**Counter Fraud, Bribery and Corruption Policy**

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| Impact Assessments Undertaken | * Equality and Health Inequalities Impact Assessment |

**Version History:**

| Version | Date | Author (Name and Title) | Summary of amendments made |
| --- | --- | --- | --- |
| 0.1 | 08/02/22 | David Triggs, Governance Lead | Draft ICB Policy |
| 0.2 | 08/02/2022 | Viv Barnes and  Sara O’Connor  Governance Leads | Review of first draft  Minor text changes & highlight need to insert links to related documents |
| 0.3 | 15/02/22 | Mark Barker CFO | Minor text changes  Change Director of Finance to Director of Resources |
| 0.4 | 04/03/22 | Audit Committee | Minor amendments. |
| 1.0 | 12/08/22 | Marion Barritt /  Sara O’Connor | Final review against policy checklist. |
|  |  |  |  |

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# Introduction

## All fraud, bribery and corruption (collectively referred to as economic crime) in the NHS is unacceptable and must not be tolerated. It affects the ability of the NHS to improve health outcomes for the population, as resources are wrongfully diverted and cannot be used for their intended purpose. NHS funds and resources must, therefore, be safeguarded against those minded to committing economic crime.

## The Mid and South Essex ICB Board is absolutely committed to maintaining an honest, open and well-intentioned culture within the organisation. It is, therefore, also absolutely committed to the identification and elimination of fraud, bribery or any other illegal act which occurs either within or against the organisation.

## Whilst every effort will be made to prevent fraud and bribery from occurring, where this is not possible, the Board is committed to the rigorous investigation of any such cases and robust controls to ensure where identified it can be eliminated and prevented in the future. Consequently, all cases of suspected fraud, bribery and dishonesty will be considered for investigation. Where appropriate, criminal prosecution and civil court action may be taken to recover money, costs and interest. Employees of the ICB or of third parties acting on behalf of the ICB may also be subject to criminal/civil/disciplinary action and or referral to a professional regulator.

## The Board wishes to encourage anyone having reasonable suspicions of fraud and/or bribery to report them. Therefore, it is also the Board’s policy, which will be rigorously enforced, that no individual will suffer in any way as a result of reporting a reasonably held suspicion, provided that they have acted in ‘good faith’ when doing so. For these purposes “reasonably held suspicions” shall mean any suspicions other than those, which are raised maliciously and found to be groundless. The Board is also committed to ensuring employees are treated in line with the Public Interest Disclosure Act 1998 and its Raising Concerns (Whistleblowing) policy, which should be consulted by employees who are concerned about making a report.

# Purpose

## The ICB is committed to ensuring its resources are appropriately protected from fraud, bribery and corruption.

## Activities to tackle economic crime within the ICB will be carried out within four key principles for action:

* Strategic governance
* Inform and involve
* Prevent and deter, and
* Hold to account.

## This policy aims to:

* + Explain how the ICB intends to tackle economic crime following the NHSCFA Strategy guidelines.
  + Provide guidance.
  + Ensure employees are able to recognise economic crime and understand the correct reporting requirements.

# Scope

## This policy applies to all ICB staff (including temporary/ bank/agency staff), contractors engaged by the ICB and staff from other MSE ICS Partnership organisations working on behalf of the ICB

# Definitions

## **Fraud** - The Fraud Act 2006 created a criminal offence of fraud and defines three main ways of committing it:

1. Fraud by false representation

A person is in breach of this section if he/she dishonestly makes a false representation and:

* Intends, by making the representation to make a gain for themselves or another, or to cause loss to another or to expose another to a risk of loss.

A representation is false if:

* It is untrue or misleading, and
* The person making it knows that it is, or that it might be, untrue or misleading.

