

Anti-Fraud, Bribery & Corruption Policy and Response Plan

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DOCUMENT CONTROL

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(1) Introduction

East Staffordshire Clinical Commissioning Group (ESCCG or “the CCG”) is committed to the anti-fraud, bribery and corruption procedures as laid down in this policy. This document sets out the CCG’s policy for dealing with detected or suspected fraud, bribery or corruption, and the avoidance of such activity as directed by NHS Protect.

The policy contains the procedure to be followed when employees or members of the public wish to raise concerns in connection with actual or suspected fraud, bribery or corruption.

ESCCG wishes to encourage anyone having reasonable suspicions of fraud, bribery or corruption to report them. The CCG will ensure that no employee will suffer in any way as a result of reporting reasonably held suspicions of fraud, bribery or corruption.

For these purposes “*a reasonably held suspicion*” shall mean any suspicion other than those which are raised maliciously. All suspicions of fraud committed against the CCG will be investigated, regardless of whether perpetrated by a member of the public, an employee or a contractor.

The ultimate aim of the policy is to protect the patients, staff, property, finances and reputation of the CCG.

(2) Scope

This policy applies to all employees of ESCCG, and should also be used by interim, agency staff, contractors or suppliers, to report any concerns they may have. The CCG will adhere to the NHS Protect quality standards and procedures, as well as the NHS Anti-Fraud Manual, when investigating cases and imposing sanctions.

The CCG will make every effort to investigate fully any suspicion of fraud. It is the policy of the East Staffordshire CCG to seek to recover all losses arising from all identified fraud related activities and to take such sanctions as are appropriate. All investigations into fraud, bribery or corruption against ESCCG will be reported to the Chief Finance Officer (CFO) and NHS Protect.

The CCG shall nominate a suitable person to act as its Local Counter Fraud Specialist (LCFS), whose role and responsibilities are determined by NHS Protect and the NHS Anti-Fraud Manual.

(3) Policy Statement

All employees have a personal responsibility to protect the assets of the CCG, including buildings, equipment and monies, against the loss from theft, fraud, corruption or any other irregularity.

The CCG is absolutely committed to maintaining an honest, open culture, so as to best fulfil its objectives and those of the wider NHS. The CCG is also committed to the elimination of any form of fraud, bribery or corruption, to the investigation of any such allegations and to taking appropriate sanctions when fraud, bribery or corruption is identified.

This may include any appropriate combination of criminal prosecution, disciplinary action and undertaking steps to recover any assets lost as a result fraud, bribery or corruption.

It is the responsibility of each member of staff to report any reasonable suspicions to the nominated LCFS for the CCG. No individual will suffer any detrimental treatment as a result of reporting reasonably held suspicions.

(4) NHS Protect

NHS Protect is responsible for the prevention of crime within the NHS, and sets the standards that NHS organisations have to follow when tackling crime across NHS funded services¹. As well as setting organisational standards, NHS Protect also sets the standards by which investigators must operate when combating crime within the NHS. Only accredited NHS Protect LCFSs can be nominated by a NHS organisation to undertake their anti-fraud, bribery and corruption activities.

(5) Local Counter Fraud Specialist (LCFS)

The CCG shall nominate a suitable person to act as its LCFS, whose role and responsibilities are determined by NHS Protect, the NHS Anti-Fraud Manual, and the Standard NHS Contract.

The LCFS will actively promote an anti-fraud, bribery and corruption culture throughout the CCG. They will investigate all cases of fraud, bribery and corruption committed against the CCG, as per NHS Protect Policy, the NHS Anti-Fraud Manual and mindful of the Data Protection Act 1998 and other, relevant criminal legislation.

The LCFS will report to the CFO, Audit Committee and NHS Protect; and will produce an Anti-Fraud, Bribery and Corruption Work Plan with the CFO, which will be ratified by the Audit Committee. The LCFS will attend Audit Committee meetings, to report progress on the Plan and to raise matters of concern. They will regularly liaise with the CFO to discuss matters including and any investigations. The LCFS also has direct access to the Audit Committee Chair.

