



Fraud Policy and Fraud Action Plan

Printed copies must not be considered the definitive version

DOCUMENT CONTROL		POLICY NO.	05
Policy Group	Corporate		
Author	Julie Watters Chief Internal Auditor (Fraud Liaison Officer)	Version no.	1.5
Reviewer	Julie Watters & Counter Fraud Services	Implementation Date	March 2016
Scope (Applicability)	Board wide		
Status	Final and approved	Next review date	March 2018
Approved by	Audit and Risk Committee 21 st March 2016	Last review date	March 2016

CONTENTS

	Page
<u>PART 1 – FRAUD POLICY</u>	
1. Introduction.....	3
2. Public Service Values.....	3
3. Scottish Government Fraud Strategy and Guidance.....	4
4. The Board’s Policy on Fraud and Corruption.....	4
5. Public Interest Disclosure Act 1998.....	5
6. Regulation Of Investigatory Powers (Scotland) Act 2000.....	5
7. Guidance for Staff.....	6
8. Summarised roles and responsibilities.....	7
9. Key contacts.....	9
<u>PART 2 – FRAUD ACTION PLAN</u>	
1. Introduction.....	10
2. Reporting Fraud and Corruption.....	10
3. Investigation of Fraud and Corruption.....	11
4. Reporting to the Procurator Fiscal.....	13
5. Discipline or Civil Recovery.....	13
6. Involvement of the CFS in Disciplinary/Civil Recovery cases.....	14
7. Civil Law Remedies.....	15
8. Other issues for consideration.....	15
<u>APPENDICES</u>	
Appendix A Relevant Fraud Guidance and Legislation.....	17
Appendix B List of Specified Offences.....	19
Appendix C Fraud Roles and Responsibilities	20
Appendix D Guidance to Staff on Fraud (Induction handout).....	24

PART 1 - FRAUD POLICY

1. Introduction

- 1.1 One of the basic underlying principles of public sector organisations is being able to demonstrate the proper use of public funds. The majority of people who work in the NHS are honest and professional and find that fraud, corruption and bribery committed by a minority is wholly unacceptable. It is therefore important that all those who work in the public sector are aware of the risk of theft, dishonesty, fraud and similar illegal acts, and are aware of the means of reporting concerns.
- 1.2 NHS Scotland's policy on countering fraud and other irregularities was originally laid out in The Strategy to Combat NHS Fraud in Scotland - CEL 3 (2008) with further detail in the Partnership Agreement with NHS Boards and the Memorandum of Understanding between Internal Audit Teams and NHSScotland Counter Fraud Services (CFS). This update to the policy gives consideration to the most recent guidance received on fraud and financial crime, CEL 11 (2013) – Strategy to combat financial crime in NHS Scotland. The original CEL remains in force and is supported by the new guidance which focuses on “Tone from the Top” and also revises the roles and responsibilities of the Fraud Liaison Officer, Counter Fraud Champion and other officers within the Board.

Full details of the many pieces of guidance and legislation that relate to NHSScotland can be found at Appendix A.

- 1.3 Counter Fraud Services (CFS) was created specifically to assist all NHSScotland Boards in their efforts to reduce losses through fraud and corruption. This document sets out NHS Dumfries and Galloway's fraud policy and action plan to achieve such a reduction. The Board recognises that every pound of fraud prevented or recovered means increased funding for patient care.
- 1.4 This document is intended to provide detailed direction and help to those Board staff who have suspicions or find themselves dealing with suspected theft, fraud or corruption. It sets out a framework, which centres on immediate discussions and agreement with CFS in respect of how each case will be taken forward. On behalf of the Board, CFS will consider investigating “Specified Offences” which have the potential for criminal prosecution and Board staff need to be aware of the many options and of their responsibilities in the event that a criminal prosecution is not the chosen route. Specified Offences are listed at Appendix B.
- 1.5 This policy and action plan are intended to be an integral part of the Board's overall counter fraud, anti-bribery and corruption strategy.

2. Public Service Values

- 2.1 In order to safeguard the public interest and ensure the proper stewardship of public funds, it is essential that the three public service values of accountability, probity and openness underpin the behaviours and actions of all those who work in NHS Dumfries and Galloway.

- **Accountability**

Everything done by those who work in the organisation must be able to stand the tests of parliamentary scrutiny, public judgments on propriety, and professional codes of conduct.

- **Probity**

Absolute honesty and integrity should be exercised in dealing with NHS patients, staff, assets, suppliers and customers.

- **Openness**

The organisation's activities should be sufficiently public and transparent to promote confidence between the organisation and its patients, staff and the public.

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

2.2 The Board will therefore foster a culture which promotes these values as it seeks to prevent and to expose fraudulent activity and the misuse of resources. There are a number of controls in place to regulate and monitor the conduct of the Board's business, namely:

- Standing Orders,
- Standing Financial Instructions (SFIs),
- operational and departmental policies and procedures,
- internal audit, and
- external audit.

A requirement of higher level guidance is that we formulate robust protocols in order to ensure a prompt, measured and appropriate response to alleged, suspected or detected fraud or misappropriation, or other financial misconduct.

3. **Scottish Government Fraud Strategy and Guidance**

3.1 In June 2015, the Scottish Government published its strategy "Protecting Public Resources in Scotland – A Strategic Approach to Fighting Fraud and Error". This expands on the key features provided within CELs 3(2008) and 11(2013).

4. **The Board's Policy on Fraud and Corruption**

4.1 The Board has signed a Partnership Agreement with CFS, which outlines what must happen in the event of a fraud or other irregularity being discovered, and what the Board and CFS will do to actively counter the threat of fraud and corruption. These documents endorse the public service values of accountability, probity and openness stated above.