1. Fraud by failing to disclose information

A person is in breach of this section if he/she:

* Dishonestly fails to disclose to another person information which they are under a legal duty to disclose, and
* Intends, by failing to disclose the information to make a gain for themselves or another, or to cause loss to another or to expose another to a risk of loss

1. Fraud by abuse of position

A person is in breach of this section if he/she:

* Occupies a position in which he/she is expected to safeguard, or not to act against, the financial interests of another person;
* Dishonestly abuses that position, and
* Intends, by means of the abuse of that position to make a gain for themselves or another, or to cause loss to another or to expose another to a risk of loss.

A person may be regarded as having abused their position even though their conduct consisted of an omission rather than an act.

Fraud carries a maximum sentence of 10 years imprisonment.

## **Property** - means any property whether real or personal (including things in action and other intangible property).

## **Gain** -includes a gain by keeping what one has, as well as a gain by getting what one does not have.

## **Loss** - includes a loss by not getting what one might get, as well as a loss by parting with what one has.

## **NHS Counter Fraud Authority (NHSCFA)** – this is the Special Health Authority charged with identifying, investigating and preventing fraud and other economic crime within the NHS and the wider health group. Focussed entirely on counter fraud work, the NHSCFA is independent from other NHS bodies and directly accountable to the Department of Health and Social Care.

## **Bribery and Corruption** - Bribery is generally defined as giving or offering someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so; or requesting, agreeing to receive or accepting the advantage offered.

The Bribery Act 2010 reformed the criminal law of bribery, making it easier to tackle this offence proactively in both the public and private sectors. It introduced a corporate offence which means that commercial organisations including NHS bodies will be exposed to criminal liability, punishable by an unlimited fine, for failing to prevent bribery.

Bribery carries a maximum sentence of 10 years imprisonment and a fine.

## **Theft** – theft is defined within the Theft Act 1968 as ‘dishonestly appropriating property belonging to another with the intention of permanently depriving the other of it.’

The Theft Act 1968 also includes robbery, burglary and abstracting electricity amongst other offences.

Should theft or similar offences be suspected by any person the ICB’s Local Security Management Specialist (LSMS) should be informed to review security measures and recommend referral to the Police if appropriate.

# Roles and Responsibilities

## **Integrated Care Board**

### The ICB Board is accountable and responsible for ensuring that its resources are appropriately protected from fraud, bribery and corruption. The ICB Board is assured through the work of the Audit Committee.

## **Audit Committee**

### This committee is responsible for the detailed oversight and scrutiny of the systems and processes for protecting the ICB from fraud, bribery and corruption.

### The Audit Committee will:

* Require assurance that there are adequate arrangements in place for tackling economic crime.
* Approve the counter fraud, bribery and corruption work plan.
* Review the outcomes of counter fraud, bribery and corruption work.
* Review the adequacy and effectiveness of policies and procedures, seeking reports and assurances from Officers as appropriate.

## **Chief Executive**

### The Chief Executive is responsible for implementation of and compliance with this Policy. The Chief Executive has overall responsibility for the funds entrusted to the ICB and, as the Accounting Officer, will ensure adequate policies and procedures are in place to protect the ICB from economic crime.

## **Director of Resources (DOR)**

### The Director of Resources, as a member of the Board, is responsible for overseeing and providing strategic management and support for all work to tackle economic crime within the ICB.

### This ensures there is effective leadership and a high level of commitment to the tackling of economic crime within the ICB. Identifying a member of the Board to oversee this work also helps the ICB to focus on its key strategic priorities in the area of economic crime.

### All counter fraud, bribery and corruption services (including for hosted bodies) are provided under arrangements proposed by the Director of Resources and approved by the Audit and Assurance Committees, on behalf of the Boards.

## **NHS Counter Fraud Authority**

### In accordance with its case acceptance criteria, the NHS Counter Fraud Authority (NHSCFA) will investigate cases of fraud that are not investigated by the ICB Counter Fraud Team.

### The ICB will provide access to and support for NHSCFA improvement activity and will fully engage with associated planning action.