(6) Definitions

Fraud can be defined as “*wrongful or criminal deception intended to result in financial or personal gain or to cause the loss or risk of loss to another*”.

The Fraud Act 2006 includes a number of offences relating to fraudulent and dishonest actions, the main ones being:

- Fraud by false representation
- Fraud by failing to disclose information
- Fraud by abuse of position

Offences under the Act carry prison sentences of up to ten years in addition to heavy fines.

Bribery can be defined as “*the offering, giving, receiving or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his/her public or legal duties*”.

Corruption may be defined as being “*where someone is influenced by bribery, payment or benefit in kind to unreasonably use their position to give some advantage to themselves or to another*”.

The Bribery Act 2010 includes a number of offences in relation to bribery and corruption. The generic term “corruption” is accommodated into this Act; and the main offences involve:

¹ This section has been reduced from earlier approved versions of this policy for a number of reasons – much of the predecessor text has been deemed irrelevant to most readers of the document; and some powers / responsibilities of NHS Protect are known to be changing and disappearing (with further ones still subject to change). Reducing reference to this now means the CCG’s policy should not become obsolete too soon.

- Offering or paying a bribe
- Asking for or receiving a bribe
- Bribing a foreign public official
- Failing to prevent bribes being paid on behalf of an organisation

The offences apply to all UK 'bodies corporate', which includes all NHS organisations.

The fourth offence is a corporate offence, applicable where bribes are paid on behalf of an organisation that has not taken appropriate measures to prevent bribery from occurring.

While there are few scenarios within the NHS where this might prove likely, the CCG and other NHS organisations are nevertheless required to be mindful of the risks that this offence poses.

(7) Anti-Bribery Procedures

The guidance accompanying the Bribery Act features a number of principles should apply when considering the risk of bribery and corruption. Being able to demonstrate that these principles have been properly addressed provides some legal defence should it be proven that bribery has taken place on behalf of that organisation.

Although the risk of this occurring in an NHS context is generally considered to be low, the principles form a useful framework for any organisation to demonstrate that it has adequate procedures in place to prevent bribery. The six principles are:

(a) Proportionality

The CCG must have procedures in place to prevent bribery by persons associated with it. These are proportionate to the bribery risks faced by the organisation and to the nature, scale and complexity of the organisation's activities. They are also clear, practical, accessible, effectively implemented and enforced.

(b) Top Level Commitment

The CCG's Accountable Officer (AO) and its Directors should demonstrate that they are committed to preventing bribery by persons associated with the CCG. They will foster a culture within the organisation in which bribery is never acceptable.

(c) Risk Assessment

There are periodic and documented assessments undertaken of the nature and extent of the CCG's exposure to potential external and internal risk of bribery on its behalf by persons associated with it is periodically assessed. This includes financial risks but also other risks such as reputational damage.

(d) Due Diligence

The CCG takes a proportionate and risk based approach, in respect of persons who perform / will perform services for it or on its behalf, in order to mitigate identified risks.

(e) Communication (including training)

The CCG seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risks it faces.

(f) Monitoring and Review

The CCG will monitor / review that its procedures designed to prevent bribery by persons associated with the CCG and make improvements to minimise the risk where necessary.

(8) Public Service Values

The Nolan Committee was set up in 1994 to examine concerns about standards of conduct of all holders of public office. The Committee published seven principles of public life:

- **Selflessness** – *the CCG should take decisions solely in terms of the public interest. Decisions are not to be made in order to gain financial or other material benefits for the members of the CCG, their family, or their friends*
- **Accountability** – *everything done by those who work at the CCG must be able to stand the tests of parliamentary scrutiny, public judgements on propriety and professional codes of conduct*
- **Probity** – *absolute honesty and integrity should be exercised in dealing with NHS patients, assets, employees, suppliers and customers*
- **Openness** – *the CCG's actions should be sufficiently public and transparent to promote confidence between the CCG and its stakeholders*
- **Objectivity** – *in carrying out business, including making appointments, awarding contracts or recommending individuals for rewards / benefits, the CCG should make choices on merit*
- **Honesty** – *members of the CCG have a duty to declare any private interests relating to their duties and take steps to resolve any conflicts arising in a way that protects the public interest*
- **Leadership** – *members of the CCG should promote and support these principles by leadership and example: it is expected that Governing Body Members, Executive Directors and staff at all levels will lead by example in acting with the utmost integrity and ensuring adherence to all relevant regulations, policies and procedures*

(9) Roles and Responsibilities

9.1 All Employees

- ☑ Employees are expected to adhere to the policies and procedures of the CCG and to the Public Service Values (Nolan Principles)
- ☑ All employees also have a duty to protect the assets of the CCG / wider NHS, including information and goodwill, in addition to property
- ☑ Employees are expected to act in accordance with the standards laid down by their Professional Institutes, where applicable
- ☑ All employees, including Governing Body Members, must declare and register any interests that might potentially conflict with those of the CCG or the wider NHS
- ☑ When an employee suspects that there has been an incident of fraud, bribery or corruption, they must report this to the nominated LCFS or the CFO (see Section 11)
- ☑ Under no circumstances should staff attempt to investigate any instance of actual or suspected fraud, bribery or corruption, nor subject any individual(s) to surveillance of any kind
- ☑ All employees should be aware that failure to gather evidence in an appropriate legal manner may undermine any potential criminal investigation and subsequent prosecution

9.2 Managers

- ☑ Managers must be vigilant and ensure that CCG procedures are followed; they should be alert to the possibility that unusual events or transactions could be symptoms of fraud – where they have any doubt, they must seek advice from the nominated LCFS
- ☑ They must establish an anti-fraud and corruption culture within their team and ensure that information on procedures is made available to all staff, especially making all team members / staff aware of this policy and its contents

9.3 Chief Finance Officer (CFO)

- ☑ The CFO is responsible for the funds of ESCCG; and will oversee the work of the nominated LCFS for the CCG, and will liaise and discuss with the nominated LCFS the anti-fraud, bribery and corruption arrangements and any investigations undertaken
- ☑ The CFO will liaise with NHS Protect with regard to anti- fraud, bribery and corruption arrangements and investigations relating to the CCG.
- ☑ The CFO will authorise any prosecution, following discussion with the nominated LCFS and NHS Protect: when investigations have been referred to the Police or the investigation is in conjunction with the Police, the Crown Prosecution Service will make the decision concerning any prosecution
- ☑ The CFO will, depending on the outcome of investigations (whether on an interim, ongoing or a concluding basis) and/or the potential significance of suspicions that have been raised, inform the AO and the Chair of the Audit Committee of cases, as may be deemed appropriate or necessary

9.4 Local Counter Fraud Specialist (LCFS)

- ☑ The nominated LCFS is responsible for delivering all anti-fraud, bribery and corruption arrangements at ESCCG, in accordance with national standards as set by NHS Protect and the NHS Anti-Fraud Manual and reports directly to the CFO
- ☑ The nominated LCFS will work with key colleagues and stakeholders to promote anti-fraud work and effectively respond to system weaknesses; the LCFS will also investigate allegations of fraud, bribery and corruption

9.5 Internal and External Audit

- ☑ The CCG's nominated Internal and External Auditors have a duty to pass on any incident or suspicion of fraud, bribery or corruption that they identify as part of an audit, to the nominated LCFS for the CCG

9.6 Human Resources (HR)

- ☑ HR, as provided separately by the CCG's contracted commissioning support services provider (currently Midlands & Lancashire Commissioning Support Unit) will liaise closely with the LCFS from the outset where an employee is suspected of being involved in fraud, bribery or corruption – close liaison is essential to ensure that any parallel sanctions (i.e. criminal / disciplinary) are applied effectively and in a co-ordinated manner

(10) Prevention Arrangements

These are a key part of an organisation's defence against fraud, bribery or corruption. Therefore deterring and preventing dishonesty is a key component in combating internal or external fraud, bribery and corruption.