Fraud Policy and Fraud Action Plan

The Board is committed to the original NHSScotland Strategy on Countering Fraud and Corruption - CEL 03(2008) and the more recent Strategy to combat Financial Crime in NHSScotland – CEL 11(2013). This is supported by commitment to the public service values outlined above and maintaining an honest, open and well-intentioned culture within the organisation, so as to best fulfil the objectives of the Board and of the NHS. It is therefore committed to the elimination of any fraud within the Board, to the rigorous investigation of any such cases, and where fraud or other criminal act is proven, to ensure that those perpetrating fraud are appropriately dealt with. The Board will also take appropriate steps to recover any assets lost as a result of fraud.

4.2 This Fraud Policy and Action Plan is to be followed in the event of suspected fraud being reported and is supplemented with a guidance notes issued to all staff during induction.

4.3 The Board will nominate a Board member as a Counter Fraud Champion, who will work with CFS on an annual proactive plan. The Counter Fraud Champion role is currently undertaken by the Chair of the Audit and Risk Committee.

5. Public Interest Disclosure Act 1998

5.1 As noted above, the Board will maintain an honest and open culture and wishes to encourage anyone having suspicions of theft, dishonesty, corruption or fraud to report them without delay. The Board's Whistleblowing Policy will be rigorously enforced, in order that all members of staff can be confident that they will not suffer in any way as a result of reporting suspicions held in good faith, i.e. suspicions other than those that are raised maliciously.

5.2 Further information is also available on the Public Concern at Work website – www.pcaaw.org.uk

5.3 The Fraud Liaison Officer (FLO) is authorised to receive enquiries from staff confidentially and anonymously and, where appropriate to report the matter to CFS, the Director of Finance and/or the Chair of the Audit and Risk Committee.

5.4 The Board's Appointed (External) Auditors are also authorised to receive enquiries and to report on these as above.

6. Regulation of Investigatory Powers (Scotland) Act 2000

6.1 The use of covert surveillance or covert human intelligence sources (CHIS) by public authorities is strictly limited by the provisions of the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA). NHS National Services Scotland is the only NHS Board which is a named authority under RIPSA and, as such, only the Director of Practitioner and Counter Fraud Services (P&CFS) and the Head of CFS can authorise the use of any form of surveillance and the use of covert human intelligence sources in NHSScotland.

Fraud Policy and Fraud Action Plan

6.2 Where appropriate CFS will authorise and conduct directed surveillance and the use of CHIS on behalf of the Board. Where the Board are considering surveillance or the use of CHIS in cases which do not involve fraud or other financial irregularities, such as public or staff safety or the prevention of disorder, they should contact the appropriate public body as outlined in HDL 30 (2003). This will normally be the relevant police force.

7. Guidance for Staff

7.1 All employees should be assured that there will be no recriminations against staff who report suspicions held in good faith. Victimising or deterring staff from reporting concerns is a serious disciplinary matter. Any contravention of this policy should be reported to the Chief Executive or Chair of the Audit and Risk Committee. Equally, however, abuse of the process by raising malicious allegations would, if proven, be regarded as a disciplinary matter.

7.2 If you believe you have good reason to suspect a colleague, patient or other person of fraud or an offence involving the Board or a serious infringement of Board or NHS rules you should discuss this in the first place with your manager.

7.3 If you have suspicions about the actions of your manager, such that you suspect that manager of involvement of fraud, then you have a choice of:

- going to the next more senior person in your department or directorate;
- reporting the matter confidentially with the FLO;
- reporting the matter directly to the Director of Finance.

Further choices for staff are:

- to follow the guidance within the Board's Whistleblowing Policy where fraud may not be the only concern,
- to use the Counter Fraud Services (CFS) Fraud Reporting Line 08000 151628 or report suspicions (anonymously if desired) through the CFS Website - www.cfs.scot.nhs.uk
- if you are concerned about speaking to another member of staff you could ask for advice first from the charity "Public Concern at Work" through the Confidential Alert Line on 0800 008 6112. They provide independent and confidential advice and can also be reached on 0207 404 6609.

7.4 The FLO liaises with CFS during the initial stages of a referral prior to any decision being made regarding the requirement for a full investigation on the part of CFS.

7.5 It should be noted that CFS have investigatory powers and rights that are not held within the Board and it is therefore recommended that discussions with the FLO and CFS take place prior to any actions being taken by the Board such as suspension of staff which may impact on an investigation.

7.6 Under no circumstances should staff speak to representatives of the press, radio, TV or other third party unless expressly authorised by the Chief Executive.

Fraud Policy and Fraud Action Plan

7.7 Staff should be aware that time may be of the utmost importance to ensure that the Board does not continue to suffer a loss.

8. Summarised roles and responsibilities

8.1 A full list of roles and responsibilities in relation to fraud is attached in Appendix C. These are summarised below.

8.2 As Accountable Officer, the Chief Executive has the responsibility, in its broadest terms, for countering fraud. The Chief Executive may delegate the day-to-day responsibility for the management of fraud processes and individual cases to the Board's Director of Finance and Fraud Liaison Officer.

8.3 The Board's Counter Fraud Champion will support the Chief Executive in this role by heightening fraud awareness at Board level and ensuring the effectiveness of counter fraud efforts is measured.

8.4 The Fraud Liaison Officer will discuss each relevant case with CFS and decide if there is a potential for criminal prosecution, or disciplinary and/or civil action. If a criminal investigation is required then CFS will undertake the investigation on behalf of the Board. This will not preclude the Board taking disciplinary and/or civil action however that could only occur with agreement from CFS and potentially the relevant procurator fiscal. Any investigation will be carried out by CFS in accordance with the CFS Partnership Agreement with the Board in direct consultation with the FLO. In cases where the FLO and CFS cannot agree on a course of action, the Accountable Officer shall make a decision based on the facts presented.

