

**Policy Document Control Page**

**Title: Fraud Policy and Response Plan (to be read in conjunction with the Trust's Reporting Concerns at Work Policy)**

**Version: 9**

**Reference Number: RP8**

**Supersedes: V8**

**Description of Amendment(s):**

**Updated to reflect template local anti-fraud, bribery and corruption policy from NHS Protect**

**Originator**

**Originated By: Jon Cohen**

**Designation: Local Counter Fraud Specialist**

**Equality Impact Assessment (EIA) Process**

**Equality Relevance Assessment Undertaken by: David Kay**

**ERA undertaken on: 30 August 2012**

**ERA approved by EIA Work group on:**

**Where policy deemed relevant to equality-**

**EIA undertaken by: Christopher Corfield**

**EIA undertaken on: 13.11.12**

**EIA approved by EIA work group on: 14.11.12**

**Referred for approval by: Andrea Osborne , Assistant Director of Finance**

**Date of Referral: 6<sup>th</sup> June 2016**

**Approved by: Executive Directors**

**Approval Date: 6<sup>th</sup> June 2016**

**Date Ratified by Executive Directors: 6<sup>th</sup> June 2016**

**Executive Director Lead: Director of Finance/DCEO**

**Circulation**

**Issue Date:**

**Circulated by: Performance and Information**

**Issued to: An e-copy of this policy is sent to all wards and departments**

**Policy to be uploaded to the Trust's External Website? YES**

**Review**

**Review Date: 6<sup>th</sup> September 2019**

**Responsibility of: Martin Roe**

**Designation: Director of Finance/DCEO**

**This policy is to be disseminated to all relevant staff.**

**This policy must be posted on the Intranet.**

**Date Posted:**

## CONTENTS

<b>1</b>	<b>INTRODUCTION</b>	<b>Page 2</b>
	1.1 General	
	1.2 Aims and objectives	
	1.3 Scope	
<b>2</b>	<b>DEFINITIONS</b>	<b>Page 2</b>
	2.1 NHS Protect	
	2.2 Fraud	
	2.3 Bribery and corruption	
<b>3</b>	<b>ROLES AND RESPONSIBILITIES</b>	<b>Page 3</b>
	3.1 Chief Executive	
	3.2 Director of Finance	
	3.3 Internal and External Audit	
	3.4 Human Resources	
	3.5 Local Counter Fraud Specialist (LCFS)	
	3.6 Area Anti-Fraud Specialist	
	3.7 Managers	
	3.8 All employees	
	3.9 Information management and technology	
<b>4</b>	<b>THE RESPONSE PLAN</b>	<b>Page 8</b>
	4.1 Bribery and corruption	
	4.2 Reporting fraud, bribery or corruption	
	4.3 Disciplinary action	
	4.4 Managing the investigation	
	4.5 Gathering evidence	
<b>5</b>	<b>RECOVERY OF LOSSES INCURRED DUE TO FRAUD AND CORRUPTION</b>	<b>Page 9</b>
	5.1 Reporting the results of the investigation	
	5.2 Actions to be taken	
	5.3 Timescales	
	5.4 Recording	
<b>6.</b>	<b>REVIEW</b>	<b>Page 10</b>
	6.1 Monitoring & Auditing Policy Effectiveness	
	6.2 Dissemination of the Policy	
	<b>APPENDICES</b>	<b>Page 11</b>
	Appendix One – Desktop Guide	
	Appendix Two – Action to be taken	<b>Page 12</b>

## 1. INTRODUCTION

### 1.1 General

Pennine Care NHS Foundation Trust is committed to reducing the level of Fraud and Corruption to an absolute minimum and keeping it at that level, freeing up public resources for better patient care. This policy has been produced by the Local Counter Fraud Specialist (LCFS), Jon Cohen, and is intended as a guide for all employees on counter fraud work within the NHS. All genuine suspicions of fraud and corruption can be reported to the LCFS, or through the NHS Fraud and Corruption Reporting Line (FCRL) on freephone 0800 028 40 60. The Trust is committed to reducing fraud, bribery and corruption in the NHS and will seek the appropriate disciplinary, regulatory, civil and criminal sanctions against fraudsters and where possible will attempt to recover losses. This policy is supported and endorsed by senior management.