Prevention arrangements include revising and strengthening procedures, administrative processes and providing input for review of policies.

The CCG needs to be aware of any system weaknesses becoming apparent during an investigation. The nominated LCFS and Internal Audit will advise on the development of procedures to prevent fraud, bribery and corruption where these have been identified.

(11) Investigating Fraud, Bribery and Corruption

11.1 Reporting Fraud, Bribery or Corruption (see Appendix A)

A key aspect of an effective strategy is the ability to undertake a professional and objective investigation into allegations of fraud, bribery or corruption. Early detection helps an investigation and minimises the potential for further loss to the CCG

Anyone who encounters behaviour, documents or other evidence that they suspect may indicate fraud, bribery or corruption, should take the following action,

- You should report your suspicions to the nominated LCFS:***

Neil Mohan
Lead Counter Fraud Specialist, Pricewaterhouse Coopers
Telephone: (01509) 604029
Email: neil.mohan@nhs.net

- Alternatively, complete the Referral Form (CFS1):***

This is provided as Appendix B of this policy – once completed, this should be posted to the Anti-Fraud Team at the address supplied on the form.

- You can also report concerns to the CCG's CFO:***

Wendy Kerr
Telephone: (01283) 507137

- You can also report suspicions directly to NHS Protect:***

Fraud and Corruption Reporting Line on (0800) 0284060
NHS Protect online - www.reportnhsfraud.nhs.uk

All referrals received will be treated in confidence. The Public Interest Disclosure Act 1998 provides statutory protection, within defined parameters, to staff that make disclosures about a range of concerns, including fraud, bribery or corruption, which they believe to be happening within the organisation employing them. The CCG also has a Whistleblowing Policy which can be referred to when referring any suspicions.

On no account should anyone seek to investigate suspicions of fraud, bribery or corruption, as this may cause difficulties later.

- You should retain any potential evidence and make notes of any issues / concerns immediately
- No further action should be taken once suspicions have been raised in line with this policy

Please see Appendix C for a full list of “Do’s and Don’ts” when suspecting fraud, bribery or corruption.

11.2 Investigating Procedures and Methods

All investigations will be undertaken in a professional and objective manner, in accordance with criminal legislation / procedure, NHS Protect policy and the NHS Anti-Fraud Manual.

The nominated LCFS will be allowed access to all CCG employees, directors, contractors, and providers, as well as to systems, processes, records, data and information, as is necessary, in order to progress any investigation. All information requests will be made in accordance with the relevant sections of the Data Protection Act 1998.

During the course of an investigation all relevant legislation will be taken into account.

(12) Disciplinary Sanctions

The CCG will decide on the appropriate disciplinary action, in accordance with the CCG’s Disciplinary Policy, in instances when fraud, bribery or corruption has taken place involving an employee.

There will be instances when it is appropriate to pursue more than one course of action at the same time e.g. a criminal investigation and a disciplinary investigation. In such instances close liaison must exist between those investigating criminal and disciplinary matters.

Criminal action should take precedence over disciplinary action. However, care must be exercised as criminal investigations and prosecutions can take much longer to complete. The CCG should avoid being in a position where they are paying for a member of staff to be suspended whilst awaiting a criminal trial.

Close liaison must exist between those investigating criminal and disciplinary matters. In situations where an investigation impacts on another, the matter will be referred to the CFO to consider the advice from each investigator and to agree which investigation takes priority.

(13) Recovery

The CCG will seek to recover any monies, property or assets lost as a result of any fraud, bribery or corruption committed against it. When seeking to obtain recovery, the CCG will consider all forms of recovery available under both criminal and civil law: e.g. the Proceeds of Crime Act 2002, or debt collection agencies.

The CFO will consider the recovery options available and authorise the appropriate recovery action, dependent upon the circumstances.