8.5 Where CFS is undertaking a case on behalf of the Board no further action shall be taken by the Director of Finance, the FLO, the Workforce Director, or any other Board officer without consultation with CFS. This is necessary to maintain the integrity of the investigation. Where it is agreed that the Board shall commence an internal enquiry with a view to disciplinary proceedings and/or civil recovery, if at any stage it becomes apparent that a Specified Offence may have taken place, the investigation must be halted and CFS consulted.

8.6 Regardless of whether the investigation is carried out with a view to criminal prosecution, or disciplinary/civil recovery, all staff are under a duty to refrain from taking any direct action with regard to the enquiry without first consulting the FLO or the CFS Investigating Officer.

8.7 The **Workforce Director or nominated Human Resources Manager** shall ensure that those involved in the investigation are advised in matters of employment law and in other procedural matters, such as disciplinary and complaints procedures, as required. All HR staff should be familiar with the "Tackling NHS fraud" training DVD and ensure that advice that they give is consistent with this. Induction training within the Board will also include a general overview of fraud. The document "Guidance to staff on Fraud (Appendix D) will be distributed to staff at induction.

Fraud Policy and Fraud Action Plan

- 8.9 CFS, in conjunction with the Board, must deliver such publicity campaigns, staff induction information and fraud awareness presentations, as to allow the Board to fulfil its obligation in countering fraud.
- 8.10 Finally, all staff have a duty to protect the assets of the Board. Assets include information, intellectual property and goodwill as well as cash and physical property.

9. Key contacts in relation to fraud issues are as follows:

Director of Finance

Katy Lewis
Finance Directorate
High West
Crichton Hall
Dumfries
DG1 4TG

Direct Dial: (01387 244035)
Internal: 34035

E-mail: katy.lewis@nhs.net

Chief Executive

Jeff Ace
Chief Executive's Office
Mid North
Crichton Hall
Dumfries
DG1 4TG

Direct Dial: (01387) 272701
Internal: 32701

E-mail: jeff.ace@nhs.net

Fraud Liaison Officer

Julie Watters
Chief Internal Auditor
Internal Audit
Mid South
Crichton Hall
Dumfries
DG1 4TG

Direct Dial: (01387) 244355
Internal: 34355

Email: julie.watters@nhs.net

Counter Fraud Champion

Robert Allan (Non Executive Director)
Chair of Audit and Risk Committee
Dumfries and Galloway NHS Board
Mid North
Crichton Hall
Dumfries
DG1 4TG

Direct Dial: (01387) 272702
Internal: 32702

Email: robertallan2@nhs.net

Counter Fraud Services

Counter Fraud Services
Earlston House
Almondvale Business Park
Almondvale Way
Livingston
EH54 6GA

Telephone: 01506 705 200
Fax: 01506 465 182
Fraud Hotline: 08000 15 16 28

Website: www.cfs.scot.nhs.uk

External Auditors

Grant Thornton UK LLP
Level 8
110 Queen Street
Glasgow
G1 3BX

Telephone: 0141 223 0000

Website: www.grant-thornton.co.uk

PART 2 - FRAUD ACTION PLAN

1. Introduction

- 1.1 The following sections describe NHS Dumfries and Galloway's (the Board) intended response to a reported suspicion of fraud, theft or corruption. It is intended to provide procedures, which allow for evidence gathering and collation in a manner that will facilitate an informed initial decision, whilst ensuring that evidence gathered will be admissible in any future criminal or civil action. Each situation is different; therefore the guidance will need to be considered carefully in relation to the actual circumstances of each case before action is taken.

2. Reporting Fraud and Corruption

- 2.1 These procedures are intended to reassure members of staff who might be worried about their concerns not being properly investigated or being discriminated against for having raised their concerns. The many routes to reporting concerns laid out below are to encourage staff to bring issues forward and aim to offer a number of alternatives to reflect the many types of issues that staff may wish to raise.
- 2.2 Where staff have grounds to suspect that fraud or corruption has occurred, they should report their concerns without delay. Time may be of the utmost importance and delay may result in further loss to the Board or may allow evidence to be destroyed.
- 2.3 In the first instance staff should report their concerns or suspicions to their line manager. If they are unavailable or if they feel uncomfortable doing so they should report to their head of department. If the suspicions seem well founded, the head of department will inform the Fraud Liaison Officer (FLO) who is authorised to deal with such matters. The FLO will inform the Director of Finance.
- 2.5 Where a member of staff feels uneasy about discussing their concern through the above route, they may use the CFS Fraud Reporting Hotline 08000 15 16 28, or report their suspicions through the CFS Website (anonymously if desired). NHSScotland has introduced a Confidential Alert Line for all issues where staff may want to report a concern. The number is 0800 008 6112. Alternatively, the employee may choose instead to contact the charity "Public Concern at Work (PCAW)" on 020 7404 6609 or via their website. PCAW can offer the employee advice on how to proceed. These alternatives should be considered by staff based on the nature of the concern and do not override options laid out in the Board's Whistleblowing Policy.
- 2.6 Where an employee's suspicions are in respect of an Executive Director, the matter should be reported to the Chairman of the Board. If required, the employee may seek the assistance of the FLO in reporting to the Chairman. This facility can be accessed by a member of staff at any stage.
- 2.7 The FLO is responsible for the coordination of complaints/queries received by the Board relating to Primary Care Practitioners – GP's, dentists, opticians and pharmacists. All concerns or suspicions in respect of Primary Care Practitioners

Fraud Policy and Fraud Action Plan

should be reported to the FLO who will discuss these matters with the Head of Primary Care Development and advise the Director of Finance where fraud or corruption has occurred or is suspected.