LCFS Contact details:

Jon Cohen  
Tel: +44 07880 054 551  
Email: [jon.cohen@kpmg.co.uk](mailto:jon.cohen@kpmg.co.uk)

### 1.2 Aims and Objectives

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 and they find that fraud committed by a minority is wholly unacceptable as it ultimately leads to a reduction in the resources available for patient care.

Pennine Care NHS Foundation Trust does not tolerate fraud and corruption. The aim is to eliminate all NHS fraud and corruption as far as possible.

This document outlines what everyone's responsibility is in relation to preventing fraud, bribery and corruption, how to report it and the intended outcomes of anti-fraud work.

### 1.3 Scope

This policy relates to all forms of Fraud and Corruption and is intended to provide direction and help to employees who may identify suspected fraud. It applies to all employees of Pennine Care NHS Foundation Trust, regardless of position held, as well as consultants, vendors, contractors, agents and/or any other parties who have and form a business relationship with Pennine Care NHS Foundation Trust or acts on its behalf.

## 2. DEFINITIONS

### 2.1 NHS Protect

NHS Protect leads on work to identify and tackle crime across the health service. The aim is to protect NHS staff and resources from activities that would otherwise undermine their effectiveness and their ability to meet the needs of patients and professionals. NHS Protect has responsibility for all policy and operational matters relating to the prevention, detection and investigation of fraud, bribery and corruption in the NHS. Any investigations undertaken on behalf of the Trust will be handled in accordance with NHS Protect guidance.

For further information see the NHS Protect strategy Tackling crime against the NHS: A strategic approach.

## **2.2 Fraud**

Fraud involves dishonestly making a false representation, failing to disclose information or abusing a position held, with the intention of making a financial gain or causing a financial loss.

The Fraud Act 2006 brought in 3 offences relating to ways in which fraud can be committed. It is no longer necessary to prove that a person has been deceived. The focus is now on the dishonest behaviour of the suspect and their intent to make a gain or cause a loss.

The new offence of fraud can be committed in three ways:

- 1) Fraud by false representation (s.2) – lying about something using any means, e.g. by words or actions
- 2) Fraud by failing to disclose (s.3) – not saying something when you have a legal duty to do so
- 3) 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.

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 to the organisation. The gain or loss does not have to succeed, so long as the intent is there.

## **2.3 Bribery and corruption**

Bribery and corruption involves offering, promising or giving a payment of benefit-in-kind in order to influence others to use their position in an improper way to gain an advantage.

The Bribery Act 2010 came into force on the 1st July 2011. The main changes brought about by the Act are as follows:

- To provide an effective legal framework to combat bribery in the public or private sectors
- Replace the complex system of offences at common law and in the Prevention of Corruption Acts 1889-1916.
- Creating two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting an advantage.
- Creating a new offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf.
- The Bribery Act 2010 creates a new offence under section 7 which can be committed by commercial organisations which fail to prevent persons associated with them from bribing another person on their behalf. Pennine Care is classed as a commercial organisation for the purposes of the Act. Pennine Care expects all employees to act appropriately when conducting business on its behalf and declare relevant commercial interests.

# **3. ROLES AND RESPONSIBILITIES**

## **3.1 Chief Executive**

The Chief Executive, as the organisation's accountable officer, has the overall responsibility for funds entrusted to it. This includes instances of fraud, bribery and corruption. The Chief Executive must ensure adequate policies and procedures are in place to protect the organisation and the public funds it receives.

Pennine Care NHS Foundation Trust's Chief Executive is liable to be called to account for specific failures in the Trust's system of internal controls. However, responsibility for the operation and maintenance of controls falls directly to line managers and requires the involvement of all of Trust employees. Pennine Care NHS Foundation Trust therefore has a duty to ensure employees who are involved in or who are managing internal control systems receive adequate training and support in order to carry out their responsibilities. Therefore, the Chief Executive and Director of Finance will monitor and ensure compliance with this policy.