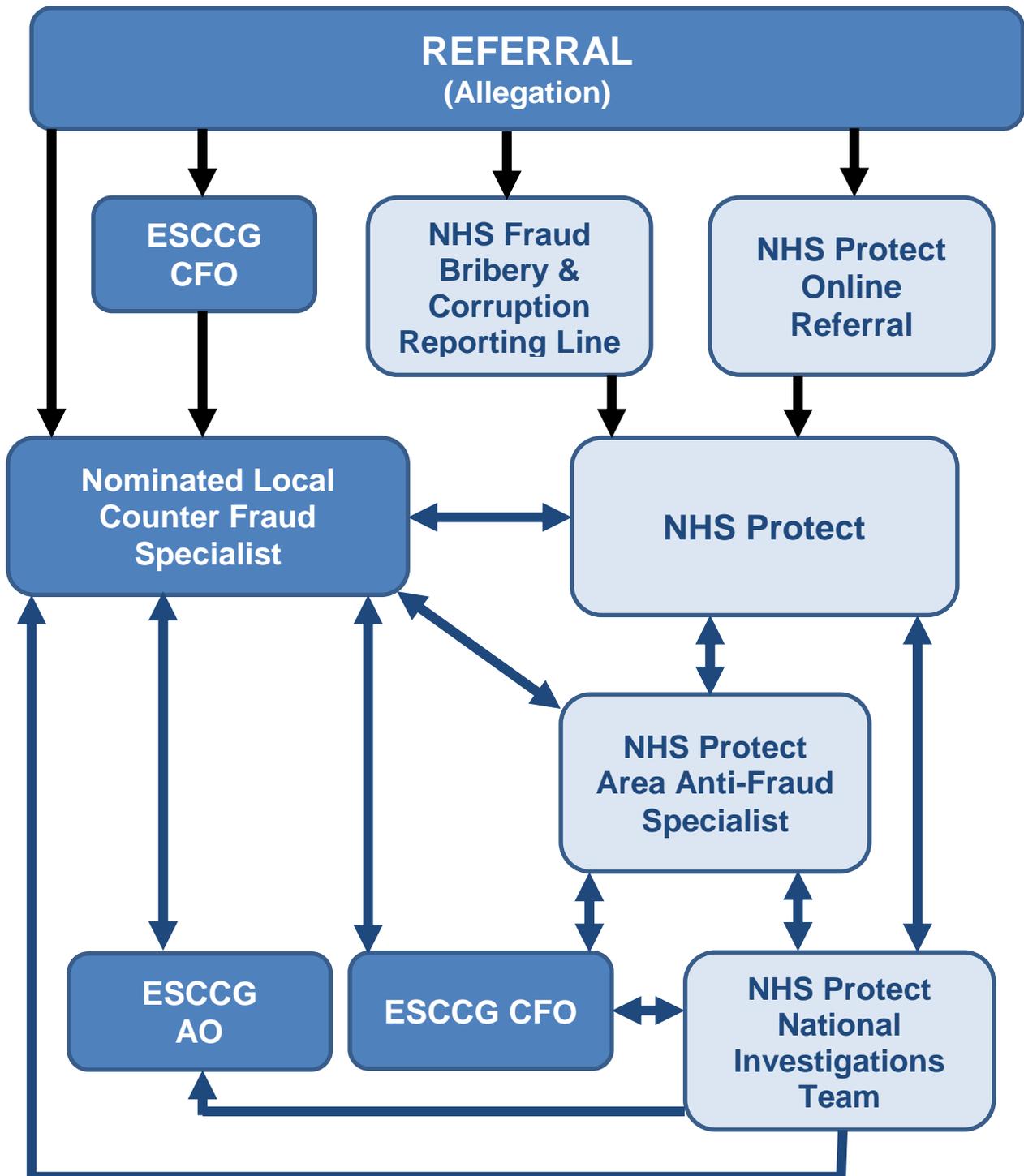
(14) Conclusion

All CCG employees have a duty to follow the Public Service Values; and ensure in particular that they maintain the standards of honesty and accountability.