- 2.8 Where in the legitimate course of their duties, an employee has access to documents or other evidence which supports their suspicions; these should if possible be made available to the officer to whom the concerns are being reported. Employees should not jeopardise their own position or risk alerting a suspected fraudster by attempting to obtain evidence which is not normally and/or readily available to them.
- 2.9 The investigation of fraud usually requires specialist skills and training. Under no circumstances therefore, should employees attempt to carry out any further investigations themselves before reporting their suspicions.
- 2.10 Where suspicions of fraud arise in the course of internal audit work, the Chief Internal Auditor will immediately notify the FLO (if not the same person), and the Director of Finance. If the nature of the suspicions is such that it is not appropriate to report to the Director of Finance, the Chief Internal Auditor will advise the Chairman of the Board.
- 2.11 In accordance with the Accounts Commission Code of Audit Practice, the external auditor should report suspected fraud or corruption to the Director of Finance and Fraud Liaison Officer.
- 2.12 The Partnership Agreement places a duty on the FLO to notify CFS of all relevant cases.

3. Investigation of Fraud and Corruption

- 3.1 The nature of fraud can vary considerably and each investigation may require its own unique approach to meet the particular circumstances which prevail. This Plan does not therefore set out to prescribe a detailed programme of action which should be applied in every investigation into suspected fraud. Instead, it highlights the issues which need to be considered when planning an investigation.
- 3.2 The FLO will discuss each relevant case with CFS and review the potential for a criminal prosecution, or disciplinary and/or civil action. If a criminal investigation is required then CFS will undertake this on behalf of the Board. This will not preclude the Board taking disciplinary and/or civil action; however that could only occur with agreement from CFS and potentially the relevant Procurator Fiscal.
- 3.3 In cases where the FLO and CFS cannot agree on a course of action, the Accountable Officer shall make a decision based on the facts presented.
- 3.4 Where CFS is undertaking a case on behalf of the Board no further action shall be taken by the Director of Finance, the FLO, the Workforce Director, or any other Board officer without consultation with CFS. This is necessary to maintain the integrity of the investigation.
- 3.5 Where it is agreed that the Board shall commence an internal enquiry with a view to

Fraud Policy and Fraud Action Plan

disciplinary proceedings and/or civil recovery, if at any stage it becomes apparent that a Specified Offence may have taken place, the investigation must be halted and CFS consulted.

3.6 The investigation of fraud can quickly consume significant resources. It is important therefore to ensure that the investigation is properly managed.

- The Director of Finance should approve the objectives of the investigation.
- The Director of Finance should agree the scope and timing of the investigation.
- The Director of Finance and Chief Internal Auditor should agree the resources which will be available for the investigation. These should be appropriate to the nature of the fraud and the likelihood of a positive outcome. This is especially relevant where there is a risk that investigation of fraud may impact on completion of the annual audit plan.
- The Chief Internal Auditor should ensure that the resources used are monitored against the agreed budget.
- Although an investigation into an alleged fraud may not lead to criminal proceedings, it could still result in disciplinary action, as this requires a lesser burden of proof. The final fraud investigation report may be tabled as evidence at a disciplinary hearing if one is necessary.

3.7 The officer appointed by the Director of Finance to oversee the investigation should maintain a diary/timeline of events. This should give a detailed explanation of each action and event in the course of the investigation. In particular,

- details should be recorded of all telephone calls, faxes, electronic mail and communication by any other means;
- a formal record should be made of all interviews and meetings;
- there should be a clear record of where, when and how documents and other evidence were obtained.

3.8 In addition, a considerable time can elapse between the start and conclusion of an investigation and between the completed investigation and any sanction being applied. It is important therefore that to aid recall, all relevant details are recorded timeously in the diary of events.

3.9 The originals of relevant documents and records should be impounded at the start of the investigation to prevent them being altered to conceal the fraud. These should be logged in such a way to facilitate the identification of the source, nature and purpose of each item.

3.10 Regardless of whether the investigation is carried out with a view to criminal prosecution, or disciplinary/civil recovery, all staff are under a duty to refrain from taking any direct action with regard to the enquiry without first consulting the FLO or the CFS Officer in Charge.

Fraud Policy and Fraud Action Plan

- 3.11 The Workforce Director (or appropriate member of the HR team) shall ensure that those involved in the investigation are advised in matters of employment law and in other procedural matters, such as disciplinary and complaints procedures, as required.
- 3.12 A Memorandum of Understanding between NHSScotland Internal Audit Teams and CFS is in place, which sets out a framework for the co-operation and collaboration between both parties on the deterrence, prevention, detection and investigation of fraud. In addition, there is also a similar Memorandum of Understanding between NHSScotland Human Resources Teams and CFS.
- 3.13 The Director of Finance will ensure that any lessons learned from a case of fraud are converted into an action plan to prevent a similar occurrence in future.
- 3.14 It may be the case that preliminary enquiries do not reveal prima facie grounds for believing that a criminal offence has occurred and that such grounds only emerge at a later stage of an investigation. For example, although in preliminary discussions with the CFS, this question may appear to have been answered, in some cases this question may be asked more than once during an investigation. In practice it may not be obvious that a criminal act has taken place. However, if at any time during the investigation, a criminal act is believed to have occurred the agreed procedure involving the CFS must be invoked.
- 3.15 The procedures that will be followed by the CFS in all investigations are detailed in the Partnership Agreement.

