitate to commission of an offence.
- Theft (s.1 – Theft Act 1968) to dishonestly appropriate, property that belongs to another with the intention of permanently depriving the other person of that property.
- Forgery and Counterfeiting Act 1981 (s.1 to s.4) making, copying, using or using a copy of a false instrument with the intention of inducing somebody to accept it as genuine.

9.5. Bribery and Corruption

Corruption can be broadly defined as the offering or acceptance of inducements, gifts, favours, payment, or benefit-in-kind which may influence the action of any person. Corruption does not always result in a loss. The corrupt person may not benefit directly from their deeds; however, they may be unreasonably using their position to give some advantage to another. It is a common law offence of corruption to bribe the holder of a public office and it is similarly an offence for the office holder to accept a bribe.

The Bribery Act 2010 received Royal Assent on 8th April 2010 and came into force on 1st July 2011. The Bribery Act 2010 provided a suite of new offences markedly different to what has gone before. The Bribery Act 2010 made it a criminal offence to “give, promise or offer a bribe and to request, agree to receive or accept a bribe either at home or abroad”. It increased the maximum penalty for bribery to 10 years imprisonment, with an unlimited fine. In addition, the Act introduced a ‘corporate offence’ of failing to prevent bribery by the organisation not having adequate preventative procedures in place. An organisation may avoid conviction if it can show that it had such procedures and protocols in place to prevent bribery. The ‘corporate offence’ is not a standalone offence but always follows from a bribery

and/or corruption offence committed by an individual associated with the company or organisation in question.

10. References

This policy should be read in conjunction with:

- Standing Orders
- Standing Financial Instructions
- Disciplinary Policy and Procedure
- Standards of Business Conduct
- I.T Security Policy
- Public Relations and Communications Strategy
- Procedure for NHS Staff to raise concerns
- Respect and Resolution Policy
- PHW policies relating to:
 - Gifts
 - Hospitality
 - Conflicts of Interest
 - Procurement
 - Capital/PFI Contracts
- Directions to NHS Bodies on Counter Fraud Measures (National Assembly Wales)
- NHS Counter Fraud Manual
- NHS Counter Fraud Strategy
- Public Interest Disclosure Act 1998
- The Fraud Act 2006
- Bribery Act 2010
- Government Functional Standard GovS 013 Counter Fraud
- Economic Crime and Corporate Transparency Act
- All Wales Information Governance Policy

11. Further Information

Further information and a copy of the fraud policy and response plan may be obtained from the LCFS or PHW intranet.

12. NHS Fraud and Corruption: Dos and Don'ts A desktop guide for PHW

FRAUD is the deliberate or reckless intent to permanently deprive an employer of money or goods through false representation, failing to disclose information or abuse of position.

CORRUPTION is the deliberate use of bribery or payment of benefit-in-kind to influence an individual to use their position in an unreasonable way to help gain advantage for another.

<u>DO</u>	<u>DO NOT</u>
<ul style="list-style-type: none"> • Note your concerns Record details such as your concerns, names, dates, times, details of conversations and possible witnesses. Time, date and sign your notes. • Retain evidence Retain any evidence that may be destroyed, or make a note and advise your LCFS. • Report your suspicion Confidentiality and anonymity will be respected – delays may lead to further financial loss. 	<ul style="list-style-type: none"> • Confront the suspect or convey concerns to anyone other than those authorised, as listed below Never attempt to question a suspect yourself; this could alert a fraudster or accuse an innocent person. • Try to investigate, or contact the police directly Never attempt to gather evidence yourself unless it is about to be destroyed; gathering evidence must take into account legal procedures in order for it to be useful. Your LCFS can conduct an investigation in accordance with legislation. • Be afraid of raising your concerns The Public Interest Disclosure Act 1998 protects employees who have reasonable concerns. You will not suffer discrimination or victimisation by following the correct procedures.

If you suspect that fraud against the NHS has taken place, you must report it immediately, by:

- directly contacting the Local Counter Fraud Specialist, or
- telephoning the free phone NHS Fraud and Corruption Reporting Line, or
- contacting the Director of Finance.

[Do you have concerns about a fraud taking place in the NHS?](#)

If so, any information can be passed to the NHS Fraud and Corruption Reporting Line:

0800 028 40 60

All calls will be treated in confidence and investigated by professionally trained staff

Your nominated Local Counter Fraud Specialist are:

Henry Bales – Counter Fraud Manager – Henry.Bales@nhs.wales.uk – 02921836265

Steve Betty – Deputy Counter Fraud Manager – Steve.Betty@wales.nhs.uk - 029218 362642

Jacob Parkinson – Local Counter Fraud Specialist – Jacob.Parkinson@wales.nhs.uk - 029218 362642

Rhidian McCann – Local Counter Fraud Specialist – Rhidian.McCann@wales.nhs.uk - 029218 36262

If you would like further information about the NHS Counter Fraud Service, please visit www.nhscfa.co.uk or [Counter Fraud - Home \(sharepoint.com\)](#)