All employees should at all times comply with the CCG’s internal control systems and procedures; and report any reasonable, non-malicious suspicions of fraud, bribery, corruption or serious criminal misconduct.

Appendices

Appendix A – Referral Flowchart



Appendix B – Postal Referral Form (CFS 1): Fraud, Bribery and Corruption

REFERRAL FROM (your details)

NAME	
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ORGANISATION / PROFESSION	
----------------------------------	--

ADDRESS	
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Phone / Email address	
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THIS ALLEGED FRAUD RELATES TO: <i>(Who do you suspect of fraud / corruption?)</i>
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NAME	
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ADDRESS	
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DATE OF BIRTH if known	
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DETAILS OF SUSPICION	<i>(What you suspect, where / when, value involved, reasons for suspicion etc)</i>
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Please attach any available additional information.

Signed..... Date.....

The CCG's Local Counter Fraud Specialist will undertake to acknowledge receipt of this referral direct to you within 5 working days unless otherwise requested.

Please return this form, marked private and confidential to:

Neil Mohan, Local Counter Fraud Specialist, PwC, Donington Court, Pegasus Business Park, Castle Donington, DE74 2UZ

Appendix C – NHS Fraud, Bribery + Corruption: “Do’s and Don’ts” Guide

FRAUD is the intent to obtain financial gain from, or cause a financial loss to, a person / party through false representation, failing to disclose information or abuse of position

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

<p style="text-align: center;"><u>DO</u></p>	<p style="text-align: center;"><u>DO NOT</u></p>
<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Note your concerns <ul style="list-style-type: none"> - Record details: e.g. the nature of your concerns, names, dates, times, details of conversations + possible witnesses. Time, date + sign your notes <input checked="" type="checkbox"/> Retain evidence <ul style="list-style-type: none"> - Retain any evidence that may be destroyed, or make a note + advise your Local Counter Fraud Specialist <input checked="" type="checkbox"/> Report your suspicions <ul style="list-style-type: none"> - Confidentiality will be respected: delays may lead to further financial loss 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Confront the suspect or convey concerns to anyone other than those authorised, as listed below <ul style="list-style-type: none"> - Never attempt to question a suspect yourself; this could alert a fraudster or lead to an innocent person being unjustly accused <input checked="" type="checkbox"/> Try to investigate, or contact the police directly <ul style="list-style-type: none"> - Never attempt to gather evidence yourself unless it is about to be destroyed; gathering evidence must be done in line with legal requirements in order for it to be useful. Your Local Counter Fraud Specialist can conduct an investigation in accordance with legislation <input checked="" type="checkbox"/> Be afraid of raising your concerns <ul style="list-style-type: none"> - The Public Interest Disclosure Act 1998 protects employees who have reasonable concerns: you will not suffer discrimination or victimisation by following the correct procedures <input checked="" type="checkbox"/> Do nothing!
<p style="text-align: center;">If you suspect that fraud against the NHS has taken place, you must report it immediately by:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Directly contacting the nominated Local Counter Fraud Specialist; or <input checked="" type="checkbox"/> Phoning the free-phone NHS Fraud + Corruption Reporting Line (see details on the right); or <input checked="" type="checkbox"/> Contacting the CFO 	<p style="text-align: center;">Do you have concerns about a fraud taking place in the NHS?</p> <p>NHS Fraud, Bribery and Corruption Reporting Line: 0800 028 40 60 Calls will be treated in confidence + investigated by professionally trained staff.</p> <p>Online: www.reportnhsfraud.nhs.uk</p>
<p>Your Nominated Local Counter Fraud Specialist is: NEIL MOHAN who can be contacted by telephoning (01509) 604029 or emailing neil.mohan@nhs.net If you would like further information about NHS Protect, please visit http://www.nhsbsa.nhs.uk/Protect.aspx</p>	