4. Reporting to the Procurator Fiscal

- 4.1 Circular [HDL \(2002\) 23](#) states that “Where preliminary investigations suggest that prima facie grounds exist for thinking that a criminal offence has been committed, the appropriate Procurator Fiscal must be notified without delay...” Therefore, where such grounds exist, CFS will be under a duty to take the case forward and to report those facts of which it is made aware, on the Board’s behalf, to the Procurator Fiscal.
- 4.2 Where CFS has been in contact with a Procurator Fiscal for an application for a search warrant or Proceeds of Crime Act application etc., control of the case effectively passes to the Procurator Fiscal, who may demand a report on the outcome to be submitted whether or not the Board or CFS wish it.

5. Discipline or Civil Recovery

- 5.1 Where, following consultation between the Board and CFS, an investigation limited to disciplinary/civil recovery action appears appropriate; the following sections outline the actions to be followed.
- 5.2 Where the allegation is in respect of an employee, the Director of Finance/Fraud Liaison Officer will seek advice from the Workforce Director on whether to suspend a suspected employee or redeploy them temporarily at another site.

Fraud Policy and Fraud Action Plan

- 5.3 Where the allegation is in respect of a director, the Chair of the Audit and Risk Committee/Chairman of the Board will involve the Workforce Director, where appropriate, in making any decision regarding suspension. When taking action to suspend an employee or director it is important to communicate the reason for taking the action.
- 5.4 The person should be advised that they will receive full pay whilst on suspension, and should not return to the workplace nor contact their colleagues about the allegations until such time as allowed to do so by their employer. A review of the suspension will be undertaken in line with current HR guidance. The individual will be informed of the outcome of the review.
- 5.5 The Board's disciplinary procedures must be followed in any disciplinary action taken by the Board towards an employee (including dismissal). This may involve the Investigation Manager in reporting formally the results of the investigation and recommending a disciplinary hearing to consider the facts.
- 5.6 Under UK employment legislation dismissal must be for a "fair" reason. The manner of dismissal must also be reasonable and the procedure fair. It is therefore important that no employee should be dismissed without following due process in consultation with the Workforce Director and in compliance with the Board's disciplinary procedures. In these circumstances the Workforce Director may take into consideration guidance provided by the Central Legal Office.
- 5.7 The Workforce Director should be consulted about the subsequent provision of references for employees who have been dismissed or who have resigned following suspicions of a fraud.

6. Involvement of the CFS in Disciplinary/Civil Recovery cases

- 6.1 The Board/CFS Partnership Agreement outlines where it may be possible to utilise some of the work carried out in a criminal case by CFS for disciplinary or civil recovery proceedings. This will always be subject to approval from the relevant procurator fiscal and may require advice from the Central Legal Office.
- 6.2 Due to the nature of the allegation, suspension of the individual may be deemed inappropriate, e.g. it would alert the suspect and as such may lead to the destruction and removal of evidence, no action to inform the suspect that an investigation was taking place should be taken. This decision should be taken early in the process, following CFS advice on whether their input will be of benefit, and prior to any investigation being carried out.
- 6.3 Subject to those caveats, the work done by CFS, particularly with respect to witness and suspect interviews, should reduce the work required by the Board's investigation team.
- 6.4 Criminal law may impose sanctions on the accused for causing loss, while civil law may assist the Board to recover its loss. Subject to CFS obtaining approval from the procurator fiscal concerned, there is no reason why the criminal prosecution and civil process cannot be taken at the same time if the evidence supports such action. The

Partnership Agreement sets out the processes for “triple tracking” whereby Criminal, Disciplinary and Recovery processes can be initiated at the same time.

7. Civil Law Remedies

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

- **Monies had and received**

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

- **Interest**

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

- **Interdict, Arrestment or Inhibition**

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

- **Damages for deceit**

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

8. Other issues for consideration

8.1 Internal Communication

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

This plan is communicated to all staff via Hippo, the Board’s Intranet site. All aspects of fraud awareness education and support are cascaded to staff at Induction via the Guidance to Staff on Fraud document attached at Appendix D

8.2 Response to media enquiries

Where a particular case of fraud attracts enquiries from the media, all employees of the Board should be fully aware of the importance of avoiding issuing any statements which may be regarded as prejudicial to the outcome of criminal proceedings.

Fraud Policy and Fraud Action Plan

Under no circumstances should a member of staff speak or write to representatives of the press, TV or radio, about a suspected fraud, corruption or other irregularity without the express authority of the Chief Executive, the Director of Finance or the Chairman of the Board. Statements to the media in respect of alleged fraud or corruption will normally be made via the Chief Executive.

8.3 Register of Fraud and Financial Irregularity

The FLO will maintain a Register of Fraud and Financial Irregularity which will contain details of all reported suspicions, including those dismissed as being unfounded. The Register will also contain details of the actions taken in respect of each matter reported and the conclusions reached. The FLO will ensure that the Register is held securely at all times, with access restricted to the Director of Finance, Chief Executive, Chair of Audit and Risk Committee and the Chairman of the Board.

8.4 Losses and Compensations Register

Guidance on losses and special payments is provided in Circulars 1985(GEN)17 and HDL23 (2002). This has been further expanded on with the issue of CEL 10 (2010) Enhanced Reporting of Fraud.