## **Internal and External Audit**

### Internal audit play a key role in reviewing controls, identifying system weaknesses and testing compliance with the ICB’s standing financial instructions.

### External audit have a specific role to conduct an independent examination and express an opinion on the ICB’s financial statements.

### The audit functions are separate and distinct from work to tackle crime, but it is important that there are effective links between those responsible for the audit function and those responsible for tackling economic crime.

### Internal and external audit should meet regularly with those responsible for work to tackle economic crime, to discuss and monitor liaison requirements with reference to the purpose of each function, ensuring they remain effective and fit for purpose.

## **Human Resources**

### Managers are responsible for taking forward disciplinary proceedings against employees who have committed an offence. Human Resources (HR) provide advice regarding this process in line with the ICB Disciplinary Policy. It is not unusual for criminal and disciplinary processes to overlap. In the case of parallel criminal and disciplinary processes, these should be conducted separately and by different officers, but there needs to be close liaison between those investigating economic crime and those progressing disciplinary proceedings since one process may impact on the other. This may include the sharing of information where lawful and at the appropriate time.

### HR will, where appropriate, provide information to assist those responsible for dealing with economic crime with any proactive reviews undertaken in relation to detection or prevention activities. In addition, HR will inform those responsible for investigating economic crime of any possible system weaknesses that could allow fraud, bribery or corruption to occur. This includes weaknesses discovered as any part of a HR investigation that did not warrant the commencement of a criminal investigation.

### Those responsible for dealing with economic crime may need to meet regularly with HR to discuss requirements to liaise and to monitor joint working arrangements.

## **Nominated and Accredited Local Counter Fraud Specialists**

### Nominated and accredited LCFSs work within NHS commissioning and provider organisations to tackle economic crime in line with the NHSCFA Counter Fraud Strategy.

### Nominated and accredited LCFSs will work with colleagues to promote their work, respond to identified system weaknesses and investigate allegations of fraud, bribery or corruption.

### Investigative work will usually be carried out by the ICB counter fraud team (in certain circumstances NHSCFA may investigate). This team comprises of nominated and accredited Counter Fraud Specialists.

## **Commissioning Support Unit**

### The Commissioning Support Unit (CSU) will assist the DOR, HR and the LCFS, in supporting access to employee IT records for the purposes of investigating incidents of fraud.

## **Information Management and Technology**

### In line with the Computer Misuse Act 1990, the Information Management and Technology (IM&T) team will report all cases to the LCFS where there is suspicion that IT is being used for fraudulent purposes. This includes inappropriate Internet or E-mail use.

## **Managers**

### All managers are responsible for ensuring that policies, procedures and processes within their work areas are adhered to and kept under review. This includes but not limited to authorising annual leave, staff expenses and staff leave as appropriate following guidelines.

### Managers should ensure that all employees in their teams are aware of fraud, bribery and corruption (economic crime) risks and understand the importance of protecting the ICB against them. Managers may also be responsible for the enforcement of disciplinary action for employees who do not comply with policies and procedures and commit economic crime.

### If a manager suspects, or is made aware, that someone in their team or a third party may be committing economic crime, they must immediately report their suspicions to the ICB LCFS.

### Managers should in no circumstances investigate suspicions or an allegation themselves. A summary of what employees (including managers) should do with any concerns is included in Appendices A and B. Routine verification of information or outliers according to normal processes is reasonable. However, where there is a concern that deliberate wrongdoing or potential fraud may have taken place, or they are unsure, employees (including managers) are encouraged to seek the advice of the relevant ICB LCFS at the earliest possible stage.

### Managers must ensure all staff complete counter fraud training available on the Electronic Staff Record (ESR) as part of MSE ICB mandatory training requirements

## **All ICB Employees**

### All employees should carry out their duties with due regard for ICB policies and procedures, be aware of fraud, bribery and corruption (economic crime) risks and understand the importance of protecting the organisation against them.