### **3.2 Executive Director of Finance**

The Executive Director of Finance (DoF) has powers to approve financial transactions initiated by directorates across the organisation.

The DoF has overall responsibility for preparing, documenting and maintaining detailed financial procedures and systems which incorporate the principles of separation of duties and internal checks to supplement those procedures and systems.

As part of the Board's overall responsibility to prepare a statement of internal control for inclusion in the NHS body's annual report, the DoF reports annually to the Board and, where applicable, the Council of Governors on the adequacy of internal financial controls and risk management.

The DoF will, depending on the outcome of initial investigations, inform appropriate senior management of suspected cases of fraud, bribery and corruption, especially in cases where the loss may be above an agreed limit or where the incident may lead to adverse publicity.

The DoF, in conjunction with the Chief Executive, monitors and ensures compliance with NHS Standards for Providers for Fraud, Bribery and Corruption. The Director of Finance will, depending on the outcome of investigations (whether on an interim/ongoing or concluding basis) and/or the potential significance of suspicions that have been raised, inform appropriate senior management accordingly.

The DoF or the LCFS will consult and take advice from the Director of Workforce and OD 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 by HR.

### **3.3 Internal and External Audit**

The role of internal and external audit includes reviewing controls and systems and ensuring compliance with financial instructions. Both Internal and External Audit have a duty to pass on any suspicions of fraud, bribery or corruption to the LCFS. The outcome of the investigation may necessitate further work by internal or external audit to review systems.

### **3.4 Human Resources**

In accordance with the agreed protocol HR will liaise closely with managers and the LCFS from the outset if an employee is suspected of being involved in fraud and/or corruption, in accordance with agreed liaison protocols. HR staff are responsible for ensuring the appropriate use of Pennine Care NHS Foundation Trust's disciplinary procedure.

HR will take steps at the recruitment stage to establish, as far as possible, the previous record of potential employees, as well as the veracity of required qualifications and memberships of professional bodies, in terms of their propriety and integrity. In this regard, temporary and fixed-term contract employees are treated in the same manner as permanent employees.

### **3.5 Local Counter Fraud Specialist (LCFS)**

It is a requirement of the NHS Protect Standards for Providers to appoint and nominate an LCFS. The LCFS's role is to ensure that all cases of actual or suspected fraud and corruption are notified to the Director of Finance and reported accordingly. The LCFS is responsible for taking forward all anti-fraud work locally in accordance with national standards and reports directly to the DoF.

Adhering to NHS Protect standards is important in ensuring that the organisation has appropriate anti-fraud, bribery and corruption arrangements in place and that the LCFS will look to achieve the highest standards possible in their work.

The LCFS will work with key colleagues and stakeholders to promote anti-fraud work, apply effective preventative measures and investigate allegations of fraud and corruption.

The LCFS will conduct risk assessments in relation to their work to prevent fraud, bribery and corruption.

The LCFS will:

- ensure that the director of finance is informed about all referrals/cases
- be responsible for the day-to-day implementation of the NHS Protect Standards for Providers and, in particular, the investigation of all suspicions of fraud
- investigate all cases of fraud
- be responsible, in discussion with the Area Anti-Fraud Specialist and Director of Finance, for informing third parties such as external audit or the police at the earliest opportunity, as circumstances dictate
- report any case and the outcome of the investigation through the NHS Protect national case management system (FIRST)
- ensure that other relevant parties are informed where necessary, e.g. Human Resources (HR) will be informed if an employee is the subject of a referral
- ensure that Pennine Care NHS Foundation Trust's incident and losses reporting systems are followed
- ensure that any system weaknesses identified as part of an investigation are followed up with management and reported to internal audit
- adhere to the Counter Fraud Professional Accreditation Board (CFPAB)'s Principles of Professional Conduct as set out in the *NHS Counter Fraud and Corruption Manual*
- not have responsibility for or be in any way engaged in the management of security for any NHS body.

### **3.6 Area Anti-Fraud Specialists (AAFS)**

Each AAFS works as part of the NHS Protect operations directorate, whose key objective is to combat Fraud and Corruption in the National Health Service. AAFSs are the frontline face of NHS Protect for all health bodies within their region.