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

Fraud Policy and Fraud Action Plan

Relevant Fraud Guidance and Legislation

SGHD Publications		
Reference	Name of Publication	Date
CEL (2013) 11	Updating CEL 3 (2008): Strategy to combat financial crime in NHS Scotland	30/05/2013
CEL (2012) 15	Partnership agreement between NHSScotland Counter Fraud Services and NHS Boards and Special Health Boards	27/04/2012
CEL(2010)40	Regulation of Investigatory Powers (Scotland) Act 2000	25/11/2010
CEL(2010)33	"Tackling NHS fraud" training DVD	14/09/2010
CEL(2010)10	Revised Scottish Financial Return (SFR) 18: enhanced reporting of NHS frauds and attempted frauds	29/03/2010
CEL(2009)18	Partnership agreement between NHSScotland Counter Fraud Services and NHS Boards and Special Health Boards	05/05/2009
CEL(2008)44	Revised form SFR 18: enhanced reporting of NHS frauds and attempted frauds	09/10/2008
CEL(2008)18	National Fraud Initiative (NFI)	04/04/2008
CEL(2008)15	Primary medical services: payment verification procedures	20/03/2008
CEL(2008)03	Strategy to combat NHS fraud in Scotland	28/01/2008
CEL(2007)16	Safer management of controlled drugs: private requisition forms for schedules 1, 2 and 3 controlled drugs	06/11/2007
CEL(2007)12	Family health services: payment verification procedures	04/10/2007
HDL(2006)44	National Fraud Initiative	18/07/2006
HDL(2005)05	Tackling fraud in NHSScotland: joint action programme: financial control: procedure where criminal offences are suspected	16/02/2005
HDL(2004)23	Fraud: tackling National Health Service fraud: extension of counter fraud role of NHSScotland Counter Fraud Services (CFS); treatment of financial recoveries	29/04/2004
HDL(2003)30	Regulation of Investigatory Powers (Scotland) Act 2000	08/07/2003
HDL(2002)88	Fraud: tackling National Health Service fraud: extension of counter fraud role of the Fraud Investigation Unit of the Common Services Agency	11/12/2002
HDL(2002)23	Financial control: procedure where criminal offences are suspected	05/04/2002
MEL(2000)28	Tackling family health service fraud: integrated programme of action: establishment of family health services Fraud Investigation Unit (FIU)	18/05/2000

Fraud Policy and Fraud Action Plan

Legislation
Regulation of Investigatory Powers (Scotland) Act 2000
Public Interest Disclosure Act 1998

Other Guidance
Memorandum of Understanding - CFS and NHSScotland Human Resources Teams
Memorandum of Understanding - CFS and Association of Chief Police Officers (ACPOS)
Memorandum of Understanding - CFS and Internal Audit teams

NHSScotland

National Services Scotland - Counter Fraud Services

List of Specified Offences

The remit of Counter Fraud Services (CFS) is limited to matters of loss by theft, dishonesty, deception and/or manipulation of documents/records where there is a loss to NHSScotland. The following is a list of offences which, following the consultation process, CFS may investigate:

- Falsehood, Fraud and Wilful Imposition;
- Embezzlement;
- Corruption;
- Theft by fraud;
- Theft by omission;
- Other financial irregularities involving dishonesty or deception such as timesheet irregularities, sick leave irregularities, failure to declare gifts, breaches of NHS Circulars or Standing Financial Instructions or other accounting irregularities.

This list is not exclusive, but contains only examples of the type of offence that may attract a CFS investigation.

In exceptional circumstances, or in the interest of the Service, but always as directed by the Accountable Officer, CFS will investigate the alleged commission of any of the specified offences where there is no direct loss to NHS funds e.g. patient or endowment funds. However, the employing NHS Board must intend to report the matter to the Police or the Procurator Fiscal in order to seek criminal proceedings.

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

FRAUD ROLES AND RESPONSIBILITIES

Members of Staff

- to protect the assets of the Board
- to report in confidence any reasonable suspicion of fraud or misappropriation as appropriate
- to co-operate in any investigation
- to maintain confidentiality and not divulge any information to a third party

Heads of Department

- to assess the risk of fraud within their areas of responsibility and to encourage staff to review controls and systems in order to identify vulnerable areas
- to develop and maintain effective controls to prevent or detect fraud or misappropriation
- to encourage staff with any reasonable suspicions of fraud or misappropriation to report the matter
- to reassure members of staff they will in no way suffer as a result of reporting reasonably held suspicions
- to ensure that they do not divulge information to a third party and ensure that staff are aware of the same
- to report to the Director of Finance or FLO any suspicion of fraud or misappropriation
- to co-operate with CFS on any investigation
- to liaise with the appropriate Workforce Business Partner regarding any possible resort to the Disciplinary Procedure and where applicable, initiate disciplinary action.
- to secure locally held documentation likely to be required in an investigation
- to not confront/interview persons likely to be responsible for committing a Specified Offence

Director of Finance

- to assume overall responsibility for investigations, liaising as appropriate with Heads of Department, Internal Audit, Police and Management Executive
- to refer timeously to the Chief Internal Auditor regarding investigations
- to agree the scope and timescale for any investigation
- to keep the Chief Executive informed of issues, and discuss management of the case as appropriate
- to inform the CFS and make full use of their expertise and resources in countering fraud and investigating Specified Offences
- to maintain a record of any suspected or actual fraud or misappropriation and action taken
- to pursue recovery of losses
- to ensure compliance with Standing Financial Instructions regarding the reporting and recovery of losses
- to review internal controls in the light of the conclusions of any investigation

Board Members

Should make themselves available to discuss in confidence with members of staff any reasonably held suspicions regarding fraud or misappropriation and should convey to the Director of Finance the details of any suspected fraud or misappropriation

Counter Fraud Champion - Updated Roles and Responsibilities– CEL 11(2013)

1. Raising the Profile of Counter Fraud Initiatives and Publicity.

The CFC should be in a position to gauge the level of understanding of financial crime in the organisation. If the level is low, the Champion should work with the board communications team to think of imaginative ways to promote fraud awareness. The Champion should also liaise with CFS to seek ideas, and mediums, to explain the message, utilising existing initiatives.