### Employees must report any suspicions of economic crime as soon as they become aware of them, using the contact details listed in Appendix B, to ensure they are investigated appropriately and to maximise the chances of financial recovery.

### Under no circumstances should any staff member commence an investigation into suspected or alleged economic crime. A summary of what staff should do with any concerns is included in Appendix A and Appendix B. Where there is a concern of deliberate wrongdoing or potential fraud, or they are unsure, staff are encouraged to seek the advice of the Local Counter Fraud Specialist at the earliest possible stage.

### All staff should cooperate with the Counter Fraud Specialists, as well as NHSCFA and other bodies, to facilitate work to tackle economic crime involving the NHS by:

* Providing information and intelligence
* Facilitating investigations; complying with NHSCFA strategy and guidance
* Not revealing information about open investigations to unauthorised persons (including journalists)
* Taking all appropriate steps to prevent, detect and investigate economic crime including:
  + Appointing qualified/professional personnel to operate in accordance with relevant legislation and relevant standards and
  + Ensuring that appropriate measures are included in all financial governance and system controls to tackle economic crime.

### All employees should not be afraid to report genuine suspicions of fraud, bribery or corruption. The Public Interest Disclosure Act 1998 protects those who have reasonable concerns and will not suffer discrimination or victimisation for following the correct procedures.

### Any fraud, bribery or corruption concerns received through the Raising Concerns Policy should be referred to the Counter Fraud Team as soon as possible and whistle-blowers encouraged to report any future fraudulent concerns directly to the Local Counter Fraud Specialist in the first instance.

### Employees should not confirm or deny the existence of an ongoing fraud investigation to any unauthorised individual (including journalists) without seeking prior approval from the LCFS or relevant NHSCFA investigator, as appropriate.

### For details regarding responsibilities regarding the declaration of gifts and hospitality, refer to the Conflicts of Interest, Gifts and Hospitality and Commercial Sponsorship Policy for the organisation. For expectations regarding the Values, Aims, Principles, Behaviours and Accountability, refer to the Corporate Governance Handbook.

# Approach to Tackling Economic Crime

## **Strategic Governance**

### The ICB will ensure there is support for work to tackle Economic Crime at all levels with the organisation. The Director of Resources will have overall responsibility for overseeing and providing strategic management and support for the work, ensuring it is embedded across the ICB. All counter fraud work will be aligned to the NHSCFA strategy.

### Furthermore, the ICBwill undertake the full range of work against economic crime.

### A local risk assessment based on the NHSCFA Risk Descriptors and other influencing factors will form the basis of an annual Counter Fraud Plan setting out the work scheduled for the year and authorised by the Audit Committee.

## **Key Principles for Action**

### In order to tackle economic crime, the ICBwill take a multi-faceted approach that is both proactive and reactive. This approach is set out in the following three key principles for action:

*Inform and Involve*

### The ICBwill ensure all its employees understand what economic crime is, and their role in ensuring they follow the correct reporting procedures. This can take place through communications and promotions, such as awareness campaigns, newsletters and presentations.

*Prevent and Deter*

### The ICB will remove opportunities for economic crime to occur and discourage those individuals who may be tempted to commit these crimes. Successes will be publicised so that the risk and consequences of detection are clear to potential offenders. Those individuals who are not deterred should be prevented from committing crime by ensuring robust systems are in place.

*Hold to account*

### The ICBwill ensure those who have committed economic crime against it are held to account for their actions. MSE ICBwill ensure professionally trained specialists are in place to detect and investigate these offences and will seek to apply the full range of sanctions to those found to have committed fraud, bribery or corruption, including criminal, civil and disciplinary sanctions. Disciplinary sanctions will be carried out by HR supported by the LCFS as appropriate.

### The ICBwill also seek to recover all funds lost to economic crime.

## **Cabinet Office Functional Standard and Measuring Success**

### The Cabinet Office has developed Functional Standard GovS 013: Counter Fraud. The purpose of this government functional standard is to set the expectations for the management of fraud, bribery and corruption risk in government organisations. The ICB will implement these requirements in order to ensure its resources are protected from economic crime.