The AAFS is responsible for the management and vetting of all local investigation case papers and evidence and witness statements submitted for the consideration of prosecutions.

AAFSs ensure that local investigations are conducted within operational and legislative guidelines to the highest standards for all allegations of fraud in the NHS. They provide help, support, advice and guidance to DoFs, LCFSs, Audit Committees and other key stakeholders in their region.

The AAFS allocates, supervises and monitors fraud referrals and notifications to the LCFS. The AAFS provides support as to the direction of ensuing investigations as required and oversees the LCFS's performance.

The AAFS ensures that all information and intelligence gained from local investigative work is reported and escalated as appropriate at both local and national level so that fraud trends can be mapped and used to fraud-proof future policies and procedures.

### **3.7 Managers**

All managers are responsible for ensuring that policies, procedures and processes within their local area are adhered to and kept under constant review.

Managers have a responsibility to ensure that staff are aware of fraud, bribery and corruption and understand the importance of protecting the organisation from it. Managers will also be responsible for the enforcement of disciplinary action for staff who do not comply with policies and procedures.

Managers should report any instances of actual or suspected fraud, bribery or corruption brought to their attention to the LCFS immediately. It is important that managers do not investigate any suspected financial crimes themselves.

Managers must be vigilant and ensure that procedures to guard against Fraud and Corruption are followed. They should be alert to the possibility that unusual events or transactions could be symptoms of Fraud and Corruption. If they have any doubts, they must seek advice from the nominated LCFS.

Managers must instil and encourage an Anti-Fraud 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.

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.

As part of that responsibility, line managers need to:

- inform staff of Pennine Care NHS Foundation Trust's Code of Business Conduct and Counter Fraud and Corruption Policy as part of their induction process, paying particular attention to the need for accurate completion of personal records and forms
- ensure that all employees for whom they are accountable are made aware of the requirements of the policy
- assess the types of risk involved in the operations for which they are responsible
- ensure that adequate control measures are put in place to minimise the risks. This must include clear roles and responsibilities, supervisory checks, staff rotation (particularly in key posts), separation of duties wherever possible so that control of a key function is not invested in one individual, and regular reviews, reconciliations and test checks to ensure that control measures continue to operate effectively
- ensure that any use of computers by employees is linked to the performance of their duties within Pennine Care NHS Foundation Trust
- be aware of Pennine Care NHS Foundation Trust's Counter Fraud Policy and the rules and guidance covering the control of specific items of expenditure and receipts
- identify financially sensitive posts
- ensure that controls are being complied with



- contribute to their Director's assessment of the risks and controls within their business area, which feeds into Pennine Care NHS Foundation Trust's and the Department of Health Accounting Officer's overall statements of accountability and internal control.

### **3.8 All employees**

Pennine Care NHS Foundation Trust's Standing Orders, Standing Financial Instructions, policies and procedures place an obligation on all employees and Non-Executive Directors to act in accordance with best practice. Employees are required to comply with the organisation's policies and procedures and apply best practice in order to prevent fraud, bribery and corruption.

Employees who are involved in or manage internal control systems should receive adequate training and support in order to carry out their responsibilities.

Employees are expected to act in accordance with the standards laid down by their professional institutes, 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 Pennine Care NHS Foundation Trust 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. This means, in addition to maintaining the normal standards of personal honesty and integrity, all employees should always:

- avoid acting in any way that might cause others to allege or suspect them of dishonesty
- behave in a way that would not give cause for others to doubt that Pennine Care NHS Foundation Trust's employees deal fairly and impartially with official matters
- be alert to the possibility that others might be attempting to deceive.

All employees have a duty to ensure that public funds are safeguarded, whether or not they are involved with cash or payment systems, receipts or dealing with contractors or suppliers.

If an employee suspects that there has been Fraud or Corruption, or has seen any suspicious acts or events, they must report the matter to the nominated LCFS (*see LCFS section 3.5*).

### **3.9. Information management and technology**

The Head of Information Security (or equivalent) will contact the LCFS immediately in all cases where there is suspicion that IT is being used for fraudulent purposes particularly in relation to the Computer Misuse Act 1990. HR will also be informed if there is a suspicion that an employee is involved.