2. Make Regular Reports and/or presentations to the Audit Committee

The Champion must be an Executive Director/ Non Executive Director who is a regular attendee at the Audit Committee. This means that they will have a direct influence on the agenda when fraud is discussed, and can highlight gaps in the counter fraud regime.

3. Involvement in Counter Fraud Initiatives.

The Champion should have oversight of and, where possible be involved in, any initiatives being considered by the NHS Body for deterring and disabling fraud.

4. Monitor the degree to which recommendations resulting from investigations by CFS have been implemented within his/her organisation and take steps to ensure full compliance.

This is an important responsibility, and may well be the task of others within a Body. However, it should be the role of the Champion to enquire as to whom that responsibility is placed and make it their duty to ensure that matters resulting from investigations are being addressed. Again, this is best facilitated by the Champion being a member of the Audit Committee, but if the Champion is of sufficient seniority, then questions can still be asked as to the compliance with fraud investigation outcomes.

5. Relationship with FLO.

The FLO is the key, day-to-day link with CFS. All matters relating to any fraud investigation and counter fraud initiatives within NHS Bodies, comes through that portal. It is therefore important that the Champion knows who the FLO is, and offers support as necessary. The FLO and the Champion should certainly meet up to discuss ongoing cases and counter-fraud initiatives. Particularly important will be the need to spot any gaps in policy or counter-fraud awareness regimes and work closely to brief the Executive Management Team.

6. Relationship with Director Human Resources.

The Champion should make it known to the Director of HR that he/she is in place, and able to assist with promoting an anti-fraud culture in the organisation. In particular, the Champion

Fraud Policy and Fraud Action Plan

should support the use of training tools developed in conjunction with HR Directors and their Teams; including the Counter Fraud DVD and the eLearning package.

7. Relationship with Head of Communications.

The Champion should be alive to any communication going to staff which involves counter-fraud messages. Ideally, the Champion should be involved in the drafting of any communication. The Champion should also be advised, in advance, of any media coverage resulting from successful prosecutions.

8. Relationship with Employee Director.

Encountering fraud in any organisation is stressful for staff. The Champion should therefore liaise with the body's Employee Director and work together to promote a safe environment for staff who report, or are witnesses in, any fraud investigation.

9. Relationship with CFS.

CFS exists to support any NHS Scotland Body in countering fraud. The Champion should feel free to contact CFS at any time to seek general advice on policy and policy implementation. Care should be taken not to obstruct the duties of the FLO, but this can be resolved through close working relationships with FLOs. The Champion will have access to the CFS Secure Website, so that general information can be accessed. The Champion should also attend an introductory briefing with CFS at the beginning of their tenure.

Fraud Liaison Officer - Updated Roles and Responsibilities– CEL 11(2013)

1. Acting as Lead Conduit between CFS and the Health Board.

The FLO is the key first point-of-contact between CFS and the Board, relating to specific cases.

2. Responsible for receiving information about suspected frauds, within their organisation, from staff or others and passing such information to CFS.

In line with the Partnership Agreement, the FLO is the key channel for communication of fraud to CFS.

3. Responsible for facilitating investigations in their organisations and liaison between CFS and those within the Board whose interests are closely linked to any fraud referral to CFS.

As summed up in the Board Partnership Agreement with CFS.

4. Responsible for briefing the Chief Executive and other senior Board Executives on specific cases.

So that the tone from the top can be maintained, the FLO will have the responsibility to keep all senior managers (including the Chief Executive) fully briefed on any current cases.

5. Working with HR Department.

Responsible for working with the Workforce Director to ensure that staff governance is observed, in particular the timing of actions which may involve staff.

6. Ensuring that Audit & Risk Committees are kept informed.

Working with principal executive officers responsible for conduct of the Audit and Risk Committee, to ensure the Committee is properly briefed on fraud matters.

7. Facilitating Deterrence and Awareness Initiatives.

Support CFS, national proactive initiatives to raise awareness by facilitating communications with the relevant Board officers (e.g. CFC, HR Directors, Learning & Development Leads, Communications Manager, etc).

Chief Internal Auditor

The Chief Internal Auditor must ensure that audit plan coverage includes areas where independent assurances are required on systems of internal control in place to prevent fraud

DUMFRIES AND GALLOWAY NHS BOARD



GUIDANCE TO STAFF ON FRAUD

This document provides an introduction to the Board's policy on fraud and gives advice to employees in dealing with fraud or suspected fraud or other illegal acts involving dishonesty or damage to Board property.

All staff have a responsibility to protect the assets of the Board.

1. Public Service Values

The three fundamental public service values underpinning all NHS and public sector work, specified by the NHS Code of Conduct, are:

- **Accountability**
Everything done by those who work in the organisation must be able to stand the tests of parliamentary scrutiny, public judgments on propriety, and professional codes of conduct.
- **Probity**
Absolute honesty and integrity should be exercised in dealing with NHS patients, staff, assets, suppliers and customers.
- **Openness**
The organisation's activities should be sufficiently public and transparent to promote confidence between the organisation and its patients, staff and the public.

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

2. The Board's Policy

The Board is absolutely committed to maintaining an honest, open and well-intentioned culture within the organisation, so as best to fulfil the objectives of the Board and of the NHS. It is therefore committed to the elimination of any fraud within the Board, to the rigorous investigation of any such cases, and where fraud or other criminal act is proven to ensure that those perpetrating fraud are appropriately dealt with. The Board will also take appropriate steps to recover any assets lost as a result of fraud.

The Board wishes to encourage anyone having suspicions of fraud to report them. The Board's policy, which will be rigorously enforced, is that no employee should suffer as a result of reporting suspicions held in good faith.