### Having appropriate measures in place helps to protect NHS resources against crime and ensures that the ICBis able to meet these standards.

### The ICBwill co-operate with the reporting and assurance programme associated with GovS 013 and will aim to continually enhance compliance with the Functional Standards.

# Monitoring Compliance

## Awareness of and compliance with the policies and procedures laid down in this document will be monitored by NHSCFA, as part of their quality assurance programme. Independent reviews may be conducted by both Internal and External Audit on a periodic basis.

## The Director of Resources is responsible for the monitoring, revision and updating of this document.

## All appropriate sanctions will be sought against those found to have committed economic crime, including criminal, civil and disciplinary sanctions. Where applicable, these may include but not be limited to:

* Criminal prosecution
* Recovery by means of contractual arrangements
* Recovery via agreement or via a civil court
* Internal disciplinary sanctions
* Referral to a professional body such as General Medical Council, Nursing Midwifery Council or Care Quality Commission.

# Staff Training

## Managers must ensure all staff complete the counter fraud training as part of the ICB’s training requirements

# Arrangements for Review

## This policy will be reviewed no less frequently than every two years. An earlier review will be carried out in the event of any relevant changes in legislation, national or local policy/guidance, organisational change or other circumstances which mean the policy needs to be reviewed.

## If only minor changes are required, the sponsoring Committee has authority to make these changes without referral to the ICB Board. If more significant or substantial changes are required, the policy will need to be ratified by the relevant committee before final approval by the Board.

# Associated Policies, Guidance and Documents

* Freedom to Speak Up: Raising Concerns (Whistleblowing) Policy
* Standards of Business Conduct Policy
* Conflicts of Interest, Gifts and Hospital and Commercial Sponsorship Policy
* Disciplinary Policy

# References

* [NHS Counter Fraud Strategy](https://cfa.nhs.uk/resources/downloads/documents/corporate-publications/NHSCFA_Strategy_2020-23.pdf)
* [The Fraud Act](https://www.legislation.gov.uk/ukpga/2006/35/contents) 2006
* [The Bribery Act 2010](https://www.legislation.gov.uk/ukpga/2010/23/contents)

# Equality Impact Assessment (EIA)

12.1 The EIA has identified no equality issues with this policy.

12.2 The EIA has been included as Appendix C.

# APPENDIX A – What to do if you have any suspicions of fraud?

## If you suspect fraud or bribery within the workplace, there are a few simple guidelines that should be followed:

**DO:**

* Make an immediate note of your concerns.
* Where possible note all relevant details, such as what was said in telephone or other conversations, the date, time and the names of any parties involved.
* Convey your suspicions to someone with the appropriate authority and experience, as set out within Section 5.12 and Appendix B of this this Anti-Fraud and Bribery Policy; and
* Deal with the matter promptly. Any delay may cause the ICB to suffer further financial loss.

**DON’T:**

* Do nothing.
* Be afraid of raising your concerns. You will not suffer any recrimination as a result of voicing a reasonably held suspicion, and any matter you raise will be dealt with sensitively and confidentially.
* Approach or accuse any individuals directly. If the suspected individual is made aware of the allegation against them, they could destroy or conceal evidence before an official investigation has begun.
* Try to investigate the matter yourself. There are special rules surrounding the gathering of evidence for use in criminal cases. Any attempt to gather evidence by people who are unfamiliar with these rules may compromise the case; and
* Convey your suspicions to anyone other than those with the proper authority.