Where IT Forensics is required this will be discussed with the Director of Finance and the Head of Information Security.

## 4. THE RESPONSE PLAN

### 4.1 Bribery and corruption

The organisation has conducted risk assessments in line with Ministry of Justice guidance to assess how bribery and corruption may affect the organisation. Proportionate procedures have been put in place to mitigate identified risks.

All Employees are expected to maintain high standards of personal conduct in all work related business and must follow the procedures outlines within the Trusts Standing Orders in relation of Declaration of Interests, gifts and hospitality.

This section includes the processes for all stakeholders to take should fraud, bribery or corruption be identified.

### 4.2 Reporting Fraud, bribery or corruption.

This section outlines the action to be taken if Fraud or Corruption is discovered or suspected.

**If an employee has any of the concerns mentioned in this document, they must inform the nominated LCFS or Pennine Care NHS Foundation Trust's Director of Finance immediately**, unless the Director of Finance or LCFS is implicated. If that is the case, they should report it to the Chair or Chief Executive, who will decide on the action to be taken.

An employee can contact any Executive or Non-Executive Director of Pennine Care NHS Foundation Trust to discuss their concerns if they feel unable, for any reason, to report the matter to the LCFS or director of finance.

Suspected fraud, bribery and corruption can be reported to NHS Protect using the NHS Fraud and Corruption Reporting Line on freephone 0800 028 40 60 or by filling in an online form at [www.reportnhsfraud.nhs.uk](http://www.reportnhsfraud.nhs.uk), as an alternative to internal reporting procedures and if staff wish to remain anonymous.

Appendix 1 provides a reminder of the key contacts and a checklist of the actions to take if fraud, bribery or corruption is discovered or suspected, managers are encouraged to copy it to staff and place it on staff notice boards in their departments

All reports of fraud and corruption will be taken seriously and thoroughly investigated.

The LCFS will make sufficient enquiries to establish whether or not there is any foundation to the suspicion that has been raised. If the allegations are found to be malicious, they will also be considered for further investigation to establish their source.

Pennine Care NHS Foundation Trust wants all employees to feel confident that they can expose any wrongdoing without any risk to themselves. In accordance with the provisions of the Public Interest Disclosure Act 1998, Pennine Care NHS Foundation Trust has produced a Whistleblowing Policy.

### 4.3 Disciplinary Action

The disciplinary procedures of Pennine Care NHS Foundation Trust must be followed if an employee is suspected of being involved in a fraudulent or otherwise illegal act.

It should be noted, however, that the duty to follow disciplinary procedures will not override the need for legal action to be taken (e.g. consideration of criminal action). In the event of doubt, legal statute will prevail.

#### **4.4 Managing the Investigation**

The LCFS, in consultation with Pennine Care NHS Foundation Trust's Director of Finance, will investigate an allegation in accordance with procedures documented in the NHS Counter Fraud and Corruption Manual issued by the NHS Protect..

The LCFS must be aware that staff under an investigation that could lead to disciplinary action have the right to be represented at all stages. In certain circumstances, evidence may best be protected by the LCFS recommending to the Trust that the staff member is suspended from duty. The trust will make a decision based on HR advice on the disciplinary options, which include suspension.

The Trust will follow its disciplinary procedure if there is evidence that an employee has committed an act of fraud or corruption.

#### **4.5 Gathering Evidence**

The LCFS will take control of any physical evidence, and record this in accordance with the procedures outlined in the *NHS Counter Fraud and Corruption Manual*.

Interviews under caution or to gather evidence will only be carried out by the LCFS in accordance with the Police and Criminal Evidence Act 1984 (PACE). The LCFS will take written statements where necessary. All employees have a right to legal representation when subject to an IUC.

All employees have a right to be represented at internal disciplinary interviews by a trade union representative or accompanied by a friend, colleague or any other person of their choice, not acting in a legal capacity in connection with the case..