The Board has therefore set in place procedures (in the form of Standing Orders, Standing Financial Instructions and procedure notes) designed to minimise the likelihood of the Board being a victim of fraud, a Fraud Policy and Response plan to

be followed in the event of suspected fraud being reported and these guidance notes issued to all staff.

3. Instructions to Staff

You should be assured that there will be no recriminations against staff who report suspicions held in good faith. Victimising or deterring staff from reporting concerns is a serious disciplinary matter. Any contravention of this policy should be reported to the Chief Executive or Chair of the Audit Committee. Equally, however, abuse of the process by raising malicious allegations would, if proven, be regarded as a disciplinary matter.

If you believe you have good reason to suspect a colleague, patient or other person of fraud or an offence involving the Board or a serious infringement of Board or NHS rules you should discuss it in the first place with your manager.

Examples could include theft of Board property, abuse of Board property or deception or falsification of records (e.g. fraudulent time or expense claims).

If you have suspicions about the actions of your manager, such that you suspect that manager of involvement of fraud, then you have a choice of:

- going to the next more senior person in your department or directorate;
- discussing the matter confidentially with the Fraud Liaison Officer
- reporting the matter directly to the Fraud Liaison Officer.

Further choices for staff are:

- to follow the guidance within the Board's Whistleblowing policy where fraud may not be the only concern
- you may use the Counter Fraud Services (CFS) Fraud Reporting Line 08000 151628 or report your suspicions (anonymously if desired) through the CFS Website - www.cfs.scot.nhs.uk
- if you are concerned about speaking to another member of staff you could ask for advice first from the charity "Public Concern at Work" through the Confidential Alert Line on 0800 008 6112. They provide independent and confidential advice and can also be reached on 0207 404 6609.

The Chief Internal Auditor is currently the Fraud Liaison Officer (FLO) for the Board and as such liaises with CFS during the initial stages of a referral prior to any decision being made regarding the requirement for a full investigation on the part of CFS.

It should be noted that CFS have investigatory powers and rights that are not held within the Board and it is therefore recommended that discussions with the FLO and CFS take place prior to any actions being taken by the Board such as suspension of staff which may impact on an investigation.

Under no circumstances should staff speak to representatives of the press, radio, TV or other third party unless expressly authorised by the Chief Executive.

Please be aware that time may be of the utmost importance to ensure that the Board does not continue to suffer a loss.

Fraud Policy and Fraud Action Plan

Relevant contacts are as follows:

Director of Finance

Katy Lewis
Finance Directorate
High West
Crichton Hall
Dumfries
DG1 4TG

Direct Dial: (01387 244035)
Internal: 34035

E-mail: katy.lewis@nhs.net

Chief Executive

Jeff Ace
Chief Executive's Office
Mid North
Crichton Hall
Dumfries
DG1 4TG

Direct Dial: (01387) 272701
Internal: 32701

E-mail: jeff.ace@nhs.net

Fraud Liaison Officer

Julie Watters
Chief Internal Auditor
Internal Audit
Mid South
Crichton Hall
Dumfries
DG1 4TG

Direct Dial: (01387) 244355
Internal: 34355

Email: julie.watters@nhs.net

Counter Fraud Champion

Robert Allan (Non Executive Director)
Chair of Audit and Risk Committee
Dumfries and Galloway NHS Board
Mid North
Crichton Hall
Dumfries
DG1 4TG

Direct Dial: (01387) 272702
Internal: 32702

Email: robertallan2@nhs.net

Counter Fraud Services

Counter Fraud Services
3 Bain Square
Kirkton Campus
Livingston
EH54 7DQ

Telephone: 0131 275 6211
Fax: 01506 465 182

Fraud Hotline: 08000 15 16 28

Website: www.cfs.scot.nhs.uk

External Auditors

Grant Thornton UK LLP
Level 8
110 Queen Street
Glasgow
G1 3BX

Telephone: 0141 223 0000

Website: www.grant-thornton.co.uk

DOCUMENT CONTROL SHEET

1. Document Status

Title	Fraud Policy and Fraud Action Plan
Author	Julie Watters, Chief Internal Auditor
Approver	Audit and Risk Committee
Document reference	Policy No. 05
Version number	1.5

2. Document Amendment History

Version	Section(s)	Reason for update
1.1 & 1.2	Section 9 and Appendix D	Amendment to Chief Executive and Counter Fraud Champion contact information
1.3	Whole document review	CEL 11(2013) issued to update NHSScotland strategy and contains specific actions at board level
1.4	Section 9 and Appendix D	Amendment to Director of Finance and Counter Fraud Champion contact information
1.5	Whole document review	A number of amendments made to reflect changes to the Partnership Agreement and updated guidance

3. Distribution

Name	Responsibility	Version number
Corporate Business Manager	Place on policy register	1.5
Finance Admin	Place on intranet and in 'latest news'	1.5
Board Management Team	Dissemination to all staff through line management	1.5
HR – Learning and Development	For inclusion in Board induction training	1.5

4. Associated documents

Detailed in Appendix A

5. Action Plan for Implementation

Action	Lead Officer	Timeframe
Approval at Audit and Risk Committee	Chief Internal Auditor	March 2016
Place on policy register	Corporate Business Manager	March 2016
Place on intranet	Finance Admin	March 2016
Dissemination to senior staff through line management	Board Management Team	March 2016
Raise awareness and inform staff	All line managers	March 2016 – ongoing
Use policy	All staff	March 2016 – ongoing

Title: Fraud Policy and Fraud Action Plan
 Date: March 2016
 Version: 1.5
 Author: Julie Watters