# APPENDIX B - How to report suspected fraud taking place in the NHS

Suspicions can be reported to:

* The ICB’s Local Counter Fraud Specialist (LCFS)

Eleni Gill [eleni.gill@wmas.nhs.uk](mailto:eleni.gill@wmas.nhs.uk) or 07827 308906

* The ICB’s Director of Resources

Dawn Scrafield [dawn.scrafield@nhs.net](mailto:dawn.scrafield@nhs.net) or 07887 890531

* The ICB’s Audit Chair

George Wood [george.wood5@nhs.net](mailto:george.wood5@nhs.net) or 07753 872965

* The Crimestoppers powered NHS Fraud and Corruption Reporting Line

0800 028 40 60 or by filling in an online form at cfa.nhs.uk/reportfraud

# APPENDIX C - Equality Impact Assessment

**INITIAL INFORMATION**

|  |  |
| --- | --- |
| **Name of policy:** Counter Fraud, Bribery and Corruption Policy  **Version number (if relevant): 1.0** | **Directorate/Service**: Resources |
| **Assessor’s Name and Job Title:**  David Triggs, Governance Lead | **Date:**  February 2022 |

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| **OUTCOMES** |
| *Briefly describe the aim of the policy and state the intended outcomes for staff* |
| This policy aims to:   * Explain how the ICB intends to tackle economic crime following the NHSCFA Strategy guidelines. * Provide guidance. * Ensure employees are able to recognise economic crime and understand the correct reporting requirements |
| **EVIDENCE** |
| *What data / information have you used to assess how this policy might impact on protected groups?* |
| The ICB monitors the composition of its workforce under the nine protected equality characteristics and report on this annually. This information helps the ICB to assess the potential impact of its policies upon staff. |
| *Who have you consulted with to assess possible impact on protected groups? If you have not consulted other people, please explain why?* |
| The policy was developed in consultation with Governance Leads, the Director of Finance and the Local Counter Fraud Specialist prior to being reviewed by the Audit Committees in common. |

**ANALYSIS OF IMPACT ON EQUALITY**

The Public Sector Equality Duty requires us to **eliminate** discrimination, **advance** equality of opportunity and **foster** good relations with protected groups. Consider how this policy / service will achieve these aims.

N.B. In some cases it is legal to treat people differently (objective justification).

* ***Positive outcome*** *– the policy/service eliminates discrimination, advances equality of opportunity and fosters good relations with protected groups*
* ***Negative outcome*** *–**protected group(s) could be disadvantaged or discriminated against*
* ***Neutral outcome***  *–**there is no effect currently on protected groups*

Please tick to show if outcome is likely to be positive, negative or neutral. Consider direct and indirect discrimination, harassment and victimisation.

| Protected  Group | Positive  outcome | Negative  outcome | Neutral  outcome | Reason(s) for outcome |
| --- | --- | --- | --- | --- |
| Age |  |  | ✓ | No impact identified. |
| Disability  (Physical and Mental/Learning) |  |  | ✓ | No impact identified. The policy will be made available in alternative formats, such as easy read or large print and alternative languages upon request. |
| Religion or belief |  |  | ✓ | No impact identified. |
| Sex (Gender) |  |  | ✓ | No impact identified. |
| Sexual  Orientation |  |  | ✓ | No impact identified. |
| Transgender / Gender Reassignment |  |  | ✓ | No impact identified. |
| Race and ethnicity |  |  | ✓ | No impact identified. The policy will be made available in alternative formats, such as easy read or large print and alternative languages upon request. |
| Pregnancy and maternity (including breastfeeding mothers) |  |  | ✓ | No impact identified. |
| Marriage or Civil Partnership |  |  | ✓ | No impact identified |

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| **MONITORING OUTCOMES** |
| Monitoring is an ongoing process to check outcomes. It is different from a formal review which takes place at pre-agreed intervals. |
| *What methods will you use to monitor outcomes on protected groups?* |
| It is anticipated that any issues in respect of the impact of the policy upon protected staff groups will be identified via the HR Grievance Procedure. |

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| **REVIEW** |
| *How often will you review this policy / service?* |
| Every 2 years as a minimum and earlier if there are any significant changes in legislation, policy or good practice. |
| *If a review process is not in place, what plans do you have to establish one?* |
| N/A |