### **5. Recovery of losses incurred to fraud and corruption**

The seeking of financial redress or recovery of losses will always be considered in cases of Fraud or Corruption that are investigated by either the LCFS or NHS Protect where a loss is identified. The decisions must be taken in the light of the particular circumstances of each case. Redress allows resources that are lost to Fraud and Corruption to be returned to the NHS for use as intended, for provision of high-quality patient care and services.

#### **5.1 Reporting the results of the investigation**

The investigation process requires the LCFS to review the systems in operation to determine whether there are any inherent weaknesses.

If Fraud or Corruption is found to have occurred, the LCFS should prepare a report for the Director of Finance and the next Pennine Care NHS Foundation Trust Audit Committee meeting, setting out the following details:

- the circumstances
- the investigation process
- the estimated loss
- the steps taken to prevent a recurrence
- the steps taken to recover the loss.

This report should also be available to Pennine Care NHS Foundation Trust's Board.

## 5.2 Action to be taken

This section includes a summary of actions that could be taken; (**Appendix Two** has more detail). Actions which may be taken when considering seeking redress include:

- no further action
- criminal investigation
- civil recovery
- disciplinary action
- confiscation order under POCA
- recovery sought from ongoing salary payments.

## 5.3 Timescales

Action to recover losses should be commenced as soon as practicable after the loss has been identified. Given the various options open to the Trust, it may be necessary for various departments to liaise about the most appropriate option.

## 5.4 Recording

In order to provide assurance that policies were adhered to, the Director of Finance will maintain a record highlighting when recovery action was required and issued and when the action taken was taken. This will be reviewed and updated on a regular basis

# 6. Review

## 6.1 Monitoring & Auditing Policy Effectiveness

Monitoring is essential to ensuring that controls are appropriate and sufficiently robust to prevent or reduce fraud, bribery and corruption.

Internal Audit will review adherence to the policy as part of their review of internal controls, findings will be reported to Senior Management and Audit Committee.

## 6.2 Dissemination of the Policy

An e-copy of this policy will be disseminated to all relevant staff, wards and departments. Trust Pack Policy Holders will be responsible for updating policy packs as required and displaying Appendix 1 on staff notice boards within their own departments.

## APPENDIX ONE

### Do You Have Concerns About a Fraud Taking Place in the NHS?

**FRAUD** is the dishonest intent to obtain a financial gain from, or cause a financial loss to, a person or party 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.

#### DO

- **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 will be respected – delays may lead to further financial loss.

#### DO NOT

- **Confront the suspect or convey concerns to anyone other than those authorised**

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.

#### How can I report a fraud (or suspected fraud) taking place in the NHS?

1. Call the **NHS Fraud and Corruption Reporting Line** on (freephone) **0800 028 40 60**.  
Lines are open 8am–6pm Monday to Friday.
2. Fill in the **online fraud reporting form** at **[www.reportnhsfraud.nhs.uk](http://www.reportnhsfraud.nhs.uk)**.
3. Ask your **Local Counter Fraud Specialist** for advice.

Jon Cohen  
Tel: 07880 054 551  
Email: [jon.cohen@kpmg.co.uk](mailto:jon.cohen@kpmg.co.uk)

## APPENDIX TWO

### ACTION TO BE TAKEN

Sections 10 and 11 of the *NHS Counter Fraud and Corruption Manual* provide 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 Pennine Care NHS Foundation Trust or the civil law.

In cases of serious fraud 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.

The NHS Protect 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.

Actions which may be taken when considering seeking redress include:

- no further action
- criminal investigation
- civil recovery
- disciplinary action
- confiscation order under POCA
- recovery sought from ongoing salary payments.

In some cases (taking into consideration all the facts of a case), it may be that Pennine Care NHS Foundation Trust, 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.

The civil recovery route is also available to Pennine Care NHS Foundation Trust if this is cost-effective and desirable for deterrence purposes. This could involve a number of options such as applying through the Small Claims Court and/or recovery through debt collection agencies. Each case needs to be discussed with the director of finance to determine the most appropriate action.

The appropriate senior manager, in conjunction with the HR department, will be responsible for initiating any necessary disciplinary action. Arrangements may be made to recover losses via payroll if the subject is still employed by Pennine Care NHS Foundation Trust. In all cases, current legislation must be complied with.